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Edited by Gerhard Robbers

AFGHANISTAN–ZIMBABWE

ENCYCLOPEDIA OF WORLD CONSTITUTIONS

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Encyclopedia of World Constitutions

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Preface

Easily accessible and ready at hand, *Encyclopedia of World Constitutions* gives a comprehensive overview of the constitutions of the world. The entries follow a common structure, making the systems easily comparable. All nation-states are covered, as are special and disputed territories. The authors are from all over the world. A large majority of articles are written by specialists in the respective country. All authors are outstanding legal and political experts; very often they hold or have held high offices in their country.

The articles concentrate on information most important for the understanding of the constitutional system, while covering all areas of predominant interest. As far as necessary for this purpose, reference is also made to constitutions of subdivisions of countries with federal structures. Suggestions for further reading attached to each article provide more detailed sources of information. This section includes Web addresses for the English text of the relevant constitutional document. The glossary explains special terms that help in understanding a particular constitution.

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— Gerhard Robbers

Introduction

A constitution represents the legal fundamentals of a country. It outlines the rules that are fundamental for governing the community. Today, most countries of the world have one central document in which all or most of these rules are laid down. In a few countries, such as Austria, Israel, or the United Kingdom, several documents taken together form the constitution. Sometimes, constitutional documents, be they one or more, are combined with other sources of constitutional law, such as custom or even religious rules. In any case, the idea that a country should have a constitution has been adopted throughout the world. Whatever differences or similarities between constitutions there may be, it is obvious that, at least in constitutional law, common ideas are at work in most of the world. There is hardly a country in the world that does not explicitly claim to be a democracy, which respects the rule of law and fundamental rights. At least in theory, these ideas have been accepted throughout the world.

Constitutions differ. They are long or short, stable or easily changed. Government institutions as established by the constitutions vary in structure and powers. Mostly, however, constitutions give an idea of the very identity of a country. Usually, no other law of a given legal system may contradict the constitution of a specific country. All other laws and legal rules must comply with what the constitution says.

Constitutions should direct the facts of life, the actions of governments. They do not always do so. Sometimes, constitutions are seen as mere symbols of the independence and sovereignty of the nation, not primarily as a source of law. In some countries, constitutions are strong, and they are implemented in fact. In other countries, the respect for the constitution is weak. In such cases there may well be a convincing constitution, nicely worded, and in perfect harmony with what can be regarded as the Good and the Just. Nevertheless, the actual situation in that country may well be intolerable. Constitutions can be misused as mere propaganda, deceiving people and deceiving the world, but even then, constitutions may serve as yardsticks for reformers to cite.

Constitutions develop. Most constitutions contain explicit provisions for amendment or renewal. Usually, these provisions differ from the normal process of legislation and make the change of the constitution more difficult. This difference reflects the predominant importance of the constitution within the legal system, stressing the idea of continuity and identity of the community. Many constitutions go a step further in protecting identity by excluding the possibility of amending certain provisions that are held basic for this constitutional identity, such as the rule of law and democracy or a reference to religious belief. On the other hand, no wording of a constitution can escape interpretation. Even if the words remain the same, the understanding of what these words mean develops during time. The text of a constitution can be interpreted narrowly or generously, and what equality or freedom means differs from generation to generation, from country to country, and from culture to culture.

Constitutions live in language. Whoever wants to understand constitutions needs to speak the language in which they are written or must find translations. Translation of legal texts is a highly difficult task. It is not enough to find a word for a word, but the words must also fit into the legal structure of the country. Terminology varies, and sometimes the same word means a different thing in a different context. This variability may become obvious in the field of human rights or fundamental rights.

Fundamental rights are those rights of the individual that are the basis of his or her legal position in a community. Most of them are the human rights of every human being. The right to life, to freedom and equality; the freedom of belief and worship; free speech and prohibition of slavery are rights of everybody, and thus they are human rights. Many constitutions acknowledge that these rights are based in human dignity. Other fundamental rights are restricted to citizens or nationals of a certain country. The right to vote in elections, equal access to public office, and often also rights such as freedom of assembly and association are linked to membership in a specific political or economic system, and they are thus restricted to those belonging to this system.

Fundamental rights have developed over time. Some have early roots dating back to ancient times. In general,

three generations of rights and freedoms are distinguished according to the time of their development. The first generation entails those fundamental rights often called liberal, classic, or civil, which are found in the early constitutions of the 18th and 19th centuries. These are guarantees such as freedom and equality; freedom of speech, assembly, and association; the right to own property; the freedom of the press; or habeas corpus—the right not to be jailed arbitrarily or without a decision by an impartial judge. These rights were developed in the era of liberalism especially in the later 18th and in the 19th century, in which the protection of the individual from government interference was seen to be paramount.

The second generation of fundamental rights turned to the social needs of the individuals. In the 19th and early 20th centuries there was a growing and widespread impression that the liberal fundamental rights were not enough to secure a proper life for the individual. Only those who owned property would profit from the protection of property; only those who had work opportunities would really enjoy their freedom of profession. Social rights were added to meet such needs such as the right to work, the right to strike, and the right to form trade unions. Many constitutions included protections for the family and for mothers, and guaranteed a minimal standard of living. Rights to education, housing, and health protection are characteristic of these second-generation fundamental rights.

The third generation of fundamental rights refers to groups and peoples. Whereas the first and second generations of fundamental rights predominantly care for the individual, the third generation of fundamental rights takes into account social coherence, traditions, and cultures. These third-generation fundamental rights protect minorities and preserve a diversity of languages, religions, and cultures. They provide for a right to sustainable development of developing countries and peoples.

Fundamental rights have developed in history as concrete answers to concrete problems. When governments have acted arbitrarily or subdued the people, demands emerged to limit government power. From here, habeas corpus rights against arbitrary arrests emerged, as did protection of property against unfair expropriation. However, governments have not always been seen as a threat. They have positive functions in providing the people with safety and with the necessary means of life. Accordingly, fundamental rights have developed in specific cases to answer specific needs: for education, minimal standards of living, or protection against others. These specific answers to specific problems have soon developed into a broad system of rights and freedoms forming a basis of communal life.

Differences between various constitutions as to which fundamental rights are guaranteed often reflect the specific needs of the specific country in a specific time. Very often, when a new need arises, constitutions are not amended, but jurisprudence, the courts, and public opinion interpret existing constitutional law in a way that includes new answers to new questions. In other constitutions, however, new needs may well lead to the introduction of an explicit new fundamental right.

One of the striking current developments is the extension of fundamental rights from a mere governmental perspective to a broad application within society. A first and primary function of fundamental rights was to structure the relationship between the individual and the government. Fundamental rights did not give direct answers to ways individuals should relate to each other. Today, in many constitutional systems, fundamental rights also give directives of the ways individuals should treat each other.

Constitutions tell about political participation of people. The systems vary considerably. Some countries have strong systems of a direct democracy in which the people decide directly by way of referendums about specific questions such as projects of laws or other issues. However, indirect representation prevails. People elect representatives, who then decide about specific questions. Many election systems provide for a decision between individually competing candidates. Then, the one who receives more votes would win the office; this constitutes the "first-past-the-post principle" or the principle of "the winner takes it all." Many other constitutions, however, provide for a proportional representation. In these systems political parties or other entities establish lists of candidates, and these lists are voted on by the electors. The number of votes a list wins in the elections decides the number of candidates who are elected from that list. Many constitutions provide for necessary representation of minorities by reserving seats in parliament or other offices for a certain part of the population.

Constitutions relate to religion. Religion is a central topic of constitutions throughout the world. Some sort of separation between churches or other religious communities and the state is predominant. That separation may be radically or moderately expressed. It can be hostile in order to push away religion, or it can be friendly to let religion have the freedom to flourish. As it usually does, much depends on practice. There are a number of constitutions declaring a certain religion or confession to be the religion of the state, the predominant religion, or a church to be the people's church. Others define themselves explicitly as Islamic republics or refer to Christianity. These explicit identities as secular or religious do not necessarily lead to unequal treatment of other religions or even to a loss of religious freedom.

Constitutions constitute identity and they represent the identity of their country. They do so in their text and they do so in the way they are implemented. Understanding a constitution is a step to understanding a people.

— Gerhard Robbers

Entries A to Z

AFGHANISTAN

At-a-Glance

OFFICIAL NAME
Islamic Republic of Afghanistan

CAPITAL
Kabul

POPULATION
28,513,677 (July 2004 est.)

SIZE
250,001 sq. mi. (647,500 sq. km)

LANGUAGES
Official languages: Pashtu and Dari. Other languages: Uzbek, Turkmen, 30 minor languages

RELIGIONS
Sunni Muslim 80%, Shia Muslim 19%, other 1%

NATIONAL OR ETHNIC COMPOSITION
Pashtun 42%, Tajik 27%, Hazara 9%, Uzbek 9%, Aimak 4%, Turkmen 3%, Baloch 2%, other 4%

DATE OF INDEPENDENCE OR CREATION
August 19, 1919 (from U.K. control over Afghan foreign affairs)

TYPE OF GOVERNMENT
Transitional, Islamic republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament envisaged by the constitution

DATE OF CONSTITUTION
January 4, 2004 (approved by constitutional Loya Jirga)

DATE OF LAST AMENDMENT
No amendment

The new constitution, as adopted on January 4, 2004, defines Afghanistan as a unitary Islamic republic, in which "no law can be contrary to the beliefs and provisions of the sacred religion of Islam and the values of [the] Constitution."

Afghanistan is made up of 34 administrative provinces, which according to the constitution will each have a provincial council. The constitution provides that "the government, while preserving the principle of centralism, shall delegate certain authorities to local administration units for the purpose of expediting and promoting economic, social, and cultural affairs, and increasing the participation of people in the development of the nation."

The justice system in Afghanistan is a combination of traditional and formal mechanisms, the formal justice system weakened by years of wars and civil unrest. During that time, traditional mechanisms served as the main judicial authority and in most parts of the country was the only one.

The 2004 constitution abolished the monarchy (which was still in effect under the 1964 constitution of King Zahir Shah) and established a strong presidential form of government, albeit with important powers reserved for the national assembly.

The religion of Afghanistan is defined by the constitution as "the sacred religion of Islam." Followers of other religions are free to perform their religious rites within the limits of the law. However, according to the constitution, no law can be contrary to Islam and the values of the constitution.

Although the economic outlook has improved significantly since the fall of the Taliban in 2001, as a result of over $2 billion in international assistance and a huge increase in opium production, Afghanistan remains extremely poor and highly dependent on foreign aid.

The president is commander in chief of the armed forces of Afghanistan. However, at the time of writing, armed factions continue to operate in many parts of the county; the process of disarmament, demobilization, and

reintegration (DDR), supported by the United Nations (UN) and the international community, was progressing slowly.

CONSTITUTIONAL HISTORY

Afghanistan's history as a country spans little more than two centuries, although the countries and its peoples have contributed to the greatness of many great Central Asian empires.

In 328 B.C.E., Alexander the Great entered the territory of present-day Afghanistan, then part of the Persian Empire. Invasions by the Scythians and Gokturks followed in succeeding centuries. In 642 C.E., Arabs invaded the entire region and introduced Islam. Arab rule quickly gave way to that of the Islamized Persians, who controlled the area until conquered by the Ghaznavid Empire in 998. The Ghaznavid dynasty, which was Sunni, was defeated in 1146 by the Ghurids (Ghor); both empires spread Islamic rule into India. Various princes and Seljuk rulers attempted to rule parts of the country until Shah Muhammad II of the Khwarezmid Empire conquered all of Persia in 1205.

Between 1220 and 1223, the country was invaded by Genghiz Khan. One of his descendents, Timur, annexed the area in the early 1380s, and his reign ushered in the golden Timurid era, which saw a flourishing of the arts in northern Afghanistan and Central Asia. With the rise of the Mughal Empire, Kabul became the capital of an Afghan principality; when the empire conquered most of India, Afghanistan became merely a peripheral part of the empire.

In 1774, with European forces, especially British, eroding the influence of the Mughals on the Indian subcontinent, the kingdom of Afghanistan was founded by the Pashtun tribal leader Ahmad Shah Durrani. Soon, a long period of confrontation began with the British in the south, who feared Afghanistan might ally itself with the expanding Russian Empire to the north.

After several local wars, from 1878 to 1880, Afghanistan became more or less a protectorate of the British Empire. In 1893, the British drew Afghanistan's eastern boundaries along the so-called Durand Line, leaving half the Pashtun population stranded in British India, in what today is Pakistan.

Various British-backed reform initiatives provoked widespread resistance. The country remained precariously unstable for decades.

In 1964, King Zahir Shah promulgated a liberal constitution providing for a two-chamber legislature, to which the king appointed one-third of the deputies. The people elected another third, and the rest were selected indirectly by provincial assemblies. Although Zahir Shah's reform efforts had few lasting positive impacts, they allowed for the growth of unofficial extremist parties on both the Left and the Right, including the communist People's Democratic Party of Afghanistan (PDPA), which had close ideological ties to the Soviet Union, and militant Muslim parties.

The kingdom was abolished in 1973 when the former prime minister, Mohammed Daoud Khan, a cousin of the king, seized power in a military coup on July 17. Zahir Shah fled the country. Daoud issued a new constitution calling for a presidential republic and a one-party system of government; he declared himself president and prime minister. His attempts to carry out economic and social reforms met with little success, and a new constitution promulgated in February 1977 failed to quell chronic political instability. As disillusionment set in, on April 27, 1978, the PDPA initiated a bloody coup, which resulted in the overthrow and murder of Daoud and most of his family.

The new government, aided by thousands of Soviet military and civil advisers, implemented a radical socialist and modernizing agenda. Within a few months the government issued a series of decrees reforming landownership, abolishing usury, banning forced marriages, giving women the vote, replacing traditional religious/cultural laws with secular laws, and banning tribal courts. The overnight revolution plunged the rural majority of the population into disarray.

A great backlash against these reforms resulted among members of the traditional patriotic establishments and Muslim and tribal leaders. Some resorted to violence and sabotage of the country's industry and infrastructure. The government of Afghanistan responded to the attacks with heavy-handed intervention by the army. The government arrested, exiled, and executed many mujahideen, "holy Muslim warriors."

By the end of 1979, the Afghan army was overwhelmed by the resistance. Party leaders called in the Soviet Union, which sent tens of thousands of troops and backed a second communist coup. On December 25, 1979, the Soviet army entered Kabul, starting a 10-year war against the mujahideen resistance. Pakistan, Saudi Arabia, and the United States assisted in financing the opposition groups in support of their common "anticommunist" stance. Among the wealthy Saudis who helped finance the mujahideen was Osama bin Laden.

The Soviet Union withdrew its troops in February 1989 but continued to aid the government, led by Mohammed Najibullah. Aid from the United States and Saudi Arabia to the mujahideen also continued. After the collapse of the Soviet Union, the Najibullah government was overthrown on April 18, 1992, when General Abdul Rashid Dostum changed allegiances and delivered Najibullah to the mujahideen.

An Islamic State of Afghanistan was declared. Almost at once, fighting broke out among the various militias, which had coexisted uneasily during the Soviet occupation. An interim president was installed and was replaced two months later by Burhanuddin Rabbani, a founder of the country's Islamic political movement. Fighting among rival factions intensified.

In reaction to the prevalence of anarchy and warlords in the country and the lack of Pashtun representation in

the Kabul government, a movement of religious scholars, many of them former mujahideen, arose, with heavy support from Pakistani military and political forces. The Taliban took control of 90 percent of the country by 1998, limiting the opposition to a small, largely Tajik corner in the northeast and the Panjshir valley. The opposition formed the Northern Alliance under Rabbani, which continued to receive diplomatic recognition in the United Nations as the government of Afghanistan.

In response to the September 11, 2001, terrorist attacks, the United States and its coalition allies launched a successful attack to oust the Taliban government, which had sheltered the al-Qaeda movement of Osama bin Laden, the apparent organizer of the attacks. The Bonn Agreement, sponsored by the United Nations, was signed on December 5, 2001, by representatives of several different anti-Taliban factions and political groups. It established a roadmap and timetable for establishing peace and security, rebuilding the country, reestablishing key institutions, and protecting human rights. The agreement formally put all mujahideen, Afghan armed forces, and armed groups in the country under the command and control of a 30-member interim authority under the Pashtun leader, Hamid Karzai.

An Emergency Loya Jirga (grand council) in June 2002 confirmed the interim authority as the Afghan Transitional Authority (ATA), and Hamid Karzai assumed the position of transitional president. In January 2004, the constitutional Loya Jirga adopted a constitution consolidating political power in the presidency. On October 9, 2004, Karzai was elected as president. The national assembly was inaugurated on December 19, 2005.

FORM AND IMPACT OF THE CONSTITUTION

Afghanistan has a written constitution, adopted by the constitutional Loya Jirga on January 4, 2004, which defines Afghanistan as a unitary Islamic republic in which "no law can be contrary to the beliefs and provisions of the sacred religion of Islam and the values of this constitution." It is unclear how the apparent contradictions might be resolved between traditional Afghan Islamic beliefs, on the one hand, and the values of the constitution, with its human rights protections, on the other.

BASIC ORGANIZATIONAL STRUCTURE

Afghanistan is made up of 34 provinces, each endowed by the constitution with a provincial council formed by "free, direct, secret ballot, and general elections by the residents of the province for a period of four years in accordance with law." The number and boundaries of the provinces themselves are established by law, in this case a presidential decree. The constitution provides that the provincial councils will "take part in securing the developmental targets of the state and improving its affairs in a way stated in the law, and give advice on important issues falling within the domain of the respective province." However, the role provided for the provincial councils in the 2005 Law of Provincial Councils is largely consultative.

The constitution also provides for district councils to be elected in the same manner as the provincial councils but is silent as to their role other than to elect members of the Meshrano Jirga (House of Elders).

In practice, local government is strong in Afghanistan, with many matters decided by traditional local councils, called jirgas or shuras. The concept of a nation state and its functions is still in the early stages of development. Particularly in remote and rural areas, the state is not thought of as the primary dispensary power, in judicial as in other matters. The delegation of power to the state still must be negotiated with the local power structures such as tribes, *shuras,* or *jirgas.*

LEADING CONSTITUTIONAL PRINCIPLES

The constitution establishes a strong presidential form of government, albeit with important powers reserved for the national assembly.

The president, who is head of state, is assisted by two vice-presidents, whom the president must nominate when running for office. The president has wide-ranging powers, including supervising the implementation of the constitution, determining the fundamental policies of the state, acting as commander in chief, declaring war or a state of emergency, and appointing judges and high-ranking officials in the judiciary, the police, and the armed forces.

Members of the administration are appointed by the president and are subject to approval by the bicameral national assembly, which consists of the House of People (Wolesi Jirga) and the House of Elders (Meshrano Jirga). The national assembly adopts laws and legislative decrees (and can override the president's veto), but no law or decree can be enforced unless it is approved by both houses.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, assisted by two vice presidents; the cabinet; the national assembly; the Loya Jirga; and the judiciary.

The judiciary remains in an embryonic stage, with the supreme court yet to be reformed to align it with constitutional requirements.

The President

Apart from his or her role as head of state, the president has wide-ranging powers, including supervising the implementation of the constitution; determining the fundamental policies of the state; acting as commander in chief; appointing judges and other high-ranking officials in the judiciary, the police, and the armed forces; and declaring war or a state of emergency. The president also appoints the cabinet members, subject to approval by the national assembly. The president additionally has the power to call a national referendum on important political, social, or economic issues.

In case of resignation, impeachment, or death of the president or of a serious illness that hinders the president's performance, a vice president undertakes the duties and authorities of the president. Impeachment requires the support of a Loya Jirga, which then refers the case to a special court. An election for a new president must be held within a period of three months.

The president is elected for a five-year term and can be re-elected only once. In presidential elections, if none of the candidates receives more than 50 percent of the votes in the first round, a runoff is held between the two top candidates. The runoff must be held within two weeks of the announcement of results of the first round.

The president must be at least 40 years of age, a citizen of Afghanistan born of Afghan parents, and a Muslim. A president must not be a citizen of another country or have been convicted of crimes against humanity or criminal acts.

The Cabinet

Cabinet ministers are appointed by the president, subject to approval by the national assembly; they may or may not be members of the national assembly. A member of the national assembly who is appointed cabinet minister must be replaced by another person in accordance with the provisions of law.

The constitution defines the cabinet's duties as follows: to execute the provisions of the constitution, other laws, and final orders of the courts and to protect the independence, defend the territorial integrity, and safeguard the interests and dignity of Afghanistan in the international community. The cabinet is also responsible for maintaining public law and order, eliminating administrative corruption, preparing the budget, regulating financial affairs, protecting the public wealth, and devising and implementing programs for social, cultural, economic, and technological progress. At the end of the fiscal year it must report to the national assembly about the tasks accomplished and the main plans for the new fiscal year. It must present the budget to the Wolesi Jirga each year. Only the cabinet can initiate budgetary and financial bills.

The National Assembly

The bicameral national assembly consists of the Wolesi Jirga (House of People) and the Meshrano Jirga (House of Elders). The national assembly adopts laws and legislative decrees, which are then endorsed by the president. No law or decree can be enforced unless it is approved by both houses.

The national assembly has the following powers: ratification, modification, or abrogation of laws and/or legislative decrees; approval of plans for economic, social, cultural, and technological development; approval of the state budget; permission for obtaining and granting loans; creation and modification of administrative units; and ratification or abrogation of international treaties and agreements.

The Wolesi Jirga is directly elected every five years. There is a constitutional requirement that at least two female delegates must be elected from each province.

Members of the Meshrano Jirga are indirectly elected or appointed. Each provincial council sends one of its members to the house for a period of four years. The district councils within each province send one of their members for a period of three years. The president appoints the remaining one-third of the members from among experts and experienced personalities; he or she must include two representatives of the disabled and two representatives from the Kochis (nomad). Half of the appointees must be women.

Members of the national assembly, as the president, must not have been convicted by a court of committing a crime against humanity or any crime or have been sentenced to deprivation of his or her civil rights. Members of the Wolesi Jirga must be 25 years old at the date of candidacy, and members of the Meshrano Jirga must be 35 years old at the date of candidacy or appointment.

The Lawmaking Process

According to the constitution, laws must be approved by both houses of the national assembly and approved and endorsed by the president. If the president rejects the bill, he or she can send the document with justifiable reasons back to the Wolesi Jirga within 15 days of its submission. If the president does not send it back within 15 days, or if the Wolesi Jirga approves the bill again with a majority of two-thirds of those voting, the bill is considered endorsed.

Either the cabinet or members of the national assembly can introduce proposed laws. It also appears that the Supreme Court can initiate bills for the regulation of judicial affairs. In budgetary and financial matters, however, the cabinet has exclusive power to introduce bills. Cabinet bills are submitted first to the Wolesi Jirga.

Bills relating to budgetary and financial affairs or to the taking or giving of loans are considered passed if the Wolesi Jirga does not approve or reject them within one month. The bill is submitted to the Meshrano Jirga after its approval by the Wolesi Jirga. The Meshrano Jirga decides on the draft within a period of 15 days.

If the decision of one house is rejected by another house, a combined committee composed of equal members of each house is formed to resolve the disagreement. The decision of the committee is binding after its approval

by the president. If the combined committee cannot resolve the disagreement, the bill is considered void.

Loya Jirga

According to the constitution, the Loya Jirga (Pashtu for grand council) is "the highest manifestation of the people of Afghanistan." The Loya Jirga is a traditional forum, unique to Afghanistan, in which tribal elders from the country's various ethnic groups meet together to settle intertribal disputes, discuss social reforms, and, most recently, approve a new constitution.

A Loya Jirga, as defined in the constitution, consists of members of the national assembly and chairpersons of the provincial and district councils. Ministers, the chief justice, and members of the Supreme Court can participate in the sessions of the Loya Jirga without the right to vote.

A Loya Jirga is convened to make decisions on issues related to independence, national sovereignty, territorial integrity, and the supreme interests of the country. It is also convened to amend the provisions of the constitution or to prosecute the president. Decisions of the Loya Jirga are ordinarily determined by a majority of the members present.

The Judiciary

The judicial branch consists of the Supreme Court (Stera Mahkama), High Courts, and Appeals Courts.

The Supreme Court is composed of nine members appointed by the president with the approval of the Wolesi Jirga for a period of up to 10 years. The head of the Supreme Court is also appointed by the president. Members of the Supreme Court are required to have a higher education in law or in Islamic jurisprudence and to have sufficient expertise and experience in the judicial system of Afghanistan.

The constitution precludes the transfer of any case from the jurisdiction of the judicial branch to any other organ of the state. At the time of writing, the judiciary had yet to be reshaped to conform to the new constitutional requirements. The judiciary currently operates with minimal training.

THE ELECTION PROCESS

The president is elected by a majority of more than 50 percent of the votes cast. If none of the candidates wins a majority in the first round, a runoff is held between the two top candidates within two weeks of the announcement of results of the first round. In the runoff, the candidate who gets the majority of votes is elected president.

Parliamentary Elections

Elections to the Parliament took place on September 18, 2005. The Decree on the Election Law of 2005 foresees multimember constituencies in each province and a Single Non-Transferable Vote (SNTV) system, which would favor independent candidates over political parties.

POLITICAL PARTIES

Citizens of Afghanistan have the right to form political parties, provided that the program and charter of the party are not contrary to the provisions and values of Islam or of the constitution; the organizational structure and financial sources of the party are made public; the party does not have military or paramilitary aims and structures; and the party is not affiliated to foreign political parties or sources.

Political parties are required by the Political Parties Law to register with the Ministry of Justice, which has an established office for registration. The process of registration is governed by a separate regulation. Article 6 of the Political Parties Law lays out a number of factors that exclude parties from registration, including pursuit of objectives opposed to the principles of Islam and incitement to ethnic, racial, religious, or sectarian violence. They are also prohibited from having military wings or affiliations with armed forces.

Parties are also required, by the same law, to register their assets with the Ministry of Finance and provide documentation from the Ministry of Finance certifying their assets.

CITIZENSHIP

Beyond providing that citizens may not be deprived of their Afghan citizenship, the constitution does not regulate the matter further.

According to the law on citizenship, Afghan citizenship is acquired if a person has one parent who is an Afghan citizen, regardless of where he or she is born. Persons born of foreign parents in Afghanistan also acquire Afghan citizenship if one of their parents was born and continuously lived in Afghanistan or if they themselves continuously lived in Afghanistan, until reaching the age of 18.

In slightly unusual provisions of the law, foundlings born in Afghanistan and persons who have entered Afghanistan from foreign countries, who have concealed their original citizenship, who have bought property reserved for Afghans, who own herds, or who have engaged in trade or agriculture shall also be considered citizens.

FUNDAMENTAL RIGHTS

The constitution contains several provisions enunciating basic political, civil, economic, and social rights. It guarantees rule of law, incorporating the presumption of innocence and the right to legal counsel, and defines crime

as a personal action, stating that the resulting penalties cannot affect another person. The constitution prohibits torture and "punishment contrary to human integrity." While the right to life is enshrined in the constitution, it also allows for the imposition of the death penalty.

The constitution also contains a range of political rights protections, including the right to elect and to be elected, the right to freedom of expression (Article 34), the right to form social organizations and political parties subject to certain restrictions, and the right to demonstrate.

In addition to prohibitions on discrimination and provisions for the equal rights and duties of women and men before the law, the constitution includes provisions requiring specified levels of women's representation in both houses of the Parliament.

The right to education is also enunciated; education up to a secondary level is guaranteed.

The right to work is provided for in the constitution, and forced labor is forbidden. The right to form social organizations for the purpose of securing material or spiritual aims, in accordance with the provisions of law, is guaranteed to every individual.

The constitution pledges the state to abide by the United Nations (UN) Charter, international treaties, international conventions to which Afghanistan is a signatory, and the Universal Declaration of Human Rights. Afghanistan has ratified the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and the Convention on the Elimination of all forms of Discrimination against Women. It has also signed the International Covenant on Economic Social and Cultural Rights (ICESCR); the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Rome Statute of the International Criminal Court (ICC).

Impact and Functions of Fundamental Rights

Despite these legal provisions on political, civil, economic, and social rights, their implementation has yet to be ensured. The constitution does not adequately address the role of Islamic law and its relationship to human rights protections.

Since the adoption of the constitution, the Supreme Court has remained very proactive in stressing the Islamic nature of the state, which it appears to give precedence over the other values of the constitution, such as the protection of human rights. This has led the court at various times to ban the broadcast of female singers on national television as being contrary to the teachings of Islam, without weighing the impact on freedom of expression, guaranteed in the constitution. The court also intervened in the 2004 presidential elections, calling for the disqualification of a candidate who, it claimed, espoused values contrary to Islam.

The Independent Human Rights Commission of Afghanistan, established in the Bonn Agreement, also has a constitutional status. However, it does not have a constitutional mandate to address issues of past war crimes and serious human rights abuses.

At the time of writing, there has still been no process of transitional justice. Members of armed factions alleged to be responsible for human rights abuses have not been made accountable and continue to act with impunity in some areas.

Although the constitution contains provisions that people who have been convicted by a court for committing a crime, specifically a crime against humanity, are prohibited from holding public office, no one has been tried by a competent court for crimes committed during the years of conflict in the country. Indeed, persons reputed to have led armed factions alleged to be responsible for human rights abuses were able to register as candidates in the 2004 presidential elections and 2005 Wolesi Jirga and Provincial Council elections.

ECONOMY AND ECONOMIC RIGHTS

The constitution "encourages and protects private capital investments and enterprises based on the market economy and guarantees their protection in accordance with the provisions of law." The state constitution also provides that the state shall "formulate and implement effective programs for development of industries, growth of production, increase of public living standards, and support to craftsmanship," and "design and implement within its financial resources effective programs for development of agriculture and animal husbandry, improving the economic, social and living conditions of farmers and herders, and the settlement and living conditions of nomads."

The state is obliged to "adopt necessary measures for housing and the distribution of public estates to deserving citizens in accordance within its financial resources and the law."

Minerals and other underground resources are properties of the state, and foreign individuals do not have the right to own immovable property in Afghanistan.

RELIGIOUS COMMUNITIES

The state religion as defined by the constitution is "the sacred religion of Islam." Followers of other religions are free to perform their rites within the limits of the law. However, according to the constitution, no law can be contrary to Islam.

It is estimated that 84 percent of the population is Sunni Muslim. Approximately 15 percent is Shía Muslim, the majority of whom are ethnic Hazaras. Other religious groups, including Sikhs, Hindus, and Jews, make up less than 1 percent of the population.

Traditionally, Sunni Islam of the Hanafi school of jurisprudence has been the dominant religion. Relations between the different branches of Islam in the country have been difficult. Historically, the minority Shiites faced discrimination from the majority Sunni population. However, the new constitution does not grant preferential status to the Hanafi school, nor does it make specific reference to Sharia law. The constitution also grants that Shia law will be applied to cases dealing with personal matters involving Shiites; there is no separate law applying to non-Muslims.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is commander in chief of the armed forces and has responsibility for declaring war, issuing a ceasefire, or sending contingents of the armed forces to foreign countries, which requires the approval of the national assembly. The president is also responsible for appointing and dismissing or accepting the retirement or resignation of officers of the armed forces.

The powers of the president, as defined by the constitution, also include "taking the required decisions in defense of territorial integrity and in protecting independence."

The president is also responsible for declaring a state of emergency in some or all parts of the country with the approval of the national assembly "if due to war, threat of war, serious rebellion, natural disasters, or similar situation, the protection of the independence or survival of the nation becomes impossible by following the [non-emergency] provisions of this constitution." If the state of emergency continues for more than two months, the approval of the national assembly is required for its extension. During the state of emergency, the president, in consultations with the heads of the national assembly and the chief justice, may transfer some authorities of the national assembly to the cabinet.

With the consent of the heads of the Parliament and the Supreme Court, the president may also suspend or restrict the right to unarmed demonstrations during a state of emergency. Internment may be introduced, and the state may inspect correspondence and communications and enter and inspect private residences without a warrant.

If the presidential term of office and/or the legislative period ends during a state of emergency, new elections are postponed, and the existing terms are extended for up to four months. If the state of emergency continues for more than four months, a Loya Jirga is summoned by the president for further decisions. After the termination of the state of emergency, the delayed elections are held. Immediately after termination of the state of emergency, the emergency measures adopted shall be considered invalid.

AMENDMENTS TO THE CONSTITUTION

The provisions regarding adherence to Islam and the regime of the Islamic republic cannot be amended. Any amendments of the fundamental rights of the people "are permitted only in order to make them more effective."

Proposals to amend other provisions of the constitution can be made by the president or by the majority of the national assembly. A commission composed of members of the government, national assembly, and supreme court is then established by a presidential decree, and the commission prepares a draft of the amendments. A Loya Jirga shall be convened by the decree of the president.

If the Loya Jirga approves an amendment by a majority of two-thirds of its members, it goes into force after endorsement by the president. The constitution may not be amended during the state of emergency.

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Michael McNamara

ALBANIA

At-a-Glance

OFFICIAL NAME
Republic of Albania

CAPITAL
Tirana

POPULATION
3,581,655 (July 2006 est.)

SIZE
11,100 sq. mi. (28,748 sq. km)

LANGUAGES
Albanian

RELIGIONS
Muslim 38.8%, Christian 35.4% (consisting of Roman Catholic 16.8%, Orthodox 16.1%, Protestant 0.6%), other 25.8%

NATIONAL OR ETHNIC COMPOSITION
Albanian 95%, Greek 3%, other 2% (Vlach, Roma and Sinti, Serb, Bulgarian)

DATE OF INDEPENDENCE OR CREATION
November 28, 1912

TYPE OF GOVERNMENT
Emerging democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 22, 1998

DATE OF LAST AMENDMENT
No amendment

Albania is a parliamentary republic based on the rule of law with a separation and balancing of legislative, executive, and judicial powers. It is organized as a unitary and indivisible state. The constitution is the highest law in the Republic of Albania. The independence of the state and the integrity of the territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, and national identity and inheritance are the bases of the state, which has the duty of respecting and protecting them. The same applies to religious coexistence, as well as coexistence with and understanding of minorities.

The president is head of state and represents the unity of the people. The central political figure is the prime minister as head of the executive power. Governance is based on a system of free, equal, general, and periodic elections. A pluralistic political party system has intense political impact.

Freedom of conscience and religion is guaranteed. Albania is a secular state, with no official religion. The economic system is based on private and public property, as well as on a market economy and free economic activity. The armed forces maintain their neutrality in political issues and are subject to civilian control. No foreign military force may be stationed in or pass through Albanian territory, and no Albanian military force may be sent abroad, except by a law approved by a majority of all members of the Assembly.

CONSTITUTIONAL HISTORY

The Organic Statute of Albania, dated October 4, 1914, is regarded as the first Albanian constitution. It was endorsed by the International Control Commission, composed of representatives of the great European powers at the time, which was set up after the declaration of independence on November 28, 1912. The constitution declared Albania to be an “autonomous, sovereign, and inheritable principality” under the guarantee of the great

powers. The powers appointed a German prince, Wilhelm of Wied, as head of state.

After World War I (1914–18), the country became a theater of hostilities. Albania experienced difficult times, and four constitutions were adopted in 19 years. These were the 1920 Statute of Lushnje, the 1922 Statute of the Albanian State, the 1925 Fundamental Statute of the Republic of Albania, and the 1928 Fundamental Statute of the Albanian Kingdom. Albania changed its governing system twice from a monarchy to a republic and vice versa. The royal crowns of Albania and Italy were joined as a result of the invasion of Albania by Italy on April 7, 1939.

After World War II (1939–45), a Constitutional Assembly was elected in December 1945. The following year it drafted and adopted a constitution for the new People's Republic of Albania. In 1976, another constitution, which deepened the communist nature of the state, was adopted and declared Albania "A Socialist People's Republic."

The 1990s saw many democratic changes based on various limited constitutional laws. The most important of these was adopted in 1991 by the first pluralist parliament. It was entitled "On the Main Constitutional Provisions." This law was supplemented by a series of other constitutional laws passed between 1991 and 1994. An attempt to introduce a comprehensive constitution failed to win a majority of votes in a referendum held in November 1994. The current constitution was adopted in 1998 by the Albanian legislative body and was ratified in a general referendum.

FORM AND IMPACT OF THE CONSTITUTION

Albania has a written constitution, codified in a single document called *Kushtetuta;* it has precedence over all other national laws. The provisions of the constitution are directly applicable, except when the constitution provides otherwise. The Republic of Albania accepts various international laws as binding. Any international agreement that has been ratified by the Assembly and published in the *Official Journal* becomes an integral part of the internal juridical system. Such agreements have precedence over any national laws that are not compatible with it.

BASIC ORGANIZATIONAL STRUCTURE

Albania is a unitary and indivisible state. Its administrative divisions consist of 12 regions (*qarqe,* singular *qark*) and 384 municipalities and communes. Local government in the Republic of Albania is founded on the principle of decentralization of power and subsidiarity and is exercised according to the principle of local self-government.

LEADING CONSTITUTIONAL PRINCIPLES

Albania's system of government is a parliamentary democracy. There are separation and balance of executive, legislative, and judicial powers. The judiciary is independent.

The Albanian constitutional system is defined by a number of leading principles: Albania is a democracy, a republic, a social state, based on the rule of law; the sovereignty belongs to the people, who exercise it through their representatives or directly. Rule of law is of decisive impact. All state actions impairing the rights of the people must have a legal basis. Further principles, such as religious neutrality, are implicitly contained in the constitution.

CONSTITUTIONAL BODIES

The most important constitutional bodies provided for in the constitution are the Assembly, the Council of Ministers, the president, the Constitutional Court, the judiciary, and organs of local self-government.

The Assembly (Parliament)

The Albanian Assembly is the central representative organ of the people. It is a legislative body that is comprised of 140 deputies. One hundred are elected in single-member constituencies with an approximately equal number of voters; 40 deputies are elected from multiname lists of parties or party coalitions according to their respective order on each party's list.

The Assembly is elected for a four-year term. Its mandate is extended only in the case of war and only for as long as the war continues.

The Assembly elects and discharges its Speaker, who directs the work according to the rules of procedure. The highest civil employee of the Assembly is the secretary general.

Political parties, coalitions of parties, and voters may present candidates for deputy. Deputies represent the people and are not bound by any obligatory mandate from their party or any other side.

The Lawmaking Process

Laws can be proposed by the Council of Ministers, any deputy, or a group of at least 20,000 electors. A draft law is voted three times: once in principle, then article by article, and then in its entirety. The constitution specifies cases in which a qualified majority is required to approve a law. Once the Assembly approves the law, the president of the republic promulgates it by a decree. A law enters into force with the passage of no fewer than 15 days after its publication in the *Official Journal.*

In case of extraordinary measures, dire necessity, and emergency, a law may enter into force immediately

upon its publication in the *Official Journal,* but only if the Assembly decides so by a majority of all its members and the president of the republic consents.

The president of the republic has the right to veto a law only once. A law vetoed by the president can be passed again by the Assembly.

The Council of Ministers

The Council of Ministers consists of the prime minister, deputy prime minister, and the ministers. The prime minister is appointed by the president on the recommendation of the party or coalition of parties that has the majority of seats in the Assembly. The Council of Ministers defines the principal directions of state policy. It issues decisions and instructions. Members of the Council of Ministers enjoy the immunity of deputies.

The President

The president is head of state and represents the "unity of the people." Only an Albanian citizen by birth who has been resident in Albania for the last 10 years and who has reached the age of 40 may be elected president.

The president is elected by secret vote and without debate by the Assembly, by a majority of three-fifths of all its members. Candidates for president are nominated by groups of at least 20 deputies. The president is elected for a five-year term and can be reelected only once. Failure to elect a president leads to dissolving of the Assembly and early elections.

Among the president's duties are addressing the Assembly, granting pardons according to law, granting citizenship, signing international agreements, and setting the date of elections.

The president of the republic, in the exercise of his or her powers, issues decrees. The president may not exercise other powers besides those recognized expressly in the constitution and granted by laws issued in compliance with it.

The Constitutional Court

The Constitutional Court guarantees respect for the constitution and makes final interpretations of it. The court is subject only to the constitution. The Constitutional Court is composed of nine members, who are appointed by the president of the republic with the consent of the Assembly for nine-year terms, without the right to be reappointed.

The Judiciary

Judicial power is exercised by the High Court, by the courts of appeal, and by courts of first instance, which are established by law. The Assembly may establish by law courts for a particular field but cannot establish extraordinary courts.

Being a judge is incompatible with holding any other state, political, or private office or business. Judges are independent and subject only to the constitution and the laws. They issue decisions in the name of the republic. Judicial terms are unlimited, and pay and other benefits cannot be lowered.

THE ELECTION PROCESS

All Albanians who have reached the age of 18, even on the date of elections, have the right to vote and be elected. However, citizens who have been declared mentally incompetent by a final court decision do not have the right to vote. Convicts who are serving a sentence enjoy the right to vote but not the right to be elected to office. The vote is personal, equal, free, and secret.

The elections to the Assembly are based on a mixed member proportional system. Voters have the right to vote directly for a candidate in a single-member constituency and for a political party. The electoral system allocates 100 seats through the first-past-the-post vote and 40 through the proportional vote for political parties, aiming at an overall proportional distribution of seats in the Assembly based on the overall proportional vote for political parties. A legal threshold of 2.5 percent for single political parties and 4 percent for party coalitions must be met in order to gain representation in the Assembly.

Local government officials such as mayors and council members are also directly elected. Mayors, who are executive officers, are elected through a first-past-the-post vote. Councils, which are representative bodies, are elected in a proportional system. No legal threshold exists for parties seeking council seats.

The Central Election Commission

The Central Election Commission is a seven-member permanent constitutional body that prepares, supervises, directs, and verifies all aspects of elections and declares election results. The mandate of its members is seven years.

POLITICAL PARTIES

Albania has a pluralistic system of political parties. Political parties are created freely, and their organization must conform to democratic principles. The laws bans any political parties or other organizations whose program and activity are based on totalitarian methods; that incite and support racial, religious, or ethnic hatred; that use violence to take power or influence state policies; or that have a secret character. The sources of political party revenues as well as their expenses must always be made public.

CITIZENSHIP

Anyone born to at least one parent of Albanian citizenship automatically gains citizenship. Albanian citizenship can also be acquired for other reasons provided by law. An Albanian citizen may not lose his or her citizenship, except by giving it up freely. The gain or loss of Albanian citizenship is effected through decrees of the president of the republic, published in the *Official Journal*.

FUNDAMENTAL RIGHTS

The constitution defines fundamental human rights and freedoms, which represent an important part of the document's content. They include personal, political, economic, social, and cultural rights and freedoms.

These fundamental human rights and freedoms are indivisible, inalienable, and inviolable. They stand as the basis of the entire judicial order.

Impact and Functions of Fundamental Rights

The fundamental human rights, freedoms, and duties provided in the Albanian constitution for Albanian citizens are also valid for foreign and stateless persons in the territory of the Republic of Albania, except in cases when the constitution specifically attaches the exercise of particular rights and duties to Albanian citizenship. The fundamental human rights, freedoms, and duties provided in the Albanian constitution are also valid for legal persons if applicable. For example, a legal person such as a company can have property, but it has no life and accordingly no right to that property.

Limitations to Fundamental Rights

The limitation of the rights and freedoms provided for in the Albanian constitution may be established only by law and only for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has prompted it. These limitations may not infringe the essence of the rights and freedoms and may in no case exceed the limitations provided for in the European Convention on Human Rights.

ECONOMY

The economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on freedom of economic activity. Private and public property is protected by law. Limitations on the freedom of economic activity may be established only by law and for important public interests.

RELIGIOUS COMMUNITIES

Freedom of conscience and religion is guaranteed. Everyone is free to choose or change his or her religion or beliefs, as well as to express them individually or collectively, in public or private life, through ceremonies, education, practices, or the performance of rituals. No one can be compelled to take part or be prohibited from taking part in a religious community or in religious practices or to make his or her beliefs or faith public.

There is no official religion in the Republic of Albania. The state is neutral in questions of belief and conscience. It guarantees the freedom of their expression in public life and recognizes the equality of religious communities. Relations between the state and religious communities are regulated on the basis of agreements reached by their representatives and the Council of Ministers and ratified by the Assembly.

Religious communities are legal persons. They have independence in the administration of their properties according to their principles, rules, and canons, to the extent that interests of third parties are not infringed.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces secure the independence of the country and protect its territorial integrity and constitutional order. The armed forces maintain neutrality in political questions and are subject to civilian control. The president of the republic is the commander in chief of the armed forces and the National Security Council is an advisory organ to the president.

No foreign military force may be stationed in or pass through Albanian territory, and no Albanian military force may be sent abroad except by a law approved by the majority of all members of the Assembly.

Citizens who for reasons of conscience refuse to perform armed service are obliged to perform alternative service as provided by law.

AMENDMENTS TO THE CONSTITUTION

Proposals for revision of the constitution require the support of at least one-fifth the members of the Assembly, except during times when extraordinary measures are in force. These draft constitutional amendments require approval by at least two-thirds of all members of the Assembly.

The Assembly may decide, by a two-thirds vote of all its members, to present the draft constitutional amendments to the voters in a referendum, which must be held no later than 60 days after approval by the Assembly. The constitutional revision enters into force upon ratification by referendum.

A constitutional amendment approved directly by the Assembly deputies must be submitted to a repeal

referendum if one-fifth of the deputies so demand. To repeal the amendment, more than half of registered voters must participate in the referendum, and at *least* half of those who participate should vote to reject the amendment.

The president of the republic does not have the right to veto an amendment to the constitution approved by the Assembly.

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ALGERIA

At-a-Glance

OFFICIAL NAME
Democratic and Popular Republic of Algeria

CAPITAL
Algiers

POPULATION
32,818,500 (2005 est.)

SIZE
919,590 sq. mi. (2,381,741 sq. km)

LANGUAGES
Arabic (official), French, Berber (national)

RELIGIONS
Sunni Muslim (state religion) 99%, Christian and Jewish 1%

NATIONAL OR ETHNIC COMPOSITION
Arab-Berber 99%, European less than 1%

DATE OF INDEPENDENCE OR CREATION
July 3, 1962

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 22, 1976

DATE OF LAST AMENDMENT
April 10, 2002

Algeria is a presidential democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. It is divided into 48 *wilaya* or governorates, each headed by a *wali* or governor appointed by the president. The constitution of Algeria guarantees the inviolability of the human person and freedom of conscience and protects the free exercise of beliefs, with reservation that they do not disturb the public order.

Freedom of opinion, expression, the press, publication, assembly, and association are also guaranteed within the conditions defined by the law. The Algerian constitution guarantees the inviolability of the home; the secrecy of correspondence; and the right to move freely within the country, to leave it, and to establish a domicile within the limits established by the law.

The president of Algeria is the head of state and the guarantor of national independence, of the integrity of the territory, of the execution of treaties, and of respect for the constitution and the laws. The president watches over the regular functioning of the constitutional authorities and assures the continuity of the state. The president of Algeria represents the executive power and is assisted by a cabinet directed by a prime minister.

The economic system can be described as a social market economy. The military is subject to the civil government in terms of law and fact. By constitutional law, Algeria is obliged to contribute to world peace.

CONSTITUTIONAL HISTORY

The native Berber population of Algeria has been under the rule of foreign occupants for much of the last 3,000 years. The Phoenicians (1000 B.C.E.) and the Roman Republic (200 B.C.E.) were the most important of these until the entry of the Arabs in the eighth century C.E. Algeria became part of the Ottoman Empire under Khair ad-Din and his brother, Aruj, in the early 16th century, the latter making its coast a base for pirate corsairs. The French invaded Algiers in 1830 and quickly conquered the country.

Algerians began their revolt against France on November 1, 1954. A referendum held in Algeria on July 1,

1962, backed independence. France declared Algeria independent two days later.

The first legislative election took place on September 20, 1962. The main objective of the assembly, elected for only one year, was to promulgate the fundamental law of the country: the constitution of September 10, 1963.

From 1965 to 1976, a Council of Revolution was instituted as the head of the Algerian state. By the Ordinance of July 10, 1965, it held the sovereign authority. A new constitution was promulgated in November 22, 1976, which instituted a single house called the National People's Assembly entrusted with the legislative power. The first assembly was elected in February 1977 for a five-year term and renewed by elections in 1982 and 1987.

The constitutional revision of February 28, 1989, established the separation of the legislative, executive, and judicial powers (Art. 92).

When the assembly reached the end of its term, its reelection was interrupted by the resignation of the president of the republic, which left a juridical vacuum. Transitional structures were established—a High Council of State and National Consultative Council, then a National Transitional Council—until a revised constitution was issued on November 28, 1996. The new document instituted a bicameral parliament, consisting of a National People's Assembly (380 members) and a Council of the Nation (144 members).

On April 15, 1999, Algeria held democratic presidential elections, which were won by Abdelaziz Bouteflika, who again won the presidential elections in April 2004.

FORM AND IMPACT OF THE CONSTITUTION

Algeria has a written constitution, codified in a single document, that takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Algeria.

Treaties enter into force only after their ratification, and provided they are applied by the other party. Treaties ratified by the president and approved by the Chamber of Deputies have higher authority than that of laws.

BASIC ORGANIZATIONAL STRUCTURE

The Algerian territorial structure is made up of three levels: 48 *wilayas* (departments), 567 *dairates* (underdepartments), and 1,540 municipalities.

At the central level, there are ministries, organized into general directorates in accordance with the French administrative model. At the intermediate level each of the 48 *wilayas* is headed by a *wali* (prefect), who is appointed by the president.

The *wali* is the representative of the central government and works with an Executive Council composed of representatives of every ministry. Each of the 48 *wilayas* has its own Popular Assembly made up of 30 representatives elected every five years. The *wilayas* enjoy financial autonomy. Their responsibilities include the territorial organization of state services; the regulation of agriculture, tourism, school systems, road networks, and medium-size industries; and all activities related to private sector development.

At the local level, each municipality is headed by a president elected to a five-year term and a Popular Assembly made up of 10 to 80 members elected every five years. The municipality is responsible for local administration, economics, finances, social and cultural activities, and planning.

LEADING CONSTITUTIONAL PRINCIPLES

Algeria's system of government is that of a presidential republic with a separation of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent and includes a constitutional court.

The state is based on the principles of democratic organization and of social justice. At the same time that it promotes political and civil rights, Algeria endeavors to guarantee the social, economic, and cultural rights of its citizens.

Islam is the official state religion. However, the Algerian constitution does not allow the exploitation of religion or race for political purposes. It states in Article 42 that "a political party cannot be founded on a religious, linguistic, racial, sex, corporatist or regional basis."

The preamble of the Algerian constitution says that the constitution is "the fundamental law which guarantees individual and collective rights and liberties, protects the principle of the people's free choice and gives legitimacy to the exercise of powers. It helps to ensure the legal protection and control of the public authorities in a society in which lawfulness and man's progress prevail in all their dimensions."

The preamble to the constitution commits Algeria to promote world peace; to consolidate national unity; to remain faithful to the human values that constitute the common heritage of peoples; to support human dignity, justice, and liberty; and to work for peace, progress, and free cooperation among nations. The constitution obliges Algeria to take an active part in Maghreb (North Africa) integration.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the prime minister and cabinet minis-

ters; the parliament, formed by the Chamber of Deputies and the Chamber of Advisors; and the judiciary.

The President

The president is the head of state of the Republic of Algeria. The president appoints and dismisses the prime minister, who is the head of the executive government. The president promulgates the laws. The president also represents Algeria in international affairs, ratifies treaties, and declares war and concludes peace with the approval of the parliament. The president directs the general policy of the nation, defines its fundamental options, and informs the national parliament accordingly. The president formally appoints and dismisses the highest civil servants and soldiers. The president has the right to pardon criminal offenders in the name of the republic.

The president is the guarantor of national independence, of the integrity of the territory, and of respect for the constitution and the laws as well as the execution of treaties. The president watches over the regular functioning of the constitutional public powers and assures the continuity of the state.

The president is elected for five years by universal, free, direct, and secret suffrage; elections are held within the last 30 days of the previous term of office. A candidate for the presidency must be an Algerian who does not carry any other nationality, who is of the Muslim religion, and whose spouse has Algerian nationality without previous interruption. The candidate must be at least 40 years old and enjoy all civil and political rights. Candidates can be nominated in one of two ways: either by 600 elected officials (local and national) or by popular petition of at least 75,000 registered voters.

The term of the presidential office is five years. A president may serve only one term.

The Executive Administration

The executive administration or cabinet puts into effect the general policy of the nation in conformity with the directions and options defined by the president of the republic. The cabinet is responsible to the president of the republic for its conduct.

The president appoints the prime minister, who is the head of the cabinet, and on the suggestion of the prime minister appoints the other ministers. The president presides over the cabinet.

The president dismisses the cabinet or any of its members on his or her own initiative or on the recommendation of the prime minister. The prime minister distributes the functions among the other members in accordance with the provisions of the constitution.

The prime minister submits the administration's program and policies for approval by the parliament and may adapt the program in light of parliamentary debate. In a case when the parliament refuses to approve the program, the prime minister presents the resignation of the cabinet to the president of the republic. The latter then chooses a new prime minister in accordance with legal procedures. If the National People's Assembly's approval is not obtained, the assembly is dissolved by law.

The prime minister may ask the assembly for a vote of confidence. If the motion of confidence is rejected, the prime minister and the cabinet resign. In this case, the president of the republic may decide to dissolve the assembly and call new general elections, which must be held within a maximum of three months.

The Parliament

The legislative power is exercised by a parliament consisting of two chambers, the National People's Assembly and the Council of the Nation. The parliament is sovereign to draft and approve laws.

The National People's Assembly is elected for a period of five years by universal, free, direct, and secret suffrage. Candidates must be at least 28 years old and Algerian by birth or naturalized for at least five years. Independent candidates must have collected at least 400 voter signatures to be eligible. Both men and women are eligible to run. The president of the people's assembly is elected for the term of the legislative body.

The Council of the Nation is composed of senators, whose numbers cannot exceed half the number of the members of the assembly. Senators serve for six years; half of the seats are renewed every three years.

The members of the Council of the Nation are chosen indirectly. Two-thirds are elected by and from among the members of the provincial and municipal assemblies and the People's Wilaya Assemblies. The remaining one-third are designated by the president of the republic from among personalities of national standing and qualified persons in the scientific, cultural, professional, economic, and social fields. The Council of the Nation chooses a president after each three-year election.

Deputies and members of the Council of the Nation enjoy parliamentary immunity during the period of their mandate. No member can be arrested or prosecuted for the duration of his or her mandate for a crime or misdemeanor unless the National People's Assembly or the Council of the Nation decides by the majority of its members to lift the immunity. However, an arrest is permitted if the member is apprehended during a crime; even then, the National People's Assembly or the Council of the Nation must be informed without delay.

The Lawmaking Process

The cabinet and any 20 deputies have the right to initiate laws. Draft laws are presented in the cabinet after review by the Council of State, a regulating body of the judiciary responsible for ensuring respect for the law. The bill is then submitted to the bureau of the National People's Assembly by the prime minister.

To be adopted, any draft law or law proposal must be debated successively by the National People's Assembly and the Council of the Nation. The Council of the Nation needs a three-quarters majority of its members to adopt a bill. In case there is a disagreement between the chambers, a committee with equal representation of the two meets at the request of the prime minister to propose a compromise version of the disputed provisions. The revised text is submitted by the prime minister to be adopted by the two chambers and cannot be further amended without the agreement of the cabinet. In case the disagreement persists, the bill is withdrawn.

The parliament legislates in the domains that the constitution assigns to it, such as the fundamental rights and duties of individuals and public freedoms in particular, as well as general rules concerning personal and family status, in particular marriage, divorce, and inheritance, and basic legislation concerning citizenship.

The president of the republic promulgates all constitutional, organic, or ordinary laws and ensures their publication in the *official journal of the Algerian Republic* within a maximal period of 15 days counting from the transmission by the president of the national parliament. During this period, the president of the republic may return the bill to the national parliament for a second reading. If the bill is adopted by the national parliament with a majority of two-thirds of its members, the law must be promulgated and published within a second period of 15 days.

The president of the republic can legislate by ordinance in case the National People's Assembly is suspended or in the period between sessions of the parliament. The president of the republic must submit the texts of such enacted ordinances to be approved by each of the two chambers of the parliament in its next session. Ordinances not adopted by the parliament become void. The president of the republic may also legislate by ordinance during a state of exception.

The president may also ratify armistice and peace agreements, alliance and union treaties, treaties related to state borders, and treaties involving expenses not provided for in the state budget but only after explicit approval by each of the chambers of the parliament.

The Judiciary

The judiciary in Algeria is independent of the executive and legislative branches and is a powerful factor in legal life. Magistrates are nominated by decree of the president upon the recommendation of the Superior Judicial Council.

The Superior Judicial Council serves as the administrative authority of the judiciary. The council is presided over by the president of the republic and is composed of senior jurors. The minister of justice serves as vice president. The current judicial system has civil, criminal, and administrative departments.

At the base of the Algerian judicial structure are the first-degree courts or jurisdictions of common right, which are qualified for all litigation relating to civil, commercial, or social matters. There are 48 courts of appeal for appeals against judgments given in courts of first resort.

The Supreme Court has the highest jurisdiction. It hears only appeals in cases of incompetence or abuse of power; violation or substantial omission of the rules of procedure; or defect, insufficiency, or contradictions of reasons of a judgment.

Special administrative courts have jurisdiction of common right for administrative cases. The law of May 30, 1998, instituted a Council of State to regulate administrative judicial activity. It ensures consistent administrative jurisprudence through the country.

The Court of Auditors reviews the public purses, local authorities, and public services.

THE ELECTION PROCESS

All Algerians over the age of 18 have the right to vote in the elections. "Suffrage is universal, free, direct, and secret." Citizens who have been naturalized for more than five years can also vote, as can Algerians living abroad who have registered in their embassy or consulate and have received their electoral card.

A Presidential and Legislative Elections National Observer has been established to control the electoral process. This body includes personalities known for their independence. The Constitutional Council reviews the validity of presidential candidate filings and the results of elections.

Parliamentary Elections

Any 18-year-old Algerian enjoying civil rights is entitled to vote in the elections. A candidate to the Chamber of Deputies must be an Algerian by birth and 23 years of age. Persons convicted of a crime entailing an unsuspended sentence of imprisonment in excess of three months cannot run for office. Guardianship, undischarged bankruptcy, insanity, and active service in the armed or security forces also disqualify a person for office.

Candidates can advertise in the press and other media. Campaigning is allowed for only the two weeks preceding the election.

No military or security forces may be present in the polling stations during voting without special permission, and voters may not carry arms.

POLITICAL PARTIES

Algeria has a "pluralistic system" of political parties. The Law Relative to Political Associations of July 1989 recognized the existence of political parties.

The 1989 law also prohibited associations formed exclusively on regional, ethnic, or religious grounds. However, the two parties that polled highest in the 1990 and 1991 elections were the Islamic Salvation Front and the Rassemblement pour la Culture et la Démocratie of the Berber Kabylie region. In December 1991, the Islamic Front won the first round of multiparty elections. The second round of elections was canceled after the military coup of January 11, 1992. On December 7, 1996, President Liamine Zeroual banned political parties that are formed on the basis of religion or language.

CITIZENSHIP

Algerian citizenship is primarily acquired by birth. The principles of *ius sanguinis* and *ius soli* are applied.

FUNDAMENTAL RIGHTS

The Algerian constitution guarantees the inviolability of the human person and freedom of conscience and protects the free exercise of beliefs, provided they do not disturb the public order. Freedom of opinion, expression, the press, publication, assembly, and association is also guaranteed and exercised within the conditions defined by law.

The constitution also guarantees the inviolability of the home, the secrecy of correspondence, the right to move freely within the country or to leave it, and the right to establish one's domicile within the limits established by the law. Article 29 provides a general equal treatment clause, which guarantees that all citizens are equal before the law.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. The constitution itself lays down such possible limitations in the interest of the public or of the rights of others. Article 57 states, "The law may forbid or limit the right to strike in the field of national defense and security or in any public service or activity of vital interest for the community." On the other hand, no fundamental right may be disregarded completely. Each limit to a fundamental right faces limits itself.

ECONOMY

The Algerian constitution does not specify any specific economic system. However, it does explicitly state that public property belongs to the national collectivity. Such property includes mines, quarries, energy resources, and the mineral, natural, and biological resources found in the country's national forests, waters, and maritime areas. Such public properties also include rail, maritime, and air transport; mail and telecommunications; and other properties defined by the law.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a human right. Islam is the state religion. The constitution provides for the free exercise of other religions that do not disturb the public order, and the government generally observes and enforces this right.

The government controls and subsidizes mosques and pays the salaries of prayer leaders. The law provides that only personnel appointed by the government may lead activities in mosques.

MILITARY DEFENSE AND STATE OF EMERGENCY

In case of imminent peril menacing the institutions of the republic or the security and independence of the country, or obstructing the regular functioning of state powers, the president of the republic may take exceptional measures necessitated by the circumstances, such as declaring a state of emergency, after consultation with the prime minister and the president of the national parliament.

AMENDMENTS TO THE CONSTITUTION

Only the president of the republic has the right to propose constitutional revisions. They must then be approved by both houses of parliament, following the same procedure as ordinary laws. If it is passed, an amendment is submitted to a referendum to be approved by the people within 50 days.

Constitutional revision may not infringe on the republican nature of the state, the democratic order based on the multiparty system, Islam as the religion of the state, Arabic as the national and official language, fundamental liberties and citizen's rights, and the integrity of the national territory.

Three-quarters of the members of the two chambers of the parliament meeting together can propose a constitutional revision and present it to the president of the republic, who can submit it to a referendum.

A constitutional revision, approved by the people, is promulgated by the president of the republic.

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Dahmène Touchent

ANDORRA

At-a-Glance

OFFICIAL NAME
Principality of Andorra

CAPITAL
Andorra la Vella

POPULATION
71,201 (July 2006 est.)

SIZE
180 sq. mi. (468 sq. km)

LANGUAGES
Catalan

RELIGIONS
Catholic 90% (active attendees 50%), Protestant 2%, Muslim 3%, Jewish 0.5%, Jehovah's Witnesses 0.5%, atheist 1%, unaffiliated or other 3%

NATIONAL OR ETHNIC COMPOSITION
Andorran 37.92%, Spanish 38.82%, French 10.02%, Portuguese 6.4%, other 6.8%

DATE OF INDEPENDENCE OR CREATION
Documented with the same borders as today since 839 C.E. It became a feudal territory on its own, subjected to the persons of the two coprinces in 1278. Modern independence since 1993.

TYPE OF GOVERNMENT
Parliamentary coprincipality

TYPE OF STATE
Democratic and social independent coprincipality

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
March 14, 1993

DATE OF LAST AMENDMENT
None

A small country in the heart of the Pyrenees between France and Spain, Andorra is a parliamentary coprincipality in which sovereignty lies in a democratic parliament chosen by universal suffrage by the Andorran people. Andorra is a democratic, independent, and social state based on the rule of law, with a clear division of executive, legislative, and judicial powers. The two heads of state, who serve by personal right, are the bishop of the Catholic Diocese of Urgell (in Catalonia, Spain) and the president of the French Republic. Apart from their representative functions, the coprinces retain a degree of governing power.

The constitution proclaims that the action of the Andorran state is inspired by the principles of respect and promotion of liberty, equality, justice, and tolerance. It provides far-reaching guarantees to protect human rights and the dignity of the person. The constitution has become the centerpiece of the modern Andorran identity, as the text that gave the country international recognition.

The central political figure is the head of government (*cap de govern*), who derives his or her powers from parliament (Consell General). Free, equal, and direct elections of members of parliament are guaranteed. A pluralistic system of political parties has emerged.

Religious freedom and freedom of worship are guaranteed, subject only to the limitations prescribed by law if necessary in the interest of public safety, order, health, morals, or protection of the fundamental rights and freedoms of others. Religious communities are separated from the state, but the Roman Catholic Church has a preeminent historic position, and its relations with the state are legally well defined by a system of cooperation as defined in Article 11.3 of the constitution.

The economic system can be described as a social market economy. No military exists in Andorra.

CONSTITUTIONAL HISTORY

Andorra emerged in the ninth century C.E. as a fief of the County of Urgelland; its current borders go back to the year 839 C.E. Andorra fell under the sovereignty of the bishop of Urgell in the 11th century. With the *pariatges* or treaties of 1278 and 1288, the lordship rights of the bishop of Urgell were shared with the count of Foix (in present-day France), under homage to the king of Aragon and count of Barcelona.

The treaties, signed by Pere of Urtx, bishop of Urgell, and Bernat III, count of Foix, in the presence of the count of Barcelona and ratified by the pope, were based on the idea of equality in lordship. However, they also guaranteed the formal homage of the count to the bishop. The 1278 document provided for shared participation in the payment of tribute, the naming of judges, and military service; the 1288 agreement specified that each coprince should name a public notary and barred the construction of fortresses by either of the princes without license from the other. The two treaties are considered to be the most fundamental documents and sources of Andorra's history and its juridical-political system. Their spirit survived until the current constitution took force in 1993.

With the treaties in force, the internal life of Andorra continued to evolve. In 1419, the Land's Council (Consell de Terra) was created as an organ of representation and administration for the valley. It was the predecessor of the current parliament.

In 1589, Henry of Navarre, count of Foix, succeeded to the throne of France as Henry IV. In 1607 he formally attached his sovereign rights over Andorra as count of Foix to the Crown of France. As count of Foix the king of France would also become coprince of Andorra.

Early in the 11th century the bishop of Urgell had given these lands in fief to the Caboet house. The rights of the Caboet house later passed to the Castellbó counts and from them to the counts of Foix. France's Crown received the rights via Henry, and afterward they passed to the French Republic. Thus the president of the French Republic became coprince of Andorra.

The fact that one of the colords of Andorra was a king of another state gave further prestige to his acts, but it turned the valleys into an enclave with an unusual status. Toward 1715 the bishop of Urgell began to use the title of "Princeps Supremus Vallis Andorre." As the enclave's two lords (formerly a bishop and a count) now used the titles of king and prince, it became only a matter of time for the old feudal domain to be identified with the idea of sovereignty. This became easier once the Kingdom of Aragon–County of Barcelona (the former ultimate sovereign of Andorra) disappeared and was partitioned between Spain and France.

From the 18th century, the Lands Council became the mainstay of Andorra's independence and neutrality as it began to follow the concepts and practices of a government. In 1758 the council ordered that the tacitly structured Andorran laws and customs be compiled and written down.

The second half of the 19th century and the beginning of the 20th were difficult and violent as modern liberal ideas spread in a formally feudal state. New economic interests provoked numerous public quarrels; there were continuous confrontations between the two coprinces. However, during World War II (1939–45) the constitutional role of the bishop of Urgell stood in the way of the occupation of Andorra by German troops after their occupation of France. Thus, the existence of two coprinces has been the key to preserving the integrity, neutrality, and independence of the country.

In 1946, universal suffrage for men 25 years of age, originally introduced in 1933, was restored after having been abolished by Marshal Pétain in 1941. In the 1970s the rights of active and passive suffrage were also recognized for women. In January 1981 an "institutional reform process" began, leading to the emergence of the government of Andorra the following year.

On March 1989, the Law of the Rights of the Human Person was approved; it stated that "fundamental rights, as defined in the Universal Declaration of Human Rights of 1948, are included in the legal system of the Principality." On March 14, 1993, the Andorran people approved the first constitution in the country's history. The same year Andorra was admitted as a member of the United Nations. It joined the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1996. Andorra has not asked for membership in the European Union but maintains diplomatic and other ties.

The legitimacy of the succession of the president of the French Republic to a personal title of nobility was long questioned. The referendum and constitution of 1993 completely legitimized this situation.

FORM AND IMPACT OF THE CONSTITUTION

Andorra has a written constitution, codified in a single, relatively short document, officially called the Constitution of the Principality of Andorra; it takes precedence over all other national laws and customs. The constitution cites the Universal Declaration of Human Rights; international laws must be in accordance with both documents to be applicable within Andorra. There are other unwritten norms that have binding force in Andorran private law, such as custom or Roman and medieval canon law (*ius commune*). The law of the European Union does not affect Andorra, but certain bilateral treaties have binding force.

BASIC ORGANIZATIONAL STRUCTURE

Andorra is divided into seven parishes (*parròquies*), territorial entities with some legislative power over local admin-

istration and regulations. The parishes are represented and administrated by the *comuns,* public corporations with legal status. Their ruling bodies are elected democratically, and they are entitled to lodge appeals of unconstitutionality. The parishes differ considerably from each other in economic strength but have identical administrative competences.

LEADING CONSTITUTIONAL PRINCIPLES

The political system of Andorra is a parliamentary coprincipality. Government is based on parliamentary democracy, with a strong division between the executive and legislative branches; there is an independent judicial power. The constitutional system is defined by several leading principles: Andorra is a democratic, independent, and social state abiding by the rule of law. The constitution proclaims that the Andorran state is inspired by the principles of respect for and promotion of real and effective liberty, equality, justice, and tolerance, and the protection of human rights and dignity. All state actions impairing the rights of people must have a basis in a "qualified parliamentary law" (*llei qualificada*) requiring a greater majority than other laws. Integrity and neutrality are two of Andorra's main principles. Further principles expressly mentioned in the constitution are hierarchy and transparency of norms, nonretroactivity of unfavorable or restrictive norms, security of the judicial system, accountability of public institutions, and prohibition of arbitrary acts. The constitution, as the highest law, binds all public institutions as well as individuals. Any kind of discrimination is forbidden.

Treaties and international agreements cannot be amended or repealed by law. Article 44.1 of the constitution states that the coprinces are the symbols and guarantees of the independence and continuity of Andorra and provides for the maintenance of the traditional parity in relations with the neighboring states.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the coprinces; the parliament, or Consell General, and its president, the *síndic general;* the *govern,* or administration, with its head and his or her ministers; the comuns, the representative organs of the parishes; and the judiciary, including the Constitutional Court.

The Coprinces

In accordance with the institutional tradition of Andorra, the coprinces are jointly and indivisibly heads of the state and its highest representatives. Dating from the treaties or *pariatges* of the 13th century, the coprinces are by personal and exclusive right the bishop of Urgell and the president of the French Republic. Their powers are equal and derive from the constitution, and each of them swears or affirms to exercise his or her functions in accordance with the constitution.

Apart from their function as heads of state, they also exercise some powers, such as proclaiming the consent of the Andorran state to adopt and honor international obligations and treaties. By acts of free will, they may jointly exercise the prerogative of pardon, create and structure appropriate services for performing their duties, appoint some Consell members and half the members of the Constitutional Court, make preliminary judgments as to the constitutionality of norms prior to their ratification, and participate in negotiating treaties affecting relations with neighboring states concerning internal security and defense, diplomatic or consular functions, and judiciary or penal cooperation.

Each coprince appoints a personal representative in Andorra, who is immune from court actions. The acts of the coprinces are under the responsibility of those who countersign them.

As heads of state, the coprinces arbitrate and moderate the functioning of public authorities and institutions and are kept regularly informed of affairs of state. They issue the call for general elections and referendums, sign the decrees of dissolution of the Consell, accredit diplomatic representatives to foreign states, appoint state officeholders, and sanction and enact laws and international treaties and ordain their publication. Foreign envoys present credentials to both of them.

In case of vacancy of one of the coprinces, the constitution recognizes the succession mechanisms provided for in their respective legal systems (canon law and French public law), so as not to interrupt the functioning of Andorran institutions.

The Consell General (Parliament)

The Consell General is the central representative organ of the Andorran people; it expresses a mixed and apportioned representation of the national population and the seven parishes. It exercises legislative powers, approves the budget of the state, and controls the political action of the government. It is composed of deputies elected for four-year terms by free, equal, and direct suffrage of all Andorrans.

The Consell General consists of a minimum of 28 and a maximum of 42 members, half of whom are elected in an equal number by each of the seven parishes and the other half elected on the basis of a national single constituency.

Resolutions of the Consell General require a quorum of half the deputies and take effect when approved by the simple majority of those present. Special majorities are required for certain matters, including regulations on fundamental rights.

The Síndic General

The *síndic general* is the chair of the Consell General. The *síndic general* may not exercise the office for more than two consecutive full terms and chairs sessions of parliament.

The *Govern* (Administration)

The *govern* (administration or cabinet) consists of the *cap de govern* and the ministers. The administration carries out the national and international policy of Andorra and is vested with statutory powers under the laws and the general principles of the legal system. Its actions and decisions are subject to judicial control. Members of the cabinet cannot be members of the Consell General and cannot exercise any other public office not derived from the cabinet. The *cap de govern* may not hold office for more than two consecutive terms.

The cabinet ceases to function upon the dissolution of the Consell General; the resignation, death, or permanent disability of the *cap de govern;* the approval of a motion of censure or the lack of approval in a vote of confidence.

The *Comuns*

The *comuns* are the corporations that represent the interests of the parishes or *parròquies*. They approve and carry out the communal budget, develop public policies within their territory, and manage and administer all parish properties of any kind. The *comuns* function under the principle of self-government and are presided over by a *cònsol*. The parishes are divided into Quarts and Veïnats, which are represented in the Consell del Comú.

The Lawmaking Process

The Consell General and the *Govern* have the right to propose a law. Any three *comuns* can combine to present private members' bills to the Consell General, as can 10 percent of the electoral roll. Once a bill has been passed by the Consell General, the *Síndic General* presents it to the coprinces so that they may sanction it, enact it, and publish it in the official bulletin.

The Judiciary

The judiciary is independent of the administration. Because of the paucity of legislation in some areas, it is a powerful factor in legal life.

There is a Constitutional Court (Tribunal Constitutional) as highest interpreter of the constitution and the highest protector of fundamental rights. It consists of four magistrates who serve for a period of eight years. The court ranks above the Supreme Court (Tribunal Superior de Justícia d'Andorra), which consists of eight magistrates and a president. The judiciary is divided into three different branches: civil, criminal, and administrative and fiscal.

THE ELECTION PROCESS

All Andorrans over 18, in full command of their faculties, have both the right to vote and the right to stand for election.

POLITICAL PARTIES

Andorra has a pluralistic system of political parties, dominated by the Social-Democratic Party and the Andorran Liberal Party. All Andorrans have the right to create political parties, which must have democratic structures and engage in lawful activities. Political parties can be banned, suspended, or dissolved only by a decision of the judicial organs.

CITIZENSHIP

Andorran citizenship is quite restrictive because of the small size of the country, and it is primarily acquired by birth when one of the parents is an Andorran citizen. It can also be acquired by birth within Andorra by foreigners who are legal residents or who were themselves born in Andorra. Adoption confers Andorran nationality, but three years of residence is required after marriage. Nationality can also be acquired by residence. In 2004 the required residence period was reduced from 25 to 20 years. Only 10 years of residence is required if the applicant has studied in Andorra and 15 years if grandparents were from Andorra.

FUNDAMENTAL RIGHTS

The constitution, in chapter III of its second title, defines fundamental rights as of basic importance. It guarantees the traditional set of human rights and civil liberties.

Taking human dignity as its starting point, the constitution has some introductory articles on equality and liberty and guarantees numerous specific rights. The basic rights bind all public authorities as directly enforceable law.

Article 8 protects the right to life; it specifies full protection of all phases of life, prohibiting abortion, euthanasia, and the death penalty.

Impact and Functions of Fundamental Rights

For the Andorran constitution, human rights are the axis on which all legal thinking turns. The fundamental rights represent a constitutional decision in favor of certain values, and thus they are of direct application to the interpretation of all laws.

Limitations to Fundamental Rights

The fundamental rights of religious freedom, freedom of expression, inviolability of dwelling and communication, right to assemble, right to associate, and right to property contain constitutionally defined limitations, but they may never be completely disregarded. Fundamental rights cannot be limited by ordinary law; any limitations require a qualified law. There is an exceptional procedure of appeal before the Constitutional Court against acts of public authorities that may violate the essential contents of fundamental rights. Aliens legally resident in Andorra have complete protection of fundamental rights, but such rights may be limited during a state of alarm or suspended in a state of emergency.

ECONOMY

The Andorran constitution does not specify any economic system, but the state may intervene in the functioning of the economic, commercial, labor, and financial systems to ensure the balanced development of society and the general welfare, within the framework of a market economy system. The constitution protects the freedom of private property, the right of enterprise, the right to and freedom of profession, the right to health protection, and the obligation of the state to guarantee a system of social security. The state is obliged to ensure a reasonable use of the soil and to keep the ecological balance. It must also defend decent housing and consumers' rights.

RELIGIOUS COMMUNITIES

Freedom of religion and worship is guaranteed as a human right, and no one is bound to state his or her ideology, religion, or belief. Religious freedom also involves rights for religious communities, with traditional limitations. The state and religious communities are separate, and there is no established state church.

The constitution expressly mentions the Roman Catholic Church, however, and guarantees relations of special cooperation in accordance with the Andorran tradition. The bishop of Urgell, the diocesan bishop governing the Catholic Church in Andorra, is also one of the heads of the state. The constitution recognizes the full legal powers of Roman Catholic Church bodies in accordance with canon law. Development laws grant the Catholic Church a special position, notwithstanding the constitutional provision that all public authorities must remain strictly neutral in their relations with religious communities and that all religions must be treated equally.

MILITARY DEFENSE AND STATE OF EMERGENCY

There is no army in Andorra. The defense of the country is coordinated with France and Spain. The police forces are presumed to be able to cope successfully with all emerging difficulties. Therefore, no military service is provided for legally.

A state of alarm can be declared by the *Govern* in case of natural disaster, for a term of 15 days, upon notifying the Consell General. The right to move freely about or enter and leave the country as well as the right to private property may be limited. A state of emergency can be declared by the *Govern* for a term of 30 days, with the authorization of the Consell General, in cases in which the normal functioning of democratic life is interrupted. People can be detained for up to 48 hours, and the administration can suspend freedom of expression, the inviolability of dwellings and communication, the right to meet and assemble, the rights of workers and employers, and the right to move about and leave the country.

Further extension of states of alarm and emergency requires the approval of the Consell General.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed only with the joint initiative of the two coprinces or at the request of one-third of parliament. A majority of two-thirds of the members is required to pass any amendment. It must be ratified in a referendum and sanctioned by the two coprinces in order to go into force. The constitution does not specify any matters that may not be amended, except that the coprinces must approve any change or new constitution that deposes them.

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Eulogi Broto

ANGOLA

At-a-Glance

OFFICIAL NAME
Republic of Angola

CAPITAL
Luanda

POPULATION
12,127,071 (July 2006 est.)

SIZE
481,354 sq. mi. (1,246,700 sq. km)

LANGUAGES
Mainly Portuguese as official language; also Ovimbundu, Kimbundu, and Bakongo

RELIGIONS
Roman Catholic 68%, various Protestants 20%, indigenous beliefs 12%

NATIONAL OR ETHNIC COMPOSITION
Ovimbundu 37%, Bakongo 13%, mixed racial 2%, European 1%, other 47%

DATE OF INDEPENDENCE OR CREATION
November 11, 1975

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 11, 1975

DATE OF LAST AMENDMENT
August 26, 1992

Angola is a multiparty democratic state based on the principles of the rule of law and the protection of internationally recognized fundamental rights. There is clear division among the executive, legislative, and judicial powers although significant overlap of the branches of the government does occur. The country is organized as a unitary state, with a strong central government and 18 less powerful provinces. Provision has been made to oversee constitutional compliance by the creation of a separate Constitutional Court.

The president of the republic of Angola is both head of state and head of the administration. The office of a prime minister has also been established with the primary function of directing and coordinating the general activities of the ruling administration. The central figure, however, is the president, who possesses wide-ranging powers and functions. The national parliament consists of a unicameral National Assembly with 223 members elected through a system of proportional representation. Sovereignty of the state is vested in the people, who exercise political power through their right to periodic universal suffrage.

With the enactment of radical constitutional changes in 1992, explicit provisions calling for a multiparty state and a free market economy were added. The constitution furthermore protects religious freedom; it requires a secular state and specifies the separation between the government and religious organizations.

Angola has a fast-growing economy, funded mainly from rich oil reserves, but the economy is largely in disarray because of many years of political instability due to civil war. The constitution provides for national defense, with the overall objective of guaranteeing national independence, territorial integrity, and the freedom and security of the Angolan population.

CONSTITUTIONAL HISTORY

The recent constitutional history of Angola can be traced back to 1482 when Portuguese seamen landed along the northern coast. Although Dutch people occupied the territory briefly after 1641, Brazilian-based Portuguese forces retook the capital, Luanda, in late 1648. From that year, the territory remained a colony of Portugal until independence.

During the latter part of the 20th century, decolonization built up strong momentum in Africa. In Angola, three independence movements emerged: the Popular Movement for the Liberation of Angola (MPLA), the National Union for the Total Independence of Angola (UNITA), and the National Front for the Liberation of Angola (FNLA). These movements fought together against the Portuguese occupation.

In 1974 a coup d'état in Portugal resulted in a new military government. This new government agreed in the Alvor Accords to end Portugal's occupation of Angola and hand over power to a coalition government that comprised the three independence movements. However, ideological differences among the movements led to armed conflict. UNITA and the FNLA formed a coalition against the MPLA and attempted to take control of the capital city, Luanda. The internal struggle was further complicated by the intervention of armed forces from South Africa on behalf of UNITA, from Zaire for the FNLA, and from Cuba for the MPLA. The MPLA remained in control of the capital and on November 11, 1975, declared independence. The movement subsequently proclaimed itself to be the government. It adopted a constitution that proclaimed a Marxist-Leninist ideology and a one-party state.

Civil war overwhelmed the new Angolan state for decades after independence. Various attempts were made to resolve the conflict and to stabilize the region, including the Lusaka Peace Accord of 1984 and the Bicesse Accord of 1991. In 1990 a process of democratization began when the MPLA government proposed major constitutional reforms, which were instituted in 1992. Political parties were legalized, including UNITA, and communism was rejected in favor of democratic socialism. After the reforms were established, a general election was held in 1992. The MPLA leader, José Eduardo dos Santos, obtained 49 percent of the vote against the UNITA leader Dr. Jonas Savimbi's 40 percent. Dr. Savimbi, however, called the election fraudulent, and the parties resumed civil war. In 1994 the parties agreed to disarm according to the terms of the Lusaka Protocol, but peace again collapsed in 1997 when a government of unity and national reconciliation was formed without Dr. Savimbi. The United Nations imposed sanctions against UNITA.

In 1999 the MPLA launched a massive offensive against UNITA and captured vast territories. In February 2002 Dr. Savimbi was killed in combat; his death ironically lead to a cease-fire and disarmament negotiations. During November 2003, both UNITA and the MPLA government declared that all outstanding issues had been resolved and proposed national elections to take place in 2005.

FORM AND IMPACT OF THE CONSTITUTION

With the 1992 constitutional reforms, the Angolan state was transformed from a one-party Marxist-Leninist system to a nominally multiparty democracy. The constitution establishes the broad outlines of the new governmental structure and delineates the rights and duties of all citizens. It consists of a single written document, which explicitly enshrines the principles of international law. The finer details of government are mainly based on ordinances, decrees, and decisions issued by the president of the republic and the cabinet ministers and also through legislation produced by the National Assembly and approved by the president. Generally speaking, the unicameral parliament is subordinate to the executive authority of the state, and the office of the president is the most influential position. The constitution remains fundamentally important in a political sense as it influences and impacts all aspects of the government and the legal system, but it enjoys no special status, and its provisions are generally supplemented by other national laws.

BASIC ORGANIZATIONAL STRUCTURE

Apart from its national territory, Angola is divided into 18 provinces, approximately 164 municipal areas, and many smaller communes, neighborhoods, and villages. The state has created various local government agencies and administrative bodies, which function in accord with the constitution and the law. The powers and functions of these bodies have been significantly decentralized in order to implement the administration's goals at the lowest levels of the government. Each province is headed by a provincial governor appointed by the president of the republic. These governors are the representatives of the national government in each province. Their general duty is to oversee and ensure the effective functioning of local administrative bodies.

LEADING CONSTITUTIONAL PRINCIPLES

The Republic of Angola is constituted as a sovereign, independent nation whose primary objective is to build a free and democratic society. The state is based on the principles of the rule of law, national unity, and protection of basic rights and freedoms of the person. Govern-

ment authority and sovereignty are vested in the people of Angola, who are constitutionally permitted to organize themselves in many political parties and to exercise political power through regularly held, free, and fair elections. There is a clear division of powers among the executive, legislative, and judicial institutions. The state is unitary in form and has a secular nature.

CONSTITUTIONAL BODIES

The three branches of the Angolan state are divided into five separate constitutional bodies: the president, the Council of the Republic, the National Assembly, the administration (the cabinet), and the judiciary.

The President

The first and most important body is the office of the president of the republic. The president is both head of state, symbolizing national unity, and head of the national executive branch. The president is also the commander in chief of the armed forces. He or she defines the country's political policy, and political power is concentrated in the presidency. The president is directly elected by an absolute majority of voting citizens for a fixed term of five years. The president's various powers and functions are specifically enumerated in the constitution and other laws. It is, for example, the privilege of the president to appoint the prime minister, the other ministers, and the judges of the Supreme Court. In the exercise of his or her political powers, the president issues presidential decrees that must be published in the official government gazette, the *Diário da República*.

The Council of the Republic

The Council of the Republic serves as the political consultative body for the president; it functions as a quasi cabinet. The president presides over the Council of the Republic, which includes ex-officio members such as the president of the National Assembly, the prime minister, the president of the Constitutional Court, the attorney general, the former president of the republic, and the leaders of the political parties represented in the National People's Assembly, as well as 10 citizens appointed by the president of the republic.

The National Assembly

National legislative authority is vested in a unicameral National Assembly consisting of 223 seats. The assembly functions as the national representative body of the people. Representatives are elected for four-year terms in accordance with proportional representation. Members of the assembly have the right to question the administration on its performance, and the members of the administration are accountable in terms of the constitution and the law. In essence, the National Assembly is the highest legislative organ of the state with the power to amend the constitution and to approve laws on all other matters. The assembly has a president chosen by the parties or coalitions represented in it. Normally, the assembly functions with a simple majority of members present.

The Lawmaking Process

Members of the National Assembly, parliamentary groups, and the cabinet have the right to propose legislation. In general, laws are adopted by a simple majority of the members present.

The Administration

The constitution provides for a national administration as the highest public executive body in the state apart from the presidency. It meets in a Council of Ministers and discharges its duties through executive laws or decrees. The administration is politically accountable to the president of the republic and the National Assembly, and it is composed in accordance with an executive law. The members of the administration may not be members of the National Assembly as the system provides for direct separation of powers.

The Judiciary

The constitution provides for judicial bodies in the form of courts that function as sovereign bodies subject only to the law. The constitution mandates the courts to ensure compliance with the law and more specifically the constitution. Specifically, the constitution provides for a Constitutional Court, a Supreme Court (Tribunal da Relação), provincial and municipal courts, and such other courts as may be established by law. A High Council of the Judicial Bench is established to manage and discipline the judiciary; it is presided over by the president of the Supreme Court. The Constitutional Court, which has not yet been established, is to adjudicate over constitutional matters only and should consist of seven judges. Finally, the constitution provides for an attorney general and a judicial procurator to oversee and control criminal prosecution and the public administration, respectively.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Universal suffrage is only for citizens, who must be over the age of 18. All adult citizens have the right and duty to take part in public life, to vote, and to stand for election. The electoral process is not specifically regulated by the constitution but is conducted according to various other national laws.

POLITICAL PARTIES

Before 1992, only the ruling MPLA party was constitutionally authorized, but the constitutional changes of that year provided for multiparty democracy and legalized various other parties including the rival UNITA. Many parties are active on the political playing field, but the MPLA remains dominant, and there are few practical opportunities for the opposition. Still, the authorization of different political parties not only allows for better public participation and representation but also ensures a truly democratic and pluralistic Angolan future.

CITIZENSHIP

Broad principles regarding citizenship are not included in the text of the constitution. Instead, they are prescribed by other laws.

FUNDAMENTAL RIGHTS

The Angolan constitution specifically protects various internationally accepted fundamental human rights.

Impact and Functions of Fundamental Rights

The constitution determines that all citizens are equal under the law and that the state has an obligation to respect and protect the person, human dignity, life, a healthy environment, due process of law, and free movement. The state must also protect against cruel, inhuman, or degrading treatment or punishment. Family life is regarded as the basic nucleus of social organization. Although the current constitution tends to stress primarily liberal rights, some social rights are also included.

Limitations to Fundamental Rights

Fundamental rights are not regarded as absolute, and limitations may be lawful if they are in accordance with the constitution and the law. The constitution is silent on when and under what circumstances rights may be limited, as such details are to be found in other national laws.

ECONOMY

On paper, Angola is a relative rich country with an estimated gross domestic product of $23 billion in 2004. Although the economy is growing fast, it remains in disarray because of the civil war that ravaged the country for nearly a quarter of a century, corruption, and public mismanagement. The country survives mainly on oil production; other national resources include diamonds, iron ore, uranium, gold, granite, and copper. Various agricultural products and sectors are also important, such as bananas, sugarcane, coffee, corn, tobacco, livestock, and fisheries. Subsistence agriculture is the main livelihood of the majority of the population. Most foodstuffs are, however, imported since the agricultural and fishing resources are underexploited because of factors associated with the civil war. Despite the abundant natural resources, the output per capita remains among the lowest in the world. According to the constitution, it is the responsibility of the state to guide the development of the nation's economy, as all natural resources are constitutionally proclaimed to be the property of the state, to be managed and exploited for the benefit of the nation.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is specifically protected under Angola's new constitutional system. There is no official state religion that is prescribed, and the people can practice their own religions freely. The state is secular in nature, and a direct separation between the state and churches is maintained. The constitution also places a duty on the state to respect religion and places of worship.

MILITARY DEFENSE AND STATE OF EMERGENCY

Angola is protected by national armed forces. The armed forces are headed by a chief of staff who is accountable to a civilian minister of defense. A special presidential guard (Casa Militar) is also provided, answering directly to the office of the president. Military service is mandatory and cannot be refused; no conscientious objections are possible. Only the president of the republic in cooperation with the National Assembly can declare a state of siege or emergency. Detailed requirements before such a state is declared are prescribed by law. During states of emergency, the president and the rest of the civil government structures continue to rule. It is, however, specifically determined in the constitution that during a state of siege or emergency, no amendment of the constitution may be made.

AMENDMENTS TO THE CONSTITUTION

In comparison with many other constitutions in the world, the Angolan constitution is fairly easy to amend. The constitution determines that the National Assembly may review or amend the constitution through a decision of a two-thirds majority of the members present, which

is a relatively weak quorum. Any 10 or more members of the assembly or the president of the republic may propose amendments to the constitution. Amendments may be made at any time except during a state of siege or emergency. The president has no veto over a constitutional amendment if the amendment procedure was carried out in accordance with the law. Finally, the constitution requires that any amendment conform to certain criteria such as a guarantee of fundamental human rights protection, the rule of law, political pluralism, direct suffrage, a secular state, and the independence of the courts.

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Bernard Bekink

ANTIGUA AND BARBUDA

At-a-Glance

OFFICIAL NAME
Antigua and Barbuda

CAPITAL
Saint John's (Antigua)

POPULATION
68,722 (2005 est.)

SIZE
171 sq. mi. (443 sq. km)

LANGUAGES
English (official), local dialects

RELIGIONS
Anglican 45%, Protestant 42% (Moravian 12%, Methodist 9.1%, Seventh Day Adventist 8.8%), Roman Catholic 10.8%, Jehovah's Witness 1.2%, Rastafarian 0.8%, other 0.2%

NATIONAL OR ETHNIC COMPOSITION
Black African origin 82.4%, white 12%, mulatto 3.5%, British 1.3%, Portuguese, Lebanese, Syrian 0.8%

DATE OF INDEPENDENCE OR CREATION
November 1, 1981

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary democratic state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 1, 1981

DATE OF LAST AMENDMENT
No amendment

The islands of Antigua and Barbuda form a constitutional monarchy with the British monarch, who is the nominal head of state, represented by a governor-general. The governor-general is appointed by the monarch on the advice of the prime minister. Under the 1981 constitution, the political system is a parliamentary democracy. Antigua and Barbuda has a multiparty political system with a long history of hard-fought elections, three of which have resulted in peaceful changes of government.

The judicial branch is relatively independent of the other two branches even though the magistrates are appointed by the office of the attorney general in the executive branch.

The constitution of 1981 was promulgated simultaneously with the country's formal independence from Britain. It provides a basis for possible territorial acquisitions, expands upon fundamental human rights, recognizes and guarantees the rights of opposition parties in government, and provides Barbuda with a large measure of internal self-government.

The constitution sets forth the rights of citizens, ascribing fundamental rights to each person regardless of race, place of origin, political opinions or affiliations, color, creed, or sex. It further extends these rights to persons born out of wedlock, an important provision in that legitimate and illegitimate persons did not have equal legal status under colonial rule.

CONSTITUTIONAL HISTORY

Antigua was visited in 1493 by Christopher Columbus, who named it after the Church of Santa Maria de la Antigua in Sevilla (Seville), Spain. The island was colonized by English settlers in 1632 and remained a British possession for centuries, although it was raided by the French in 1666. Initially tobacco was grown, but in the later 17th century, sugarcane was found to be more profitable. Antigua became one of the most lucrative of Britain's colonies in the Caribbean.

The nearby island of Barbuda was colonized in 1678. In 1685 the Crown granted the island to the Codrington family, who governed it until 1870. Barbuda became part of Antigua in 1860. It reverted to the Crown in the late

19th century, and its administration became so closely related to that of Antigua that Barbuda eventually became a dependency of the larger neighboring island.

The Leeward Islands colony, of which the islands were a part, was defederated in 1956, and in 1958, Antigua joined the West Indies Federation. When the federation was dissolved in 1962, Antigua persevered with discussions of alternative forms of federation. Provision was made in the West Indies Act of 1967 for Antigua to assume a status of association with the United Kingdom, which took effect on February 27 that year. As an associated state, Antigua was fully self-governing in all internal affairs, while the United Kingdom retained responsibility for external affairs and defense.

By the 1970s, Antigua had developed an independence movement, particularly during the administration of Prime Minister George Walter, who wanted complete independence and opposed the British plan of a federation of islands. Walter lost the 1976 elections to Vere Bird, who favored regional integration. In 1978, Antigua reversed its position and announced it wanted independence. The autonomy talks were complicated by the fact that Barbuda believed that it had been economically shortchanged by the larger island and wanted to secede. Eventually, on November 1, 1981, Antigua and Barbuda achieved independence with Vere Bird as the first prime minister. The state obtained United Nations and British Commonwealth membership and joined the Organization of East Caribbean States. Bird's party won again in 1984 and 1989 by overwhelming margins, giving the prime minister firm control of the islands' government.

During elections in March 1994, power passed from Vere Bird to his son, Lester Bird, but remained within the Antigua Labor Party, which won 11 of the 17 parliamentary seats. The United Progressive Party won the 2004 elections, and Baldwin Spencer became prime minister, thus removing from power the longest-serving elected government in the Caribbean.

FORM AND IMPACT OF THE CONSTITUTION

Antigua and Barbuda has a written constitution, codified in a single document. The Constitution of Antigua and Barbuda of November 1, 1981, is the supreme law of the state; it declares void any legal provision inconsistent with it. International law is not explicitly regulated within the constitutional body.

BASIC ORGANIZATIONAL STRUCTURE

The unitary state of Antigua and Barbuda is divided into six parishes (Saint George, Saint John, Saint Mary, Saint Paul, Saint Peter, and Saint Philip) and two dependencies, Barbuda and Redonda, which have a certain degree of autonomy. The constitution provides for a Constituencies Boundaries Commission, which, when called upon, has the task of reviewing the number and the boundaries of the constituencies and reporting accordingly to the Speaker of parliament.

In order to quell secessionist sentiment in Barbuda, the writers of the constitution included provisions for Barbudan internal self-government, constitutionally protecting the 1976 Barbuda Local Government Act. The elected Council for Barbuda is the organ of local self-government. It has the power to draft resolutions covering community issues or domestic affairs. In the areas of defense and foreign affairs, however, Barbuda remains under the aegis of the national government. The Barbuda Council consists of nine elected members, one Barbudan representative to the national parliament, and several government-appointed councilors. Council elections are held every two years.

LEADING CONSTITUTIONAL PRINCIPLES

Antigua and Barbuda is a unitary sovereign democratic state within the Commonwealth of Nations. Its system of government is a constitutional monarchy acknowledging the king or queen of the United Kingdom as the official head of state, represented by an appointed governor-general who exercises the executive authority on behalf of the monarch. The legislative, executive, and judicial branches are distinct and independent; none of these branches may delegate the exercise of their proper functions. Holders of public office must take an oath to observe and comply with the constitution and the laws and to bear true allegiance to Her Majesty Queen Elizabeth II.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the parliament, consisting of the House of Representatives and the Senate; the governor-general; the prime minister and cabinet ministers; the judiciary; the supervisor of elections; and the director of audit.

The Parliament

The legislature is the bicameral parliament consisting of a 17-member House of Representatives elected by popular vote for a five-year term and an appointed Senate of 17 members. Antigua has 16 seats in the House, and Barbuda one. Of the senators, 11 are appointed by the prime minister, four by the parliamentary opposition leader, one by the Barbuda Council, and one by the governor-general. In this way, the opposition, the leader of which is recognized constitutionally, is ensured a voice in government. In practice, the major figures in parliament and the executive

government are members of the House of Representatives. The constitution provides for two standing committees, the Advisory Committee on the Prerogative of Mercy and the Public Accounts Committee. Parliament is free to set up more nonstanding committees.

The Lawmaking Process

To become laws, bills must be passed by the Senate and the House of Representatives and assented to by the governor-general on behalf of her majesty. After assent is given, the bill must be published in the *Official Gazette* to enter into effect.

The Governor-General, the Prime Minister, and Cabinet Ministers

The executive authority of Antigua and Barbuda is vested in her majesty, the queen of England. In practice, it is exercised on behalf of her majesty by the governor-general, either directly or through officers subordinate to him or her. The governor-general appoints the prime minister, usually the leader of the political party that commands the support of the majority in the house. The executive branch is derived from the legislative branch. As leader of the majority party of the House of Representatives, the prime minister appoints other members of parliament as cabinet ministers. The prime minister and the cabinet are responsible to the parliament. The governor-general in principle acts in accordance with the advice of the cabinet or a minister acting under the general authority of the cabinet. The prime minister has to keep the governor-general regularly and fully informed.

The Supervisor of Elections

The governor-general appoints a supervisor of elections by notice published in the *Official Gazette*. The supervisor of elections exercises such functions, powers, and duties as may be provided by law for the elections.

The Director of Audit and Public Accounts Committee

The constitutional bodies in charge of oversight of public finances are the office of the director of audit and the Public Accounts Committee. The director of audit enjoys full functional and administrative independence in the performance of his or her duties.

The Judiciary

The judiciary, which is part of the eastern Caribbean legal system, is independent. There is an intraisland court of appeals for Antigua and five other former British colonies in the Lesser Antilles. The judiciary consists of the Magistrate's Court for minor offenses and the High Court for major offenses. To proceed beyond the High Court, a case must pass to the Eastern Caribbean States Supreme Court, the members of which are appointed by the Organization of Eastern Caribbean States. Jurisprudence is based on the English common law system. The Eastern Caribbean Supreme Court is based in Saint Lucia; one judge of the Supreme Court is a resident of the islands of Antigua and Barbuda and presides over the Court of Summary Jurisdiction.

Any person who alleges that any provision of the constitution has been or is being contravened can, if he or she has a relevant interest, apply to the High Court. The right to apply for a declaration and remedies is additional to any other legal action in respect of the same matter. There is a possibility of appeal to the Court of Appeals and, further, to the Privy Council in Britain.

THE ELECTION PROCESS

Citizens of Antigua and Barbuda of at least 18 years old are eligible to vote in universal suffrage. Any person who at the date of his or her election is a citizen of the age of 21 years or more, who has resided in Antigua and Barbuda for a period of 12 months immediately preceding the date of election, and who is able to speak and read the English language is, in principle, qualified to be elected as a member of the House of Representatives.

POLITICAL PARTIES

Antigua and Barbuda's political system emerged from British political tradition and the development of trade-union activism. Antigua shifted from a one-party to a two-party system after 1967. In 1971, the Progressive Labor Movement (PLM) won a majority of seats in the House of Representatives in the general election, ending the Antigua Labor Party's (ALP's) continuous dominance in national politics. The ALP regained control of the government in the 1976 general election.

Elections to the House of Representatives were held on March 23, 2004. The ALP under Lester Bryant Bird won only four seats, while Baldwin Spencer's United Progressive Party (UPP, a coalition of three opposition parties: United National Democratic Party [UNDP], Antigua Caribbean Liberation Movement [ACLM], and PLM) became the strongest faction. The Barbuda People's Movement (BPM) under Thomas H. Frank did not win any seats.

CITIZENSHIP

Citizenship of Antigua and Barbuda is obtained by birth or by naturalization. Every person born in Antigua who was on October 31, 1981, a citizen of the United Kingdom or its colonies was proclaimed a citizen on November 1, 1981. The same rule applies to any person born outside

Antigua, any one of whose parents or grandparents was born therein or was registered or naturalized while resident in Antigua. The constitution provides for the concept of dual citizenship; a citizen cannot be denied an Antiguan passport on grounds of being entitled to apply for some other country's nationality.

FUNDAMENTAL RIGHTS

The constitution establishes the fundamental rights of all persons, regardless of race, place of origin, political opinions or affiliations, color, creed, or sex, but subject to respect for the rights and freedoms of others, and for the public interest. The right to life is guaranteed: No person shall be deprived of his or her life intentionally, save in execution of the sentence of a court in respect of a crime of treason or murder of which he or her has been convicted.

In addition, the constitution acknowledges the right to personal liberty, protection from slavery and forced labor, protection from inhuman treatment, protection of freedom of movement, protection from deprivation of property, protection of persons or property from arbitrary search or entry, protection of freedom of conscience, protection of freedom of expression including freedom of the press, freedom of assembly and association, and protection from discrimination on the grounds of race, sex, or other characteristics.

ECONOMY

The constitution protects the right to private property. No property of any description shall be compulsorily taken except for public use in accordance with the provisions of the law; fair compensation must be paid within a reasonable time.

Antigua and Barbuda's economy is service-based; tourism and financial and government services represent the key sources of employment and income.

RELIGIOUS COMMUNITIES

The constitution provides for freedom of religion, and the government generally respects this right in practice. The government at all levels strives to protect this right in full and does not tolerate its abuse, either by governmental or by private actors. The government is secular and does not interfere with an individual's right to worship. Christian holy days, such as Good Friday, White Monday, and Christmas, are national holidays. Relations among the various religious communities are generally amicable. The Antigua Christian Council, an interdenominational group, conducts activities to promote greater mutual understanding and tolerance among adherents of different denominations within the Christian faith.

MILITARY DEFENSE AND STATE OF EMERGENCY

The islands maintain the Royal Antigua and Barbuda Defense Force, including the Coast Guard. In addition, the constitution acknowledges a Police Service Commission in charge of administering a professional police force.

The governor-general can declare a state of emergency for a period of seven days during a session of parliament and for a maximum of 21 days or, in specified cases, for a period of three months, unless parliament in the meantime has passed a declaration of a state of emergency. Parliament has the right to do so on its own initiative. A vote for a state of emergency requires a simple majority in each of the two parliamentary chambers. The assumption of emergency powers is taken in the case of war (periods of 12 months renewable) or if there is a vote of two-thirds of the members of each chamber declaring that the democratic institutions of Antigua and Barbuda are facing a threat of subversion (hostile action from outside or as a result of a natural disaster).

AMENDMENTS TO THE CONSTITUTION

Parliament may alter any of the provisions of the constitution. Depending on the particular article being amended, a majority of two-thirds or three-quarters of members is required. Further requirements are detailed in Article 47 of the constitution.

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Lasia Bloß

ARGENTINA

At-a-Glance

OFFICIAL NAME
Argentine Republic

CAPITAL
Buenos Aires

POPULATION
39,537,943 (2005 est.)

SIZE
1,077,924 sq. mi. (2,791,810 sq. km)

LANGUAGES
Spanish

RELIGIONS
Catholic 80%, Protestant 9%, Jewish 1%, other 3%, nonbelievers 7%

NATIONAL OR ETHNIC COMPOSITION
Argentine 95.6%, other South American natives (largely Paraguayan, Bolivian, Chilean, and Uruguayan) 2.8%, other (largely Italian and Spanish) 1.6%

DATE OF INDEPENDENCE OR CREATION
May 25, 1810

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
May 1, 1853

DATE OF LAST AMENDMENT
August 22, 1994

The Argentine Republic is a republican democracy and presidential state. Its constitutional system is similar to that of the United States. Argentina is a federal state composed of 24 autonomous provinces and a federal district, although it also has a strong central government, which comprises an executive power managed by a president, a bicameral legislative power (Senate and Chamber of Deputies), and an independent judicial power. The president, elected by the citizens by direct vote, is simultaneously the chief of state and chief of the administration. Each province has its own constitution and its own government. The federal constitution and several international treaties that possess constitutional rank guarantee the fulfillment of human rights. Civil rights are equal for all inhabitants, Argentines or foreigners. The country promotes immigration, which has contributed to the development of its diversified population. Although the Catholic Church holds a special status and legal recognition, ample religious liberty exists.

CONSTITUTIONAL HISTORY

The Argentine Republic became independent after the fragmentation of the Spanish Empire in America, early in the 19th century. Its present territory was part of the thinly populated Virreinato del Río de La Plata, the capital of which was Buenos Aires, where the split with the Spanish Crown started on May 25, 1810. Independence was formally declared on July 9, 1816. In the meantime, the existing cities became the nuclei of several of the present provinces, although others formed independent nations such as Uruguay, Paraguay, and Bolivia in the following years.

After independence, the Provincias Unidas del Río de La Plata, today's Argentina, constituted a confederation, but it was exposed to four decades of civil war. There were failed attempts at constitutional organization in 1817, 1819, and 1826. In 1852 several provinces defeated the governor of Buenos Aires, Juan Manuel de Rosas, and a federal system was imposed. A Constitutional Congress

adopted a constitution in 1853. In 1859 the province of Buenos Aires, which had refused to join the federation, was reunited with the nation, prompting the revision of the constitution the following year, which produced its final text. The 1853–60 constitution was based on the ideas of the jurist Juan Bautista Alberdi and shaped according to the model of the constitution of the United States of America, taking into account other national models.

The national constitution survived without incident until 1930. By then, substantial European immigration had contributed to the modern Argentinean social profile and led to important economic development. Between 1930 and 1932 a military revolution produced a suspension of the constitutional government; this occurred again between 1943 and 1946. In 1946, Colonel Juan D. Perón was democratically elected president, but he went on to govern in an authoritarian and demagogic way. He introduced important economic and social changes of nationalist orientation. In 1949, the constitution was amended through questionable procedures in order to permit the reelection of Perón.

The 1949 constitution was abrogated in 1956 by a revolution that ousted Perón. In 1957, a constitutional convention reestablished the 1853 constitution with some changes, recognizing the rights of workers and promoting social security. The military government of 1966–73 produced a modified constitution in 1972, which remained in force during the democratic government of 1973–76. A new military dictatorship in 1976–83 suspended parts of the constitution, which went back in force in 1983. In 1994 the constitution was modified once again to include new rights and guarantees and to update the provisions concerning governmental structure. An independent judicial power survived under the military governments (1930–32, 1943–46, 1955–58, 1962, 1966–73, and 1976–83), but the national congress and provincial legislatures remained closed; the president of the nation (or a Junta Militar) exercised the legislative power and appointed the governors of the provinces.

Argentina, Brazil, Paraguay, Uruguay, and, in part, Chile and Bolivia are members of MERCOSUR (Mercado Común del Sur; Common Market of the South), an economic integration agreement aimed at developing closer economic ties among these states. The 1994 constitutional reform authorizes Congress to approve integration treaties that delegate competences and jurisdiction to supranational organizations.

FORM AND IMPACT OF THE CONSTITUTION

The Argentine Republic has a written constitution, codified in one single document. International treaties and concordats with the Holy See, the leading body of the Roman Catholic Church, take precedence over any norm of internal law with the exception of the constitution. Since 1994, Argentina has signed the main international human-rights treaties such as the International Covenant on Cultural, Social, and Economic Rights; the Covenant on Political and Civil Rights; and the American Convention on Human Rights. These treaties have constitutional status and complement the statement of rights and guarantees in the national constitution. Not only the Supreme Court, but also any federal or provincial judge can declare laws or other rules unconstitutional and thus prevent their application in concrete cases. Even during the military dictatorships, judges declared laws or dispositions of those governments unconstitutional in order to implement the rights contained in the constitution.

The rights and guarantees held in the constitution have been for the most part respected, even during the military governments. After several decades of institutional instability during the 20th century, a great consensus concerning those institutions now exists since the reestablishment of democratic institutions in 1983.

BASIC ORGANIZATIONAL STRUCTURE

The Argentine Republic is composed of 24 provinces and one autonomous city, Buenos Aires, which is also the capital city of the nation. Some provinces were formed before the founding of the nation, while others were created during the 20th century out of territories that were incorporated into the nation after its founding. All provinces have equal rights, but they are very different in size, population, wealth, and economic development. The provinces have their own institutions and adopt their own constitutions without intervention of the federal government. They retain all powers not delegated to the federal government by the constitution; however, this delegation is very extensive.

Among other responsibilities, the provinces regulate health care and primary and secondary education under a legal framework created by the national congress. Most taxes are collected on the national level; portions are then distributed among the provinces. The financial and economic dependence of many provinces on the federal government limits their autonomy, although the provinces control natural resources in their territories. The federal government has exclusive authority in many fields such as foreign affairs, defense and military matters, and citizenship.

The provinces can conclude treaties among themselves and can create "regions" encompassing several provinces for optimal social and economic development. Since the 1994 constitutional reform the provinces can also conclude international covenants with the knowledge of the Congress. These treaties must be compatible with national foreign policy.

Each province has the duty to organize municipal governments. The municipalities are small territorial units, with local governments elected by the inhabitants directly. Usually, foreign residents have the right to vote in these elections.

LEADING CONSTITUTIONAL PRINCIPLES

Argentina is a presidential republic. It has a strong division of powers among the executive, legislative, and judicial branches; powers are based on a system of checks and balances. The judicial power is independent, and the Supreme Court also functions as a constitutional court. Article 1 of the constitution states that "the Argentine Nation adopts for its government the federal, republican, representative form." Each province must adopt a constitution under the republican representative system according to the principles, statements, and guarantees of the national constitution. Representative government means that the citizens democratically choose their representatives to form the executive and the legislative power.

In a relatively new departure that has not yet been effectively applied, the constitution authorizes semidirect forms of democracy as well. These include the citizens' ability to introduce bills to the Chamber of Deputies, in matters other than constitutional reform, international treaties, taxes, budgets, and criminal law. Congress can also submit bills or other matters to popular referendum.

The principle of republican government means that Argentina does not allow a monarchy and that there must be periodic rotation in government power. The ideology behind the constitution is liberal, emphasizing the protection of individual rights. The introduction to the constitution cites the goal of "ensuring justice," "promoting the general welfare, and securing the blessings of liberty to ourselves, to our posterity, and to all men in the world who wish to dwell on Argentine soil." Subsequent reform has introduced guarantees of social rights for families, workers, and consumers, including the right to live in a healthy environment. It has also given constitutional standing to international treaties that protect human rights of the first and second generations.

The state is secular, although in the framework of extensive freedom of worship, it offers special recognition to the Catholic Church.

The constitution foresees and authorizes the integration of the Argentine Republic with other states, particularly those of Latin America.

CONSTITUTIONAL BODIES

The main constitutional organs are the president of the nation, who exercises the executive power with the aid of the cabinet of ministers or federal administration; the Congress, made up of the Chamber of Deputies and the Senate, and the judiciary including the Supreme Court of Justice. Other organs also have constitutional rank, such as the general auditing office, the defender of the people (ombudsperson), and the office of the chief public prosecutor.

The President (and the Vice President) of the Nation

The executive power is individual, and it is exercised by a citizen holding the office of the "president of the Argentine nation." The president is elected together with a vice president, who can replace the president, permanently in case of death, renunciation, or dismissal or temporarily in case of illness or absence from the country. The vice president does not exercise executive powers independently. As president of the Senate, he or she can participate in debates but cannot vote. The president and the vice president are elected for a period of four years and can be reelected only for a single consecutive period. They are elected directly by popular vote. Candidates for president or vice president must be at least 30 years old and Argentine citizens.

According to the constitution, the president "is the commander in chief of the nation, leader of the government and political head of the general administration of the country." The president is the supreme commander of the armed forces. The president also appoints federal judges and members of the Supreme Court, with the agreement of the Senate, and appoints ambassadors and higher officers of the armed forces.

The president participates in the legislative activity in several ways. He or she can propose bills to the Congress; most laws passed in recent decades have originated as projects of the executive. When Congress passes a bill, the president can either promulgate and publish it as law or veto it. The president has also the power to adjust laws but only in such a way as "not to alter its spirit" by means of exceptions.

In principle, the president cannot dictate laws. However, since the 1994 constitutional reform, the president has the power to issue decrees with the force of law, except in electoral, tax, and those penal matters that concern political parties. This power is supposed to be used only in exceptional cases in the face of urgent necessity. Such "urgency and necessity decrees" are supposed to be communicated to Congress for ratification or modification. However, no law to regulate this procedure has yet been passed, and presidents have become accustomed to abusing this power and to issuing such decrees even in cases lacking any real necessity or urgency.

The president also conducts foreign affairs and can sign international treaties that must then be approved by Congress. According to the constitution, the president cannot leave the country without the permission of Congress. However, in practice, Congress passes a law every year authorizing such trips whenever the president deems them necessary.

The Federal Administration

While executive power in Argentina is exercised by one person—the president—the constitution provides for

cabinet ministers to assist the president and to validate presidential acts by countersigning them.

The number of cabinet ministers and their individual functions are provided for by law. While serving as ministers, they cannot also be senators or deputies. They have the right to participate in congressional sessions, without voting, although this right is rarely used.

The president appoints a cabinet chief, whose function is the "general administration of the country." This function includes collecting national taxes and administering the national budget, appointing those public officials not appointed by the president, and reporting to Congress every month concerning the most important governmental issues. In theory, the cabinet chief is a special link between the president and the rest of the executive branch. In practice, the chief is treated as any other cabinet minister is.

The cabinet ministers and the cabinet chief are appointed by the president without the consent of Congress or any other body, and they can be removed freely by the president. In theory, they can also be removed by Congress in a procedure called political trial (Juicio Político). However, this has never happened.

The Congress

The legislative power is exercised by Congress, composed of the Chamber of Deputies and the Senate.

The deputies are directly elected by the people in the provinces and in the city of Buenos Aires, whom they represent. At present, there are 256 deputies. Each province or district is allocated seats in proportion to its population, although the law establishes a minimum of five deputies per province, with the result of overrepresentation of the provinces that have fewer inhabitants.

To be elected as a deputy, a candidate must be at least 25 years old, must have been a citizen for four years, and must be born in the province or have been a resident there for two years. The deputies are elected for four years and can be reelected. The Chamber of Deputies changes half of its members every two years, so there is at least one legislative election within each presidential term.

The Senate comprises three senators per province and three for the city of Buenos Aires, all elected by direct vote. In each constituency, the party that receives most votes gets two senators, and the runner-up party gets the third. The senators are elected for a period of six years and can be reelected with no limits. The senators' chamber changes 33 percent of its members every two years.

The two chambers are in principle equal and have equal prerogatives, but each has unique functions. Only the Chamber of Deputies can introduce legislation related to tax matters and to the recruitment of troops. This chamber also can impeach the president, the vice president, cabinet ministers, or judges of the Supreme Court. The Senate, however, is responsible for distributing national taxes; approving appointments of judges, military leaders, and ambassadors; and actually trying a president, vice president, cabinet ministers, or a Supreme Court judge who has been impeached by the Chamber of Deputies.

The deputies and senators enjoy immunity as soon as they are elected, and they can be neither indicted nor interrogated judicially because of their opinions. They cannot be arrested unless they are caught performing a criminal act.

Neither the governors of provinces nor members of Roman Catholic religious orders can be elected to Congress. The latter prohibition is widely regarded to be outdated and to lack justification.

The legislative powers of Congress are very extensive. It can pass and modify provisions in the Civil Code, the Code of Commerce, or the Penal Code, as well as laws regulating mining, labor, social security, taxes, and political parties.

The Lawmaking Process

In general, a bill can be introduced in either chamber by one or more members of Congress or by the administration. All laws have to be approved in both chambers. If the introducing chamber approves the law, it remits the project to the other chamber to consider it and submit it to a vote.

If one of the chambers rejects a project approved by the other, that project cannot be reintroduced during the same year. If the project is partially rejected or amended, it is returned to the original chamber to approve or reject the changes. When both chambers reach agreement, the bill is forwarded to the president for approval, promulgation, and publication. The president can veto the law and return it to the Congress. If both chambers insist on the project with a two-thirds majority of votes, the bill becomes law despite the president's opposition.

The Defender of the People (Ombudsperson) and the General Auditing Office of the Nation

The Defender of the People is an independent body charged with defending and protecting human rights and other rights, guarantees, and interests enumerated in the constitution and laws, against governmental acts and omissions. It also reviews the exercise of public administrative functions. The Defender of the People is appointed by a two-thirds majority of the members present in each of the two chambers and serves a five-year term of office.

The 1994 constitutional reform created another organ of control within the legislative branch that functions autonomously, the General Auditing Office of the Nation. The general auditor is appointed on recommendation of the largest opposition party in Congress. The office audits and controls all the functions of the executive branch.

The Judiciary

The judiciary is an independent power exercised by a Supreme Court of Justice and lower courts located in the federal capital and in the provinces. The nine judges of the Supreme Court are appointed by the president with the consent of two-thirds of the members of the Senate. Each lower-court judge is also appointed by the president with the consent of the Senate, but he or she must choose from a list of three candidates nominated by the Judicial Council. The Judicial Council is composed of members of Congress, judges, lawyers, and academics. Its functions are to nominate judges (other than for the Supreme Court) by means of public competition, to supervise the administration of the judiciary, and to discipline and even dismiss judges.

All judges remain in office until age 75 unless their actions are contrary to their duty or to good behavior. Their remuneration cannot be reduced. When judges reach 75 years old, they can be reappointed by the Senate for a period of five years that can be renewed indefinitely. Supreme Court judges can be removed by means of political trial only (impeachment), with the Chamber of Deputies acting as the accusing party and the Senate as a court of judgment; in both cases, a two-thirds majority is required.

The Supreme Court has exclusive and original jurisdiction in several matters, such as disputes among provinces. It also hears appeals in matters governed by federal laws. All federal judges have authority to hear cases governed by federal laws. Since 1853, the constitution has provided for juries in criminal trials, but such juries have never been established. Each province has its own Supreme Court or Upper Court, chambers of appeals, and courts of first instance, with varying jurisdictions.

Any federal or provincial judge at any level can declare a law or other norm such as a regulation unconstitutional in the specific case under review, and the law or norm is not applied. Nevertheless, the law remains in force because a statement of unconstitutionality is only valid for the case to which it has been applied. Decisions of the Supreme Court are not formally binding in the future on lower courts. However, such decisions have "moral" and factual relevance; the criteria that the court establishes in federal matters are in fact followed by the other courts. There is no "constitutional court" in Argentina other than the Supreme Court of Justice. In this respect, Argentina follows the model of the judiciary system of the United States.

The Office of the Public Prosecutor

The Office of the Public Prosecutor is an independent body established to defend lawfulness and the general interests of society in coordination with the other authorities of the republic. It is composed of a national chief prosecutor, a national chief public defender, and other members that the law may establish.

THE ELECTION PROCESS

All citizens over 18 years of age have the right to vote for and to be elected to public office. This right does not apply to mentally impaired persons, those who have been sentenced to prison, and soldiers of the armed forces.

Foreigners who have permanent residence can also vote in some provincial and municipal elections. The electoral registers are controlled by the judicial branch. Voting is compulsory; this requirement was first established by a law (in 1912) and in 1994 was added to the constitution.

The judiciary has refused to allow conscientious objection to the compulsory vote. It considers election to be an essential institution of democracy; in any case, those who do not desire to participate can submit blank ballots. The failure to vote is sanctioned by fines, which have not actually been enforced.

Voting is secret, with penal sanctions for those who reveal their vote at the time of the election. It is also a crime to hinder the liberty of the voting process in any way.

Electoral procedures, regulated by law, impose multiple controls on political parties. In general, elections in Argentina are thought to be free of fraud. Only recognized political parties can present candidate lists. Independent candidates can only run in municipal elections.

Candidate lists are required by law to include at least one-third women; for every two male candidates there must be at least one female candidate. Since this requirement was implemented, female representation has increased notably in legislative bodies, especially in Congress, although their representation does not yet equal that of their male counterparts.

POLITICAL PARTIES

The constitution explicitly affirms that political parties are "fundamental institutions in the democratic system." It guarantees their free and democratic organization, their representation of minorities, and their right to communicate their ideas publicly.

There are political parties that act only on the local level, as well as national political parties. To be recognized on the national level, a party must first be recognized in at least five districts or provinces. To be recognized as a local political party, it must in elections represent at least 4 percent of the voters in that locality. The parties are legal and political entities, and they function under the control of the judiciary. They can form confederations and alliances, which may be permanent or transitory, for a single election. The governing bodies of the parties and the candidates they present for public elections must be chosen in internal elections regulated by the judiciary. The parties are funded through contributions from their members and from the state, which is obliged by the constitution to work with them. The state contribution is proportional to the number of votes obtained by the party in

the elections. The law provides for mechanisms to keep party finances transparent, but the rules have turned out to be difficult to implement.

There is a pluralistic party system in Argentina. Throughout its history, political parties have played a prominent role. In 1946, the Justicialista party was founded by Colonel Juan D. Perón; it has been the dominant party in the country ever since. Occasionally, other parties or alliances of parties have won elections against the Justicialista party, such as the Unión Cívica Radical, founded in 1891, which has politically liberal but economically nationalist tendencies. However, no non-Justicialista administration has been able to complete a full term in office. As a consequence, internal disputes within the Justicialista party have been very important for national elections.

The Justicialista party lacks a clear ideological identity, but it is clearly populist and demagogic in tone. Socialists are divided among several parties and have been represented in parliament. They have, however, never controlled the government. Provincial parties are generally conservative; they tend to control provincial governments. Groups of provincial parties have at times joined with other conservative parties to become a third electoral force on the national level behind the Justicialista party and the Unión Cívica Radical. However, their heterogeneous nature has prevented them form forming a strong party at the national level. In recent years, the party system has experienced a severe crisis, and the identities of the various parties have become uncertain.

CITIZENSHIP

All persons born in Argentine territory have the right to citizenship according to the principle of the *ius soli*. Children of Argentine citizens who are born abroad can adopt Argentine citizenship and acquire the same rights as native Argentines. From its inception, Argentina has welcomed immigration. The constitution guarantees foreigners the same civil rights as citizens. They are not eligible to hold a number of offices, but they can vote in municipal and provincial elections. Foreigners of at least 18 years old and without a criminal record may acquire citizenship after residing in the country for two years. The procedure is simple and is carried out before the federal judiciary. The period of residence can be shorter if the applicant has rendered notable services to the republic or has married an Argentine citizen. Citizenship cannot be denied on racial, religious, political, or ideological grounds. The constitution exempts nationalized foreigners from military service for 10 years after they have obtained citizenship.

FUNDAMENTAL RIGHTS

The constitution guarantees extensive fundamental rights. Its first chapter includes the recognition of political and civil rights.

The 1949 constitution, in force until 1955, proclaimed a long list of social rights for the family, workers, children, the elderly, and others. The 1957 constitutional reform incorporated the essential components of these social rights and added guarantees such as the right to strike, the right to form unions, and protection of employment.

International human rights treaties such as the International Covenant on Civil and Political Rights; the International Covenant on Cultural, Social, and Economic Rights; and the American Convention on Human Rights form part of national law.

Impact and Functions of Fundamental Rights

All the social, civil, and fundamental rights receive very broad constitutional protection. Today, fundamental rights in general are protected.

Limitations to Fundamental Rights

Fundamental rights are regularly guaranteed in accordance with the laws that regulate their exercise. They thus find their limits in the laws. Congress may not, however, confer either on the national executive or on the provincial legislatures or the provincial governors powers whereby the lives, the honor, or the property of Argentines will be at the mercy of governments or any person whatsoever.

ECONOMY

The constitution tends to be liberal in economic matters. The right of private property is extensively guaranteed, as are other economic liberties such as navigation, industry, and commerce. These liberties have generally been respected.

Nevertheless, especially between 1940 and 1990 many economic interventionist laws were passed, and the state was actively involved in the production of goods and services through public enterprises. This trend partially modified the liberal model that had predominated since 1853. In the 1990s, an abrupt change of economic rules was introduced in favor of liberalization. In an effort to promote an open economy, all public enterprises and state agencies that controlled economic activity were quickly dismantled. This new form of action, or of inaction, of the state in the economy caused a serious crisis in 2001 and resulted in substantial backward movement of the country's development indicators.

The 1994 constitutional reform explicitly permitted economic integration, especially with states of Latin America.

RELIGIOUS COMMUNITIES

At the time of independence, the Catholic Church was the only organized religion in the country, and it had a strong

social presence. The first constitutional projects declared the Catholic faith as the religion of the state. The 1853 constitution did away with this and recognized extensive freedom of worship, after much debate in the constitutional convention. At the same time, the constitution recognized the privileged position of the Catholic Church, stating in Article 2 that "the federal government supports Catholic worship." It also gave the federal government the right of patronage that had previously belonged to the kings of Spain. This meant that the government could intervene in the appointment of bishops, the income of religious orders, and other matters. For these reasons, the president was required to be Catholic. In 1966, Argentina signed an agreement with the Holy See that gave extensive freedom and autonomy to the Catholic Church and removed the right of patronage from the state. The 1994 constitutional reform formalized these changes and removed the requirement that the president be Catholic. At present, no religious condition is required for any public office. Article 2 of the national constitution is still in force, but the economic contribution from the state to the Catholic Church is very small. In the Argentine republic there is now substantial separation between church and state.

Religious liberty is very extensive in Argentina, although there is no formal religious equality. The Catholic Church is recognized as a "public legal person," while other religions are considered private legal persons that act in the framework of freedom of association. These religions have to register with an office of the federal government. There are a great variety of churches, such as the Christian Orthodox churches, mainly Greek, Russian, Antiochian, and Armenian. Also present are Anglicans; Protestants and Evangelicals of different denominations; important groups of Sunni and Shiite Muslims; Jewish communities; Buddhists; Umbanda and Afro Brazilian groups; the Church of Jesus Christ of the Latter Day Saints; Jehovah's Witnesses; and other groups. All religions are tax exempt. Many of them maintain schools at different levels, and they receive subsidies from the state. The armed forces, the police corps, and most of the prisons and hospitals have Catholic chaplains only, but ministers of other religions are permitted when they are required.

Individual religious liberty is extensively guaranteed, and it has been recognized by the courts in several disputes. Religious discrimination is always prohibited and is punished severely. Thanks to cultural traditions, the main Catholic festivals are official holidays; the law also recognizes the more important Muslim and Jewish religious festivals as holidays.

The right to conscientious objection has been recognized by law in matters of military service, and for medical doctors and nurses. It is also applied by the courts in matters of labor, transfusions of blood, reverence to the flag or national symbols, oaths in diverse situations, and other matters.

Domestic law as well as international treaties with constitutional status recognize the parental right to choose a religious education for children. Religion can be taught after school hours or within the school curricula in religious schools. In some provinces the Catholic religion is taught as a subject in public schools, though attendance is voluntary.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are a federal institution. The provinces have only corps of police to maintain local and internal order; they do not have their own militias. The president of the nation is the commander in chief of the armed forces in war and peacetime. The national armed forces participate regularly in peaceful operations under the flag of the United Nations, as "blue helmets." Between 1930 and 1983, the armed forces had an active party in national politics. Since the nation restored democracy, the armed forces have been subordinate to the civil authorities.

The constitution imposes on all citizens the duty of "being armed in defense of the country" in case of need. Until 1994, military service for one year was compulsory for all male citizens after the age of 18. Since then a voluntary military service has been established for males and females. In case of necessity, the Congress could reintroduce military service. Were that to occur, the law provides for the recognition of conscientious objection and the introduction of a civil service substitute of equal duration. In case of "interior commotion," the Congress can declare a state of siege with martial law, either throughout the country or just in a specific location. The president can also declare a state of siege in circumstances of external attack with the approval of Congress. This state of emergency implies the suspension of some constitutional guarantees. However, even then the executive cannot exercise judicial functions; it can only make arrests and transfer prisoners to another location, unless they prefer to leave Argentine territory.

The Congress, and in specific cases the president, has the power to intervene in the provinces, temporarily replacing provincial authorities with federal personnel. This procedure is used in situations of serious crisis in a province, although at times the national government has abused this right and replaced provincial governments on grounds of political opposition.

AMENDMENTS TO THE CONSTITUTION

The Argentine constitution requires a special procedure for amendments. The Congress must declare the need for a reform by a two-thirds majority of all its members, specifying the issues needing reform; the reform is prepared by an elected constituent convention meeting especially for that purpose. Historically, constitutional reform has been minimal because it was very difficult to obtain the needed

majorities. Many authors agree that the constitution, especially its first articles, contains certain features that are "written in stone" and can never be altered. This applies to the principles of a federal state and a republican government and to the guarantee of civil rights. Congress can, with a two-thirds majority of all its members, offer constitutional status to international treaties on human rights, as it did in the case of the Pan-American Convention on Forced Disappearance of Persons. The 1994 constitutional reform included a clause specifying that any act against the constitution or any modification carried out by acts of force against the institutional order and the democratic system will not enter into force and that all citizens have the right to resist them. Anyone who commits such acts or usurps functions of the constitutional authorities is to be punished, and such crimes are not subject to amnesty.

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Juan G. Navarro Floria

ARMENIA

At-a-Glance

OFFICIAL NAME
Republic of Armenia

CAPITAL
Yerevan

POPULATION
3,100,000 (2005 est.)

SIZE
11,506 sq. mi. (29,800 sq. km)

LANGUAGES
Armenian

RELIGIONS
Armenian Orthodox 94%, other Christian 4%, Yezidi (Zoroastrian/animist) 2%

NATIONAL OR ETHNIC COMPOSITION
Armenian 96%, Kurd, Yezid, Russian, Jewish, Assyrian, and Greek 4%

DATE OF INDEPENDENCE OR CREATION
September 21, 1991

TYPE OF GOVERNMENT
Mixed presidential-parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 5, 1995

DATE OF LAST AMENDMENT
November 27, 2005

Armenia is, according to Article 1 of the constitution, a sovereign, democratic, and social state based on the rule of law. It is a unitary state. Although the constitution provides for guarantees of human rights, in practice there are substantial barriers to the effective protection of these rights.

Despite the proclamation of the principle of separation of power, political power is concentrated in the presidency. The president is the central political figure who puts together and dismisses the administration. The administration is also responsible to the National Assembly, but the latter has substantially less authority than the president.

Armenia has a market economy with equal legal protection for all forms of property. The constitution guarantees freedom of economic activity and free economic competition. By its constitution, Armenia is obliged to conduct its foreign policy in accordance with the norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states.

CONSTITUTIONAL HISTORY

One of the world's oldest civilizations, Armenia, over the centuries, has been conquered by the Greeks, Romans, Persians, Byzantines, Mongols, Arabs, Ottoman Turks, and Russians. After the collapse of the Russian Empire, an independent republic was established in May 1918, which survived only until November 1920 when it was annexed by the Communist Soviet Army. The first independent Republic of Armenia did not manage to adopt a constitution. The first Soviet Armenian constitution was adopted on February 3, 1922. On March 12, 1922, the Soviets joined Georgia, Armenia, and Azerbaijan to form the Transcaucasian Soviet Socialist Republic, which became part of the Soviet Union, the Union of Soviet Socialist Republics (USSR). In 1936, after reorganization, Armenia became a separate constituent republic of the USSR. The second and third Soviet Armenian constitutions were adopted in 1937 and 1978, modeled on the Soviet constitutions of 1936 and 1977, respectively.

Armenia gained its independence from the Soviet Union in September 1991. Work on the constitution only began in October 1992, although the Constitutional Commission of the parliament had been established in November 1990. The constitution-building process, dominated by the president and his party, lasted over three years. The draft constitution was approved by the parliament in May 1995 and was adopted on July 5, 1995, by referendum.

FORM AND IMPACT OF THE CONSTITUTION

Armenia has a written constitution, codified in a single document that takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Armenia. International treaties that have been ratified are a constituent part of the legal system of Armenia. The norms of these treaties prevail over the ordinary laws of Armenia.

The impact of the constitution is not comprehensive because of the persisting imperial and Soviet legacies and the authoritarian practices of the successive administrations. None of the elections held since 1995 has met international standards. The right of citizens to change their government has been severely restricted in practice. The elections were marked by abuses of state power, fraud, and harassment of the opposition. Basic civil rights are frequently violated.

BASIC ORGANIZATIONAL STRUCTURE

Armenia is a unitary state. The administrative territorial units are the provinces and communities. The provinces are governed by the national administration, which appoints and removes the governors of the provinces, who implement the central government's regional policy and coordinate the regional activities of the national executive branch.

Local self-government is exercised in urban and rural communities through bodies such as the Council of Elders and the leader of the community, who are all elected by universal suffrage for terms of four years.

Armenia's system of government is characterized by features typical of both parliamentary and presidential systems. For example, the administration is responsible to parliament; yet the president is elected by universal suffrage. The main feature of this system, which has been called a semipresidential government, is the dualistic structure of executive power. This dualism can accommodate a great variety of patterns of distribution of power between the president and the prime minister.

In principle, semipresidential governments are of two varieties: premier-presidential and president-parliamentary. Armenia clearly belongs to the president-parliamentary category, which is characterized by the dual responsibility of the administration: The administration depends upon the ongoing confidence of both the president and the National Assembly. This type of regime does not provide for a clear line of authority over the administration since the constitution permits either the president or the parliamentary majority to dismiss the administration. Besides, the popularly elected president can dissolve the National Assembly; that prerogative puts the president in a very strong position vis-à-vis the parliament, especially during the formation of the administration. The strong constitutional position of the president and the poorly institutionalized party system allow the president, in practice, to dominate governmental power. The system functions as a superpresidential system with a premier fully subordinated to the president.

LEADING CONSTITUTIONAL PRINCIPLES

The leading constitutional principles are set forth in Chapter 1 of the constitution. The key principles are the sovereignty of the state, democracy, the rule of law, the social state, and the division of power. However, the principle of the division of power is distorted in the constitution by extensive powers of the president over the legislative, executive, and judicial branches. This has resulted in the dominance of the president in the political system; it has left the legislature powerless to hold the executive to account and has precluded the development of an independent judiciary.

CONSTITUTIONAL BODIES

The basic bodies provided for in the constitution are the president of the republic; the parliament, called the National Assembly; the administration; and the Constitutional Court.

The President of the Republic

The president is the head of state. The president's main functions are laid down in Article 49 of the constitution, according to which he or she shall uphold the constitution and ensure the normal functioning of the legislative, executive, and judicial authorities. The president of the republic shall also be the guarantor of the independence, territorial integrity, and security of the republic.

The 17 sections of Article 55 of the constitution provide the president with extensive powers, including the power to appoint and dismiss the prime minister and, at the proposal of the latter, the members of the administration and to dissolve the National Assembly. The president has extensive appointment powers, covering civil servants and judges.

The president is elected by direct universal suffrage for a five-year term. The same person may not be elected for the post of the president of the republic for more than two consecutive terms.

The Administration

Executive power in the Republic of Armenia is vested in the administration, which is composed of the prime minister and the ministers. The administration's organization and rules of operation are determined by law, based on recommendations of the administration. Decisions of the administration are signed by the prime minister. Because of the president's organizational powers with respect to the administration (especially the right to appoint and dismiss the prime minister) and the president's authority in the areas of foreign, defense, and security policy, the president is generally the dominant figure in Armenian politics.

The National Assembly (Parliament)

The legislative power is vested in the National Assembly; all its powers are determined by the constitution. The National Assembly is a legislative body; it also approves the administration's program and can bring down the administration with a no-confidence vote. The body also adopts the state budget and has some supervisory powers in relation to the administration.

The Lawmaking Process

The main function of the National Assembly is the passing of laws. The right to initiate legislation in the National Assembly belongs to the deputies and the administration. The president has a veto right over legislation, which can be overridden by an absolute majority of the deputies. In order to make the lawmaking process effective, the constitution gives the administration the right to require urgent consideration of its proposals and to force a vote of confidence in conjunction with its proposed bills.

The Judiciary

Although Armenia's constitution enshrines the principle of an independent judiciary, the president wields control over all judicial appointments. The Council of Justice drafts annual lists of judges and prosecutors fit to be appointed or promoted, and it submits those lists to the president for approval. It may also subject any judge to disciplinary action and recommend removal of a judge from office in cases provided for by law.

The Constitutional Court is composed of nine members, five of whom are appointed by the National Assembly and four by the president of the republic. The Constitutional Court decides on the constitutionality of normative acts, on election disputes, and on the suspension or prohibition of a political party in cases prescribed by law. Citizens have the right to constitutional complaints.

THE ELECTION PROCESS

All Armenians over the age of 18 have the right to vote in elections. Citizens who are recognized as incapable by a court or have been duly convicted of a crime and are serving a sentence cannot vote or be elected. Any person who has attained the age of 25, been a citizen of the Republic of Armenia for the preceding five years, permanently resided in the republic for the preceding five years, and has the right to vote may be elected as a deputy to the National Assembly. Every person who has attained the age of 35, been a citizen of the Republic of Armenia for the preceding 10 years, permanently resided in the republic for the preceding 10 years, and has the right to vote is eligible for the presidency.

POLITICAL PARTIES

Armenia has a pluralistic political party system. The multiparty system is a basic structure of the constitutional order. Its constitutional function is to promote the formulation and expression of the political will of the people. Political parties can only be banned by a decision of the Constitutional Court.

CITIZENSHIP

Armenian citizenship is primarily acquired by birth. This means that a child acquires Armenian citizenship if one of his or her parents is an Armenian citizen. It is of no relevance where a child is born. A citizen of the Republic of Armenia may not simultaneously be a citizen of another state.

FUNDAMENTAL RIGHTS

The fundamental rights are set forth in the second chapter of the constitution, which follows the chapter on the foundations of the state and precedes the provisions on the state's organization. This structure reflects the constitution makers' new attitude to human rights, which were now considered fundamental values that should be protected by the state. Article 6 of the constitution states that its norms are applicable directly; thus the legislature, the executive, and the judiciary are bound by those fundamental rights and freedoms.

The constitution enshrines both liberal and social rights. The constitution guarantees the traditional set of liberal human rights and civil liberties and states in Article 42 that the rights and freedoms set forth in the constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms. Thus this clause opens the door to considering as constitutionally guaranteed rights those universally accepted rights that are not explicitly enshrined in the constitution.

The constitution lacks a differentiated approach to liberal and social rights. A specific feature of liberal rights are that they are directly enforceable. On the other hand, many social rights are organically related to the existing economic structure of the state and thus do not directly entail personal rights to individuals. Social rights typically include the right to housing, free medical assistance, social security, and preservation of health. Because the norms of the Armenian constitution are supposed to be directly applicable, this undifferentiated approach to liberal and social rights will create difficulties when these norms are interpreted by the Constitutional Court.

Impact and Functions of Fundamental Rights

In practice, the impact of fundamental rights is limited. The barriers to the effective protection of fundamental rights stem mainly from the absence of an effective system of checks and balances. The judiciary is weak and far from fulfilling its role as a guarantor of law. A fundamental flaw of the constitution is the absence of the right of the citizen to apply to the Constitutional Court with a complaint. As a consequence, the provisions on fundamental rights do not decisively impact ordinary legislation.

Limitations to Fundamental Rights

Limitations to fundamental rights are specified in Article 43, according to which the fundamental rights and freedoms in a democratic society may only be restricted by law, if necessary, for public security, public order, public health, and morality, or the rights, freedoms, honor, and reputation of others. This article provides for constraints to limitations (the so-called limitation limits): They can be established only by law and are subject to the principle of proportionality.

ECONOMY

The Armenian constitution does not provide for a specific economic system. However, the constitution states certain basic principles that frame the economic system: the free development and equal legal protection of all forms of property, the freedom of economic activity and free economic competition, the freedom of choice of one's place of work, and the right to form associations. The principle of the social state requires the state to combine market freedom with balanced social policy.

RELIGIOUS COMMUNITIES

Freedom of thought, conscience, and religion are guaranteed by the constitution. Freedom of religion also incorporates the freedom of religious communities. There is no established state church. About 94 percent of Armenians belong to the Christian Orthodox Armenian Apostolic Church.

In line with the conditions for membership in the Council of Europe, Armenia is committed to ensuring freedom from discrimination also for new religious communities, of which about 50 are officially registered.

MILITARY DEFENSE AND STATE OF EMERGENCY

The guarantor of the independence, territorial integrity, and security of the republic is the president, who is the commander in chief of the armed forces and appoints the staff to its highest command. The administration has responsibility for ensuring implementation of defense and national security policies.

In the event of an armed attack, immediate danger to the republic, or a declaration of war by the National Assembly, the president is mandated to declare a state of martial law and may call for a general or partial mobilization. In the event of an imminent danger to the constitutional order, and upon consultations with the president of the National Assembly and the prime minister, the president is mandated to take measures appropriate to the situation and to address the people on the matter.

In Armenia, general conscription requires all men over the age of 18 to do basic military service of 24 months. Conscientious objectors can file petitions to be excluded from military service and perform service in social institutions instead.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed only by a referendum. Amendments can be initiated by the president or the National Assembly. They are considered to have been passed if they receive more than 50 percent of the votes cast and not less than one-third of the number of registered voters. Certain fundamental provisions are not subject to change at all. Article 114 says, "Articles 1, 2 and 114 of the constitution may not be amended." These refer to the essential identity of the constitution—sovereignty of the state, democracy, rule of law, social state, and sovereignty of the people.

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Vardan Poghosyan

AUSTRALIA

At-a-Glance

OFFICIAL NAME
Commonwealth of Australia

CAPITAL
Canberra

POPULATION
20,090,437 (July 2005)

SIZE
2,969,907 sq. mi. (7,692,024 sq. km)

LANGUAGES
English 79.1%, Chinese 2.1%, Italian 1.9%, other 11.1%, unspecified 5.8% (2001 census)

RELIGIONS
Catholic 26.4%, Anglican 20.5%, other Christian 20.5%, Buddhist 1.9%, Muslim 1.5%, other 1.2%, unspecified 12.7%, none 15.3% (2001 census)

NATIONAL OR ETHNIC COMPOSITION
Approximately 91% of European descent (mainly English and Irish but also Greek, Italian, German, Dutch, and other), Asian 7%, Aboriginal 2%

DATE OF INDEPENDENCE OR CREATION
January 1, 1901

TYPE OF GOVERNMENT
Parliamentary democracy and constitutional monarchy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
January 1, 1901

DATE OF LAST AMENDMENT
May 21, 1977

Australia is a parliamentary democracy with strong historical and constitutional ties to the United Kingdom. The Australian constitution was created as a means of federating the six British colonies that existed on the territory of Australia in the late 19th century. Since its enactment in 1901, the constitution has proved stable and has rarely been modified. The system of government in Australia is based largely on the Westminster system of parliamentary democracy and constitutional monarchy. The federal system in Australia, however, is derived largely from the American model, as is the concept of a court with the power to invalidate legislation on the basis of unconstitutionality. This court, the High Court of Australia, has the ultimate authority to interpret and apply the provisions of the Australian constitution, and it has done so in a manner that has increased the power and significance of the Commonwealth government in relation to the states. A tradition of the separation of powers and respect for the rule of law has ensured that the decisions of the High Court in constitutional matters have always been respected, even when they have dealt with areas of great controversy.

CONSTITUTIONAL HISTORY

For at least 40,000 years Australia was inhabited by its indigenous people, who lived in accordance with customary indigenous laws. This organization precluded the need for a formal or written constitution. While early white settlers and the British legal system assumed that indigenous Australians had no legal system, it is now clear that sophisticated legal, social, and religious obligations existed in indigenous societies. This condition has been recognized by the Australian legal system in recent decades, and this recognition has given rise to some acknowledgment of Aboriginal land rights but has not led to any more comprehensive recognition of the preexisting legal or constitutional order.

The British officially established the colony of New South Wales on January 26, 1788. New South Wales was the first Australian colony and originally spanned the entire eastern half of the continent before dividing into five separate colonies during the first six decades of the 19th century. Van Diemen's Land (now Tasmania) separated in 1825, South Australia in 1836, Victoria in 1850, and Queensland in 1859. Western Australia was founded independently in 1829.

In the late 19th century, there was a move toward federation between the colonies. Although there were some advances toward a federation, or greater cooperation, in the 1840s and 1850s, the movement did not gain momentum until near the end of the century. Several constitutional conventions were held during the 1890s to debate the issue of federation and the form that a new constitution might take. The first of these was the largely unsuccessful National Australasian Convention held in Sydney in 1891. Its membership was made up of colonial parliamentarians, and it failed to capture the popular imagination or to develop political momentum. In 1897, a convention made up of elected members was held, and it prepared a draft constitution. The draft was circulated for public and parliamentary comment, and large numbers of suggestions were made. The convention met a number of times before completing the draft and presenting it to the people by referendum. The referendum passed in Victoria, South Australia, and Tasmania but failed in New South Wales. After redrafting, another referendum was held, and the draft was approved by all four of these colonies and Queensland, which had, by this stage, decided to join the move to federation. Western Australia decided to join the federation only months before the constitution went into force.

Despite strong local participation in the drafting of the constitution, its final legal form was ultimately determined by a British parliamentary law. The British Colonial Office had made a number of suggestions for changes to the constitution during its drafting period, and the British Parliament made a small number of changes to the final draft before enacting it. The act, and thus the federated Commonwealth of Australia, went into effect on January 1, 1901.

There is a provision in the constitution for the creation of new states, but the six original states (New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania) remain the only states in Australia. The states have their own constitutions as well as certain rights and powers under the Commonwealth constitution that can only be removed by referendum. There are also a number of Australian territories that have some degree of self-government. The two most important of these are the Australian Capital Territory and the Northern Territory. The Northern Territory, which was part of South Australia at the time of federation, became a territory of the Commonwealth pursuant to Section 111 of the constitution in 1911. While the Northern Territory was granted a degree of autonomy by the 1978 Northern Territory (Self-Government) Act, it remains subject to Commonwealth legislative oversight. The Australian Capital Territory was surrendered to the federal government by New South Wales in 1909 and was anointed the seat of government in accordance with Section 125. The Australian Capital Territory was granted the same limited autonomy as the Northern Territory in 1988.

FORM AND IMPACT OF THE CONSTITUTION

The Commonwealth constitution is a single written document, although each of the states also has its own constitution. These state constitutions are, in most respects, subordinate to the Commonwealth constitution. The Commonwealth constitution consists of 128 articles and has proved stable and enduring since its enactment in 1901.

The Commonwealth constitution has had a considerable impact on Australian political life. The constitution created a new level of government (the Commonwealth or federal government), a new head of state (the governor-general), and a new court with the power to interpret and apply the constitution (the High Court of Australia). Over time, the influence of the Commonwealth government has grown since the High Court's expansive interpretations of the Commonwealth's powers. The rulings of the court, although sometimes controversial, are inevitably accepted and acted upon by the government. This has been the case even when the decisions have undermined important government policies, such as the nationalization of the banking system or the banning of the Communist Party.

While the written constitution is very important in terms of the structure and operation of the federal government, there are also conventions that underlie the constitution. It is impossible to understand the government's real workings, particularly of the executive arm of government, without reference to these conventions. Under Section 61 of the constitution, the executive power of the Commonwealth government resides in the governor-general, who is appointed by the queen. Under the constitution, the governor-general also has other significant powers and duties, which include commanding the armed forces, assenting to acts of Parliament (or refusing to do so), suspending Parliament, and appointing ministers. While the powers of the governor-general seem broad, convention ensures that the holder of the office is, in most cases, a figurehead whose power is more symbolic than real. In almost all cases, the governor-general exercises constitutional powers only on the advice of cabinet ministers. It is now very difficult to imagine a situation in which the governor-general could refuse to assent to legislation duly passed by Parliament or to act independently in commanding the armed forces. Thus, while the constitution designates the governor-general as the most

powerful member of the executive, the political reality is that the prime minister and the cabinet are the most influential actors in the executive government under normal circumstances. The superiority of the prime minister is reinforced by his or her control over the appointment or dismissal of the governor-general. While the constitution gives the power to appoint the governor-general to the queen, it is now clear that she may exercise that power only on the advice of the Australian prime minister, who also has the power to advise her majesty to dismiss the governor-general.

There are limited exceptions to the rule that the governor-general acts only on advice. The governor-general retains narrow discretion over a small number of matters described as the "reserve powers," which may be invoked and exercised independently of advice in the extraordinary circumstance of a constitutional crisis. The reserve powers of the governor-general include the power to dismiss the prime minister in very limited circumstances. This occurred in 1975 when Sir John Kerr dismissed the Whitlam administration from office after the administration failed to convince Parliament to pass legislation granting it sufficient funds for the ordinary services of government. The dismissal of the Whitlam administration and the installation of the leader of the opposition as interim prime minister until elections were called continue to be a source of controversy among both constitutional lawyers and the public. The controversy surrounding this event has helped to ensure that governors-general are very cautious in their use of the reserve powers.

Another area of executive power that is not clearly defined by the constitution is the impact of international law obligations in the Australian legal system. The constitution does not delineate a particular relationship between international and domestic law. It is accepted that the executive arm of the Commonwealth government has the power to enter into treaties without parliamentary input or approval, as this was a traditional prerogative of the Crown. While Parliament currently exercises some oversight with regard to the treaty process through the Joint Standing Committee on Treaties, the committee only has the power to make recommendations, not to bind the executive. Once a treaty has been entered into, the Commonwealth Parliament has the power to enact legislation to ensure Australian compliance with its international obligations. This power is derived from a provision in the constitution that gives the Commonwealth Parliament power over external affairs and has allowed the Commonwealth to enact legislation in areas, such as human rights and environmental protection, in which it does not seem to otherwise have legislative power.

The details of the relationship between international and domestic law has been left to the courts to develop. It is clear that in Australia law treaties are not incorporated into domestic law upon ratification. Rather, they must be transformed into domestic law by an act of Parliament. This probably also holds true for customary international law, although the relevant case law is less clear. This process has allowed Australia to ratify certain important treaties, such as the International Covenant on Civil and Political Rights and the Genocide Convention, without implementing them into domestic legislation. This system has led to some criticism of the Australian position by international human-rights-treaty bodies, although the government claims that Australia fulfills its international obligations without the need for specific legislation in all cases. Even if the government were to breach international law, it would be impossible for an individual to bring a case in Australia to enforce those international obligations directly. Some indirect role for international law has been recognized by the courts, however, which allows international law to be used in the interpretation of ambiguous legislation and in the development of the common law. In the Dietrich case, for example, the High Court refused to allow an unrepresented criminal defendant to rely directly on the provisions of the International Covenant on Civil and Political Rights regarding fair trials, but it held that the common law of fair trials had developed (in part as a result of the influence of international law) to create a right to legal counsel in serious criminal cases. Despite a number of examples in which international law has been influential in the development of common law or statutory protection of rights, international law has not had as strong an impact in Australia as in many other states.

BASIC ORGANIZATIONAL STRUCTURE

Australia has a federal system of government consisting of six states (Queensland, New South Wales, Victoria, Tasmania, South Australia, and Western Australia) and a Commonwealth government. It also has a number of self-governing territories that are subject to legislative oversight by the Commonwealth Parliament but that function with a high degree of independence. The most politically important of these territories are the Northern Territory and the Australian Capital Territory. The latter is the seat of the Commonwealth government. Local governments, which are subordinate to the respective state governments, exist in each state, but their power derives from statute; they are not mentioned in the Commonwealth constitution. A referendum to entrench local government in the constitution was rejected in 1988. Local governments in Australia are less powerful than their counterparts in many parts of the world and tend to control mainly service matters, such as garbage collection and planning permits. Their role in areas such as education or health is very limited.

The Commonwealth constitution lists a small number of legislative powers that are exclusive to the Commonwealth and a longer list of powers held concurrently with the state legislatures. All other legislative powers are assumed to remain with the states. It was believed by some of the drafters that limiting the list of powers that

the Commonwealth possessed would make it the weaker federal partner. The High Court originally interpreted the Commonwealth's powers in a limited fashion to ensure that the traditional powers of the states were not undermined. From the 1920s on, however, the High Court has taken a more expansive view of Commonwealth power, leading to a significant increase in the areas over which the Commonwealth has jurisdiction. In instances of conflict between Commonwealth and state laws, the Commonwealth laws prevail. The High Court has the authority to determine the existence and extent of any alleged conflict between the two laws.

The other important change to the federal balance of powers since 1901 is that the Commonwealth has gained more control over revenues. Particularly important in this regard is that income tax has shifted from primarily a state matter to an exclusively federal matter. Under the constitution, the Commonwealth already had exclusive control of customs and excise taxes. The Commonwealth can use its control of the bulk of the revenue to give conditional grants to the states or direct, conditional grants of money to institutions, such as universities. Using this influence, it has taken control of many areas, such as tertiary education, over which it has no formal, constitutional power. This vertical fiscal imbalance has been the greatest cause of centralization in the Australian constitutional system. It was partially alleviated by a goods and services tax imposed by the Commonwealth, the revenues of which are distributed to the states unconditionally. This system has increased state revenues and control over financial resources but has not eliminated the significant fiscal imbalance between the two levels of government.

LEADING CONSTITUTIONAL PRINCIPLES

Australia is a constitutional monarchy. The current monarch of the United Kingdom is also the monarch of Australia. The queen or the king, acting through the representative the governor-general, is the Australian head of state. While Australians profess a strong belief in republicanism when polled, a referendum in 1999 that sought to change the head of state from the queen to an Australian head of state selected by Parliament was defeated.

The Australian constitution originally derived its authority and legitimacy from the assent of the British Parliament, and it remains a theoretical possibility that the Parliament of the United Kingdom could unilaterally amend the Australian constitution. Many writers and judges now, however, source the ultimate legitimacy and authority of the constitution in the will of the Australian people. This is the case despite the fact that the constitution does not expressly bind the Australian people and their government in any overarching social contract. While the preamble to the constitution codifies the agreement between the original colonies "to unite in one indissoluble federal union," there is a conspicuous lack of general sentiment expressed in the document as to how relations between citizen and state are to be conducted. Of particular note in this regard is the lack of a bill of rights in the constitution.

The political philosophy that underlies the constitution and Australian political life is one of liberal democracy, respect for the rule of law, and representative government. The model of Westminster parliamentary democracy, developed in the United Kingdom, has broadly been adopted in Australia.

The constitution implicitly enshrines a separation of powers among the legislature, the executive, and the judiciary, but the separation in Australia is not strict. In the tradition of Westminster-style responsible government, members of the executive are required also to be members of the legislature. This means that the lines between executive and legislative power become blurred. The Parliament, for example, can delegate considerable legislative power to the executive. The executive then uses this power to create delegated legislation in a wide variety of areas. The separation between the legislative and executive arms of government on the one hand and the judiciary on the other is more closely observed. It is unconstitutional to grant Commonwealth judicial power to any person or body other than a Commonwealth court set up under Chapter III of the constitution or a state court. There is no strict requirement that state governments adhere to a separation of powers, although the principles of separation are broadly adhered to in the states.

Australia's constitutionalism is underscored by concurrent commitments to democracy and to federalism. Conflicts can arise from the interaction between democracy and federalism. For instance, the constitution provides that the Senate is to be a states' house, composed of members from the six states. The constitution provides elsewhere that Parliament can make laws for the representation of the territories. An interpretation of the constitution that denies residents of territories representation in the upper house of Parliament would be difficult to reconcile with a commitment to democracy. On the other hand, federalist principles hold that the Senate was conceived as a states' house, and its composition should reflect that to the exclusion of the territories. The High Court has settled the issue, and the territories are now represented in the Senate, but the dispute illustrates the tension that can exist between democratic and federal principles.

CONSTITUTIONAL BODIES

The constitution establishes several principal organs of Australia's parliamentary democracy, including the Commonwealth Parliament, the governor-general, and the High Court. The framework of the Australian government is erected by the constitution, but much of the detail can only be understood by reference to convention. The Westminster system of responsible government is fundamen-

tal to the workings of the Australian government, but the framers, concerned with allowing flexibility within the democratic framework to meet future contingencies, decided not to codify many aspects of government, such as the role of the prime minister and the cabinet. This situation also reflected the British tradition of a largely unwritten constitution, particularly with regard to the workings of the executive.

The Parliament

Chapter I of the constitution establishes the Commonwealth Parliament, comprising the House of Representatives, the Senate, and the governor-general as the queen's representative. The Commonwealth Parliament is vested with legislative power over a finite list of subjects. The Commonwealth exercises exclusive legislative power in relation to a number of subjects and shares power to make laws with respect to a number of other matters with state legislatures. The legislature controls the supply of public funds to government.

The Parliament is directly elected by the people and must be dissolved and reelected at intervals of no longer than three years. Early elections may be called (effectively at the discretion of the prime minister) if the Senate has twice rejected the same piece of legislation that has twice passed the House of Representatives. In 2004, Australia elected its 43rd federal parliament in the 103 years since the first sitting. This averages to a parliamentary duration of two and a half years. The constitution prescribes no specific electoral process or method of voting. The only requirement is that the Parliament be "directly elected by the people," but this probably does not equal a requirement of universal suffrage, and it certainly does not amount to a right to vote for individual electors. Despite the lack of constitutional protection for voting rights, the right to vote in Australia is now very widespread and includes most people over the age of 18. Voting in Australia is compulsory by statutory provision.

The lower house of Australia's bicameral legislature, known as the House of Representatives, comprises 150 sitting members. Each member is the sole representative of a single electorate; changes in population size and distribution necessitate alterations in the number of members of the House of Representatives from time to time. These redistributions are undertaken by an independent statutory body, which is not subject to political influence or pressure. The House of Representatives may introduce bills on any subject within the constitutional power of the Commonwealth, as well as proposals for constitutional amendment by referendum.

The upper house of the legislature is known as the Senate and is composed of 76 sitting members. The constitution requires that states be equally represented in the Senate. At present, each state elects 12 senators, and each territory elects two senators. The Senate is vested with the same legislative power as the House, with the exception that the Senate cannot introduce financial legislation. By convention, most important legislation is introduced in the House of Representatives.

The Lawmaking Process

Australia's legislative process is bicameral. In order to become law, legislation must be passed both by the House of Representatives and by the Senate and must receive royal assent. The use of different voting systems for election to the two houses of Parliament means that the administration will rarely enjoy a majority in the Senate. Since legislation must pass through both houses before it can become law, the Senate plays a prominent role in the scrutiny and the occasional veto of the administration's legislative program. The Senate has established a series of committees with oversight responsibility over various areas of legislative and executive activity. These committees have proved relatively effective at holding administrations accountable.

The Executive

The executive power of the Commonwealth is nominally vested in the governor-general. On its face, the constitution installs the governor-general as the most powerful figure in government: His or her assent is required for legislation to become law, and he or she is the commander in chief of Australia's defense forces. The governor-general appoints cabinet ministers, may dismiss cabinet ministers, and retains the power to dissolve or suspend the Parliament. The constitution contains only limited prescriptions for the executive government and on its face vests wide power in the governor-general. In practice, however, the office of the governor-general is largely symbolic, and its attendant powers are exercised only by the Australian executive government.

The executive branch is outlined in Chapter II of the constitution. It is in practice constituted by the prime minister and the cabinet, neither of which is mentioned in the text. They develop policy and exercise the most important executive powers. The governor-general's role is limited to giving assent, which gives effect to cabinet decisions. Most aspects of executive government are conducted according to convention rather than to the text of the constitution.

The prime minister is by convention the leader of the party with the majority of seats in the House of Representatives; he or she wields more power than any other actor in the executive branch. Cabinet ministers are appointed from within the Parliament. The constitution prohibits any person who is not a member of Parliament to hold a position as a minister for more than three months. In practice, all ministers are members of Parliament.

In reality, the executive exercises a significant degree of control over Parliament and the legislative process. The prime minister and the cabinet are the leaders of the party or coalition of parties that, by virtue of its majority in the House of Representatives, forms the administration. As such, they usually control the passage of bills through

the House. They do not always enjoy the same advantage of numbers in the Senate.

The High Court

Chapter III of the constitution outlines the process for establishing a federal judiciary. Despite the opposition of the colonial superior courts, the framers of the constitution made a provision for the establishment of a Federal Supreme Court. That court was inaugurated as the High Court of Australia in 1903. The High Court exercises both original jurisdiction and appellate jurisdiction. The original jurisdiction of the court encompasses review of actions and decisions taken by the government, including the constitutionality of legislative and executive actions. The appellate jurisdiction of the court extends to the decisions of State Supreme Courts and inferior federal courts, but it is exercisable only where the court itself grants special leave. The High Court is the ultimate court of appeal in Australia, and while there remains an avenue of appeal to the Privy Council in England, that avenue is now open to appellants only in the unlikely event that the High Court grants its assent.

A strong culture of judicial independence and integrity has developed in Australia. The courts have been fastidious in maintaining this culture and are especially protective of the separation between the judicial and administrative arms of government.

Justices of the High Court are appointed by the governor-general on the advice of the prime minister, as are other federal judges. Judicial appointments were initially for life, but a constitutional amendment in 1977 imposed a mandatory retirement age of 70. Judges can be removed from office by resolution of a joint session of Parliament on the grounds of "proved misbehavior or incapacity." This provision has never been invoked, and there is considerable uncertainty as to what constitutes "proved misbehavior" and "incapacity."

The High Court's most important and most contentious function has been adjudicating the constitutional validity of Commonwealth legislative enactments. There is no specific provision of the constitution that authorizes the court to carry out this function. The Australian constitution, however, was framed more than 100 years after the United States Supreme Court confirmed that it had the power to invalidate unconstitutional laws, and it was assumed by the Australian constitutional framers that the High Court would exercise the same authority. The court has proceeded on that basis and has regularly declared legislation dealing with a wide variety of matters to be unconstitutional. Some key cases from the court's history demonstrate the variety and significance of the work undertaken by the court.

The court's decision in the Engineer's case (1920) has been described as a watershed moment in the federal division of power in Australia and in the court's approach to interpreting the constitution. The court overturned two doctrines of interpretation that had been invoked to preserve the states' powers as they existed before federation. This laid the groundwork for the expansion of the power of the Commonwealth government at the expense of the states.

In the Uniform Tax case (1942), the High Court confirmed that the Commonwealth government has the power to levy income taxes nationally and that the Commonwealth imposition of income tax has priority to state levies of income tax. This made it politically impossible for the states to raise income taxes themselves because to do so would place a significant additional tax burden on their own constituencies. While the taxation measures were initially justified as wartime measures, they later became permanent.

The Tasmanian Dam case (1983) effected a considerable expansion in the legislative power of the Commonwealth government. The court ruled that the Commonwealth's power to make laws with respect to external affairs allowed it to prevent the damming of a river in a World Heritage Area on the basis that the proposed action was inconsistent with a treaty to which Australia was a signatory. The effect of the decision was to authorize the Commonwealth government to make laws to implement international treaty obligations. Given the increased use of treaties in areas such as rights, health, and the environment (areas traditionally considered to be in the province of states under the constitution), the decision gave rise to a significant increase in potential Commonwealth power.

The decision in Mabo (No. 2) (1992) was perhaps the most significant and controversial in the High Court's history. It also demonstrates the important role that the court plays as both an appellate and a constitutional court. The court rejected the notion that Australia had been nobody's land when Europeans arrived, an idea that had served as the basis for British claims of sovereignty over the continent. On the contrary, native title had existed prior to British rule and survived in some circumstances. The decision was an affirmation of the Aboriginal people's traditional ownership of Australian land. The declaration that native title existed, despite that title's fragility, was an important development. This decision, and a later ruling that pastoral leases do not necessarily extinguish native title, led to the court's being subjected to intense media and political scrutiny, including calls by some politicians for the appointment of more conservative judges to the court.

The decision in Mabo (No. 2) was arguably the high-water mark of an approach to constitutional interpretation that was disapprovingly described by some as "judicial activism." Different compositions of the court have led to different approaches at other times, but criticism of the court at various stages in Australia's history is, if nothing else, testament to the impact it has had and continues to have on Australia's constitutionalism.

The other federal courts set up under Chapter III of the constitution are the Federal Court (which has similar jurisdiction to that of the High Court), the Family Court

(which has jurisdiction over family law issues), and the Federal Magistrates Court (which primarily has jurisdiction over migration matters and minor family law matters).

Each state also has its own court system. As a general rule, the highest court is called the Supreme Court, which often has a division that deals only with appeals. The State Supreme Courts have general jurisdiction over serious criminal and civil matters. There are also commonly a county or intermediate court and a Magistrates Court, which deal with more trivial legal matters. Appointment to any of these courts requires legal qualifications and generally some period of time in legal practice. While traditionally only barristers (who may plead in open court) were appointed to the courts, an increasing number of solicitors (other lawyers) and even a small number of academics have been appointed in recent years.

The States

Chapter V of the constitution states that the federating colonies continue as states in the newly created Commonwealth. The states' prior constitutions and laws are preserved; this provision has had a minor restrictive effect on Commonwealth power. In general, states are restricted in their fields of activity. For instance, they cannot raise naval or military forces and cannot coin money. The primary constitutional constraint on state powers, however, is the provision in Section 109 that state laws that conflict with Commonwealth laws shall be invalid "to the extent of the inconsistency." Section 109 has led to the invalidation of state laws in a number of areas.

The constitution also requires that full faith and credit be afforded throughout the nation to all laws, public records, and judicial proceedings of any of the states. There is no provision for the secession of states from the federation. Indeed, the covering clauses to the constitution describe the federation as "indissoluble."

The states broadly reproduce the judicial, legislative, and executive arrangements of the Commonwealth. With the exception of Queensland (which has a unicameral parliament), the state parliaments are bicameral. Each state has a governor as the nominal head of the executive. The system of responsible government exists at the state level, and the administration is led by a premier who is the leader of the party that commands control of the lower house of parliament.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The constitution mandates that members of the Commonwealth Parliament be "directly chosen by the people." Australia was one of the first democracies to extend voting rights to women. Australia achieved adult suffrage by 1908, except for the Aboriginal people, who were denied equal voting rights until 1962. Voting entitlements are set out in the Electoral Act of 1918. The entitlement to vote in federal elections is afforded to citizens, and to British subjects who were on the electoral roll prior to 1984 who are 18 years or older (in the past British subjects always had the right to vote in Australian elections). The 1918 act denies the right to vote to persons of unsound mind, criminals serving penal sentences of five years or longer, and those found guilty of treason and are unpardoned.

Eligibility to stand for Parliament is provided for by statute and the constitution. The general conditions are set out in the 1918 Electoral Act, but eligibility is also subject to a number of disqualifications set out in the constitution. For example, Section 163 of the act provides that persons eligible to vote are eligible to stand for Parliament. However, the constitution prohibits concurrent membership in both houses of Parliament. Citizens and subjects of foreign powers are ineligible for election to Parliament; nor can anyone who is convicted of treason or a serious crime or is bankrupt be elected. The holder of any paid office under the Crown is ineligible for Parliament, as is any person who has a direct pecuniary interest in any agreement with the Commonwealth Public Service.

No methods of voting or electoral processes are prescribed by the constitution. Voting is compulsory by statute. Elections for the House of Representatives are conducted by using a system of compulsory voting in single-member districts. Senate elections employ proportional representation with multimember districts. The constitution does require that the House of Representatives employ a scheme of single-member districts and that Senators represent multimember districts.

The constitution also requires that the number of members in the lower house be, as nearly as practicable, twice the number of members in the upper house. This requirement is known as "the nexus." States are guaranteed an equal number of senators and no fewer than five members of the House of Representatives. Currently, each state elects 12 senators. The High Court has held that the Parliament may provide for the election of senators representing the territories. Presently, the Northern Territory and the Australian Capital Territory each elect two members to the Senate. As a result of constitutional requirements, the Senate is malapportioned. Tasmania—with a population of about 400,000—elects as many representatives to the Senate as Victoria, whose population approximates 4 million. This means that some 33,000 votes will secure a Tasmanian candidate a seat in the Senate, whereas more than 10 times that number of votes is required to secure a seat for a Victorian candidate.

POLITICAL PARTIES

Australia is a pluralistic, democratic society. Two major political blocs have dominated Australian politics for many

decades: the conservative coalition led by the Liberal Party of Australia on the Right and the Australian Labor Party on the Left. One or the other of these parties has governed at the Commonwealth level since World War I (1914–18). Minor parties, however, have often held the balance of power in the Senate, which has given them a good deal of influence over the government's legislative agenda. Influential minor parties have included the Democratic Labor Party (a splinter group from the Australian Labor Party that effectively kept Labor out of office for many years by splitting its voter base), the Democrats, the Australian Greens, and the One Nation party. These parties span the political spectrum from the left-wing, progressive Greens party, to the right-wing, nationalistic One Nation party.

There has only been one attempt to ban a political party in Australia, that by Prime Minister Robert Menzies to ban the Communist Party during the cold war. The High Court ultimately found that this action was unconstitutional on the basis that the Commonwealth Parliament had no constitutional power in this area. This left open the possibility that the states could ban a political party. Prime Minister Menzies also attempted to amend the constitution to ban the party, but the referendum lost by a very narrow margin. It is likely that any attempt to ban a political party now would fall foul of the implied constitutional freedom of political speech.

Political parties are regulated by law; in order to be registered as a party, certain minimal standards must be met. The Electoral Act provides two ways to qualify: A party that has at least one member sitting in the Commonwealth Parliament and has a written constitution setting out its aims can register; alternatively, a party must have 500 members, as well as a written constitution.

CITIZENSHIP

Citizenship is not discussed in the constitution. The definition of a citizen is set out in the Australian Citizenship Act 1948. This act has been amended many times. The lack of importance given to the concept of citizenship in Australia can be seen in the fact that the term *Australian citizen* only appeared in 1948.

Until 1987, Australian citizens were automatically British subjects as well, reflecting the country's historic association with the United Kingdom and the Australian sense of identity. After 1987, Australians became solely Australian citizens. Prior to 1986, people became Australian citizens automatically if they were born in Australia. Now, an Australian-born potential citizen must show that at least one parent is a citizen or a permanent resident or that he or she has been resident for 10 years. People can become Australian citizens by adoption, descent, and grant. Citizenship can be lost under law but only in very limited circumstances. Very few Australian laws distinguish between citizens and noncitizens, apart from electoral and immigration laws.

FUNDAMENTAL RIGHTS

Australia is one of the few developed countries that have refused to adopt a bill of rights in either constitutional or statutory form. There are references to only a small number of express rights in the Commonwealth constitution, such as freedom of religion, freedom of movement between states, the right to a jury trial for indictable offenses, the right to compensation for deprivation of property, and nondiscrimination between residents of states. Even such rights as there are in the constitution have often been read in a restrictive manner by the High Court. Thus, while there is a right to a jury trial for indictable offenses, the court has said that the government has the right to determine on indictment whether an offense is triable by jury.

The High Court has also held that there are certain implied rights that can be determined from the structure and nature of the constitution itself. The most important of these is an implied freedom of political communication that limits the ability of governments to restrict free speech. This freedom was used to strike down government legislation that sought to limit political advertising.

The Australian Capital Territory in 2004 enacted a Human Rights Act, giving at least limited protection to civil and political rights in the territory. While there is no comprehensive bill of rights in any other state, there are a number of statutes that serve to protect particular rights. These are particularly common in the area of discrimination, which both state and Commonwealth laws prohibit on the basis of such characteristics as race, religion, gender, and age. Power to deal with complaints about the breach of certain human rights is given to the Human Rights and Equal Opportunity Commission at the Commonwealth level. The commission has limited power to deal with individual complaints and does not have the power to make enforceable decisions, but it does play a role in scrutinizing legislation for rights compliance, public education, interventions in court cases, and investigations and reporting on serious rights problems such as the detention of asylum seekers or the removal of Aboriginal children from their parents.

While Australia is a party to all of the key United Nations treaties on human rights, whether civil, political, economic, social, or cultural, these treaties are not directly enforceable domestically unless they are enacted in legislation. Most of these treaties have not been domestically implemented and thus remain unenforceable in Australia.

Impact and Functions of Fundamental Rights

While there is little in the way of formal protection of rights at either the state or Commonwealth level, most rights are reasonably well respected in practice. Important areas of concern include the treatment of asylum seekers,

who can be indefinitely detained, and recognition of the rights of the indigenous people.

Limitations to Fundamental Rights

There is no explicit, commonly accepted theory of how fundamental rights should be limited. In determining whether statutory limitations on constitutional rights are acceptable, the High Court often adopts a test asking whether the limitations are "appropriate and adapted" to achieving a legitimate, democratic end. Specific statutory protection of rights generally includes specific circumstances under which the rights can be limited.

ECONOMY

The Commonwealth constitution does not require any particular form of economy, but it does deal with a number of economic issues. The most important of these is the distribution of revenue between the Commonwealth and state governments. Both levels of government have the power to raise taxes, but through a combination of Commonwealth acts and constitutional interpretation, the Commonwealth government has taken control of income taxation, the most important tax revenue. The constitution also grants exclusive power to the Commonwealth government to collect customs and excise taxes, and several state taxes have been struck down on the basis that they were in reality excise taxes. This combination of factors has led to the Commonwealth's gaining control over most of the lucrative sources of revenue, even though the states retain responsibility for the most expensive government functions, such as schools and hospitals. This fiscal imbalance has allowed the Commonwealth to exercise a high degree of control over areas that are theoretically under state control. The constitution permits the Commonwealth to make "tied" grants to the states, that is, grants that are conditional on the money's being spent in particular ways. This device has allowed the Commonwealth to influence policy in many areas not specified in the constitution.

The constitution also requires that "trade, commerce, and intercourse between the states" be free. While the interpretation of this section has been very controversial and has generated more case law than any other section in the constitution, it is now settled that what the section prohibits is protectionist barriers between states. The elimination of internal barriers between the colonies of Australia was one of the motivating factors in the decision to become a federation, and this provision has prevented the reemergence of internally protectionist markets. States continue to be allowed to impose constraints or regulation on goods entering from other states as long as these can be shown to be for genuine, nonprotective purposes. While this had led to controversy in application in a number of cases (for example, environmental protections), trade between Australian states is now free of protectionism in most respects.

The constitutional assignment to the Commonwealth of power over customs and excise taxes was meant to ensure that the new country would have a single external tariff (customs) and that the states would not be able to distort that external tariff through the imposition of excise duties. The constitution does not, however, require any particular policy in regard to the use of the excise power. Different Commonwealth governments have pursued policies ranging from highly protectionist to the current broadly free trade, low-tariff approach.

RELIGIOUS COMMUNITIES

Freedom of religion is one of the few rights protected in the Commonwealth constitution. Under Section 116, the Commonwealth government is prohibited from making a law that interferes with religious freedom or that establishes a state church. While Section 116 was based on the First Amendment to the United States Constitution, it has been interpreted very differently and in a manner that gives less protection to religious freedom than its American counterpart. It is most unlikely that a Commonwealth law will be held to breach religious freedom unless it expressly singles out particular religions for regulation. In no case has the Commonwealth government been found to breach the constitutional prohibition on interfering with religious freedom.

The constitutional separation of church and state in Australia has not been interpreted particularly strictly by the High Court. The Commonwealth government can, therefore, fund private religious schools or religious groups that provide social benefits, such as employment schemes or rehabilitation. Such funding has increased in recent years. While this money predominantly goes to Christian groups of various denominations (as these are still the most numerically strong groups in Australia), money is also provided for other religions, for instance, for Jewish and Muslim schools. Australia also appointed a bishop of the Church of England (Dr. Peter Hollingsworth) as governor-general in 2001. While this caused some political disquiet in terms of separation of church and state in theory, it was widely agreed that the appointment did not breach the nonestablishment clause of the constitution.

While the states are not subject to Section 116 of the constitution, in practice religious freedom tends to be well respected. There is no real possibility that any of the states would set up an established church, even though this is permitted in theory. People of a wide variety of religious backgrounds practice their faith in Australia without interference from the government, although some increased religious animosity has been reported since September 11, 2001.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military is under the control of the civilian Commonwealth government and has a long tradition of independence and neutrality in political affairs, although this has been under some strain in recent years. Even during wartime and in a state of emergency, the military is under the command of the civilian government, although the powers of both the government and the military increase during such times.

The Commonwealth Parliament is vested with the power to make laws with respect to defense by Section 51 (vi) of the constitution. The scope of this power is potentially very wide. In interpreting Section 51 (vi), the High Court has established that the defense power is greatly expanded during wartime and may override some of the constraints on the exercise of power expressed and implied in the constitution. The exigencies of war necessitate a strong central government, and to that end the Commonwealth government's wartime power is much wider than its power in peacetime. The federal division of powers between the Commonwealth and the states may be subordinated to the immediate imperatives of fighting a war. The expanded power of the federal government will not necessarily recede immediately upon war's end, although the legislative power does contract.

Military service is not compulsory today, but conscription is not prohibited by the constitution. At various times the government has instituted conscription, most controversially during the Vietnam War. The constitution allows for the conscription of noncitizen residents for the defense of the nation at war. Conscientious objection was recognized in Australia when conscription was in force, although it is not required by the constitution; in fact, the constitutional right to religious freedom has not been interpreted as giving rise to a right to conscientious objection.

AMENDMENTS TO THE CONSTITUTION

Amendments to the Commonwealth constitution are regulated by Section 128, which presents a number of hurdles that must be overcome before change is made. A proposal for a referendum must first be passed by both houses of Parliament or by one house twice. For political reasons, only the House of Representatives can use the latter option. After approval by the governor-general, the proposal must be passed by a majority of people in a majority of states. If the amendment affects the rights of a particular state, the proposal must pass in that state as well. In practice, the Australian people have been resistant to change and have approved only eight of 44 proposed amendments in more than 100 years—and a number of those dealt with relatively trivial issues, such as the retirement age of judges. The only referenda to pass have been those backed by both major political parties and both the Commonwealth and state governments. This phenomenon has led one Australian constitutional lawyer to describe Australia as the "frozen continent" of constitutional reform.

The procedures for changing state constitutions vary from state to state but are generally more flexible. Many state constitutions were originally simply acts of Parliament and could be amended by another act of Parliament. Now, however, a number of state constitutions have entrenched certain constitutional provisions, and amendments require either a parliamentary supermajority or a referendum. On the whole, however, the state constitutions have proved more flexible over time than the Commonwealth constitution.

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Carolyn Evans
Tim Rogan

AUSTRIA

At-a-Glance

OFFICIAL NAME
Federal Republic of Austria

CAPITAL
Vienna

POPULATION
8,192,880 (July 2006 est.)

SIZE
32,385 sq. mi. (83,871 sq. km)

LANGUAGES
German; traditional minority languages: Slovenian, Croatian, Hungarian (official languages)

RELIGIONS
Catholic 73.7%, Protestant 4.7%, Muslim 4.2%, Christian Orthodox 2.2%, Jewish 0.1%, Jehovah's Witnesses 0.3%, other 1.1%, unaffiliated 12%, unspecified 1.7% (2001)

NATIONAL OR ETHNIC MINORITIES
Austrian 91.1%, Serbian-Croatian-Bosniac 4%, Turkish 1.6%, other 3.3% (2001)

DATE OF INDEPENDENCE OR CREATION
1156 (duchy with special privileges in the Holy Roman Empire); 1804 (empire); November 12, 1918 (republic)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
October 11, 1920

DATE OF LAST AMENDMENT
No single date

Austria is a parliamentary democracy based on the rule of law; the separation of executive, legislative, and judicial powers (although there are some elements of concentrated power in parliament); and the protection of fundamental rights. Organized as a federation, Austria is made up of nine federal states and a strong central government. The constitutional law of the federation provides for far-reaching guarantees of human rights. If a violation of constitutional law occurs in an individual case, there are effective remedies enforceable by an independent system of specialized and centralized constitutional review. This includes a Constitutional Court that is organized outside the regular court system.

The federal president is the head of state. While he or she is not the chief executive, the presidential function is not merely representative; it is also part of a system of checks and balances. The president appoints the federal chancellor, who is in fact the central political figure, although formally the chancellor is only first among equals in the federal administration. The administration must enjoy the confidence of the National Council as the representative body of the people; the council is shaped by free, equal, general, and direct elections. A pluralistic system of political parties is guaranteed by constitutional law and has intense political impact.

There is also a traditional system of "social partnership" that formed, for many years, a "side government" of employers' and employees' associations but has lost its importance in recent years. The system of social partnership is also primarily responsible for the prevailing concept of a social market economy.

Religious freedom is guaranteed; state and religious communities are institutionally separated.

CONSTITUTIONAL HISTORY

Starting in the 10th century C.E., Austria was part of the Holy Roman Empire of the German nation and was organized as a bulwark against invasion from the southeast. In

1156, Austria became a duchy, which in 1282 was handed over to the Habsburgs. After 1526, the Habsburgs added Bohemia and Hungary to their territories; they established a monarchical union of the Eastern Alpine, Danubian, and Carpathian regions. The union had, among other purposes, the aim of defending Europe against the Ottoman Turks. Members of the Habsburg dynasty ruled the Holy Roman Empire, with brief intermissions, from the 15th century until its dissolution in 1806.

In 1804, Austria established itself as an independent empire combining the Habsburg territories belonging to the Holy Roman Empire with the territories of the Hungarian kingdom. From 1815, Austria was one of the two leading members of the German Confederation (Deutscher Bund), a confederation of sovereign countries that replaced the Holy Roman Empire. The confederation lasted until 1866 when the other leading state, Prussia, defeated Austria. The new German Empire (Deutsches Reich) of 1870–71 excluded Austria.

Beginning with the revolution of 1848, Austria, as did other European countries, experienced a series of constitutional reforms followed by neoabsolutistic restoration. After the loss of dominant positions in Italy (1859) and Germany (1866), a period of constitutional experiments ended in the Ausgleich (compromise) with Hungary and the enactment of the so-called December Constitution in 1867.

Thus the Austrian Empire was transformed into the Austro-Hungarian Dual Monarchy, a union of two states with only a few common affairs. A similar solution in favor of the Czechs failed because of the opposition of German liberals and nationalists. In 1878, Austria occupied the Turkish provinces of Bosnia and Herzegovina. After their annexation in 1908, the idea of a Trialistic Monarchy was raised, turning the southern territories inhabited by people of Slavic descent into a third partner. One of the promoters of this concept was the heir designate to the Austrian throne, Archduke Francis Ferdinand, whose assassination by a young Serb nationalist on June 28, 1914, marked the beginning of World War I (1914–18).

The defeat in World War I led to the partitioning of the multinational Austro-Hungarian monarchy according to the national ambitions of the peoples. The German-speaking territories proclaimed the Republic of German-Austria and declared it a part of the new German republic. However, the peace treaty of Saint Germain of September 10, 1919, between Austria and the Allies barred Austria from joining Germany or from incorporating other German-speaking territories in Czechoslovakia and Italy.

On October 1, 1920, the Austrian Republic adopted a federal constitution, which concentrated political power in the parliament. An amendment in 1929 strengthened the position of the federal president so that the Austrian system of government now combined elements of parliamentary and presidential democracies.

Distrust between political groups grew after 1927, and on March 4, 1933, the administration declared the dissolution of parliament. On May 1, 1934, the constitution of 1920, as amended in 1929, was replaced by a new constitution based on a Christian Authoritarian Corporate system.

On March 12, 1938, German troops invaded Austria and incorporated it into the National Socialist German Reich. In a plebiscite four weeks later, the overwhelming majority of Austrians endorsed the union. In World War II (1939–45), Austrians not only served as soldiers in the Wehrmacht but also took part in the Nazi terror regime, which raised questions of Austria's portion in responsibility for its crimes.

In 1945, Austria was reestablished as an independent state under Allied control; unlike in Germany, one government was set up for all four occupied zones. After Stalin's death in 1953, the Soviets started negotiations with Austria that resulted in a state treaty with the four Allies, signed on May 15, 1955, by which Austria regained full sovereignty. According to an agreement with the Soviet Union, Austria adopted permanent neutrality in a federal constitutional law of October 26, 1955.

Since 1995, Austria has been a member state of the European Union (EU). While Austria started out on the EU's eastern border, as more states joined the union, Austria's geographic position was closer and closer to the center. This corresponds with Austria's traditional national identity as a link between East and West and its role as a bridge in the European integration process.

In May 2003, a Constitutional Convention was established in order to draft a new Austrian constitution.

FORM AND IMPACT OF THE CONSTITUTION

Austrian constitutional law is all written law, but it is not codified in a single document. Any legislation can be designated as a constitutional provision by a two-thirds majority vote of the National Council. One can find "constitutional law" in about 1,300 places spread over the entire legal order. The primary constitutional documents are the 1929 Federal Constitution (Bundes-Verfassungsgesetz) and the 1867 Basic Law on the General Rights of the Citizens.

Constitutional law takes precedence over all other national law, according to the theory of the hierarchy of norms. The general rules of international law are automatically part of Austrian federal law. International treaties must be transformed into Austrian legislation. The law of the European Union has precedence over the Austrian constitution as long as it does not contradict its fundamental principles.

BASIC ORGANIZATIONAL STRUCTURE

Austria is a federation made up of nine federal states, called Bundesländer. Each state has its own constitution

and is essentially equal to all others from a constitutional point of view. The federal states do not have the right to leave the federation.

The constitution regulates the allocation of legislative and executive power between the federation and the federal states. The most important powers are allocated to the federation, which therefore dominates the system. However, the federal states enjoy residual powers in areas not expressly mentioned in the constitution. In recent times, further legislative powers have passed from the federal states to the federation by constitutional amendments because of their increasing supraregional importance. This has occurred, for example, in the areas of environmental law and animal rights.

Traditionally, local governments are strong in Austria. The local communities are entities incorporated into the states and the state administrative structure. However, local communities can make their own decisions on a number of issues of local interest. The citizens of the local communities elect the mayors and members of local political bodies.

FUNDAMENTAL CONSTITUTIONAL PRINCIPLES

The Austrian constitutional system is based on a number of fundamental principles. A substantial alteration of any of them would be considered a significant revision of the constitution. Constitutional amendments of such magnitude must be approved by a popular referendum according to Article 44, Section 2, of the 1929 constitution.

Articles 1 and 2 of the constitution explicitly refer to the democratic, republican, and federal principles. According to Article 1, Austria is a democratic republic whose authority emanates from the people. In principle the whole system rests on indirect democracy, combined with a constitutional guarantee of a pluralistic political party system; it is rounded out by certain features of direct democracy, such as popular initiative, public consultation, and referendum. Since its introduction in 1973, there have been 31 popular initiatives. The republican principle has rather limited meaning in Austria today. It simply conveys that there shall be no monarchy. According to Article 2 of the 1929 constitution, Austria also is a federal state. Therefore, the legislative and executive powers are divided between the federation and the federal states. The federal states have the opportunity to participate in legislation of the federation.

According to legal doctrine, three more principles are implicitly contained in the constitution. The first is the principle of the rule of law, which requires that all state actions have a legal basis and that the judiciary be independent. The second is the principle of separation of powers. The third implicit principle is the liberal principle, guaranteeing a system of liberal fundamental rights. Although there is no explicit clause providing for a social state, certain standards of labor and social welfare law are in fact treated as fundamental laws in Austria.

Further structural principles are implicitly contained in the constitution, such as religious neutrality and a commitment to the concept that the state must support culture. This is of special importance because Austria often identifies itself by emphasizing its cultural traditions. Protection of the environment and of animals also is specified in constitutional law.

CONSTITUTIONAL BODIES

The predominant constitutional bodies are the National Council and the Federal Council, forming the legislative power, the Federal Assembly; the federal president; the federal administration; and the judiciary, including a separate Constitutional Court. A Board of Audit and a People's Advocates' Office are regarded as forming part of parliamentary control.

National Council (Nationalrat)

The Austrian National Council (Nationalrat) is the central representative organ on the federal level. In terms of the legislative process, the National Council and Federal Council may be regarded as two chambers of parliament, although the latter has a relatively weak position.

The members of the National Council have the right to put questions to the administration, and any federal minister may be called to appear before parliament. Upon the demand of five members, any question must be answered in the course of the same meeting.

Members of the National Council or the Federal Council cannot be subjected to any criminal prosecution, arrest, or limitation of their personal freedom, except with the permission of their council. The only exception to this privilege occurs when the delegate is arrested in the course of committing a crime.

The National Council consists of 183 deputies. Their term of office, the legislative term, is four years. The deputies are elected in a general, direct, free, equal, and secret balloting process.

A president, a second president, and a third president are elected by the National Council from among its members, forming a steering committee. They collectively take over the functions of head of state in case the federal president is temporarily disabled for more than 20 days.

Federal Council (Bundesrat)

In the Federal Council, the federal states participate in national legislation. The members are not elected directly by the people but are deputized by the parliaments of the federal states. Its composition, therefore, changes with every election in the federal states. Practically speaking, the influence of the federal states on policy on the federal

level primarily comes to bear within the framework of the political parties.

Federal Assembly (Bundesversammlung)

The Federal Assembly is composed of the members of the two chambers of parliament. Its main functions are to witness the induction of the federal president into office, to impeach the federal president, and to declare war.

The Lawmaking Process

The right to introduce a bill can be exercised by the federal administration, by at least five members of the National Council, by the Federal Council, or by a popular initiative signed by at least 100,000 voters.

After the National Council has passed a bill, it is passed to the Federal Council, which in most cases has only a suspensive veto, which at most delays legislation. The Federal Council may raise objections, but if these are rejected by the National Council (a process that requires a higher number of deputies), the bill becomes law in any case. The Federal Council has an absolute veto in only two cases: when a constitutional provision would restrict the power of the federal states or when it would affect the functions of the Federal Council itself.

Once a bill has been passed by parliament, it must be countersigned by the federal chancellor and the responsible federal minister. To enter into force, the law needs the federal president's assent. It is a controversial question whether the signature of the federal president serves merely a notary function, or whether the president has the right, and the duty, to refuse signature in case of doubts concerning the constitutionality of the act.

The Board of Audit (Rechnungshof)

The Board of Audit, an auxiliary organ of the legislature, is an institution under a president elected by the National Council. Although the board can only make recommendations for improving the efficiency of the administration, its high standing in public opinion has given it great influence.

The People's Advocates' Office (Volksanwaltschaft)

The People's Advocates' Office was created in 1977 in imitation of the Scandinavian "ombudsman." It examines complaints filed by citizens or legal entities alleging improper administration on the federal level when there is no legal recourse available or all legal remedies have been exhausted. If it considers a complaint justified, it issues a recommendation to the competent administrative body, which must act according to the recommendation or explain its refusal to act.

The Federal President

The federal president is the head of state but not the head of the executive. The president represents the federal republic in international affairs.

The president is elected directly by the people for a period of six years; a reelection for a second term is allowed. To be elected, a candidate needs more than one-half of the valid votes cast. The two leading candidates enter a runoff if no one wins a majority in the first round.

The federal president may in principle act independently to appoint or dismiss the federal chancellor or the entire federal administration and may act to sign laws for promulgation. This is also the case in the president's function as supreme commander of the armed forces.

In other areas, the president can only act if asked by some other body, usually the federal administration. That is the case with dissolving the National Council; summoning the National Council; ordering referendums; appointing high-level civil servants, army officers, judges, and university professors; and granting pardon to criminal offenders.

Although the Austrian federal president, by law, has a relatively strong position, in political practice the president's functions are restricted. For that reason, in recent decades there have been widespread discussions about reforming the presidential office. In practice, a great part of the president's political impact depends on personal charisma.

The Federal Administration

The federal administration is the political nerve center of Austria. It consists of the federal chancellor (Bundeskanzler), the vice-chancellor (Vizekanzler), and the federal ministers.

The federal chancellor is the head of the administration. The chancellor is appointed by the federal president. By this decision, the federal president is free in terms of law but is politically bound because the federal administration must enjoy the confidence of the National Council. The other federal ministers are appointed by the federal president according to the federal chancellor's proposal.

The federal administration, as the whole executive branch, can act only on the basis of law. It has political responsibility toward the federal president, who may dismiss the federal chancellor or the entire federal government at any time, and to the National Council, which may pass a vote of no confidence at its discretion.

Although the federal chancellor has no formal legal power to set policy guidelines independently, the chancellor is generally the dominant figure in Austrian politics. Because the majority in parliament backs the administration and stands against the parliamentary minority, and also because of the influence of the media, there has been a development toward a "chancellor democracy" in recent decades.

The Judiciary

The judiciary in Austria is independent of the executive and legislative powers. All courts are federal institutions.

The ordinary court system for civil and criminal matters is organized into four levels. At the top of the pyramid is the Supreme Court (Oberster Gerichtshof) in Vienna. Various civil matters are designated to specific courts or panels of regular civil courts, namely, for commercial law and antitrust law, as well as for issues of labor and social welfare law. In these cases, informed lay judges are members of the panel.

Austria also has a long tradition of administrative adjudication, which has existed since the 1867 constitution. There is a Supreme Administrative Court that can be petitioned after exhausting all internal administrative appeals. In recent decades, the system has been expanded by introducing independent administrative authorities. These bodies are collegial. Their decisions may be reviewed by the Administrative Court only in instances of a special legal provision. In 1988, independent administrative panels were introduced in the federal states to provide two levels of judicial proceedings.

The Constitutional Court

Austria has a specific tradition of constitutional review from the 1867 constitution. Such review is handled by a unitary Constitutional Court outside the regular court system. This court can make decisions without necessarily deciding a specific case at issue, and its rulings have general effect. The system has been adopted by most European and Latin American countries, including the new Central and East European democracies.

The central task of the court is to examine the constitutionality of acts of parliament. It can also examine administrative acts, rule on jurisdictional disputes among state organs, resolve electoral disputes, and conduct impeachment trials. A constitutional complaint can be taken before the Constitutional Court by any person alleging that the state has infringed one of his or her fundamental rights.

The Constitutional Court is composed of a president, a vice president, 12 members, and six substitute members. The members are appointed by the federal president on the nominations of the federal administration, the National Council, and the Federal Council.

The major changes in the court's decision making since the early 1980s add up to a paradigm shift. Previously, the court restricted itself to a strict textual interpretation of the law. From that point on, the court departed from this judicial self-restraint until, at present, it shows a certain degree of judicial activism.

THE ELECTION PROCESS

All Austrians over the age of 18 have the right to vote in the election of the National Council, and every Austrian above the age of 21 may stand for election to the National Council.

The 183 seats are distributed among the 43 electoral districts according to population and the principle of proportional representation. The seats and votes that remain after distribution in the electoral districts are distributed on the state level but only to parties that won at least one district seat or at least 4 percent nationwide. Any further remaining seats or votes are then distributed on the federal level.

In 2004, four political parties were represented in the National Council.

POLITICAL PARTIES

Austria has a pluralistic political party system. In 1975, a constitutional provision explicitly established that political parties constitute essential components of the democratic system of Austria.

This provision requires political parties to specify the rights and duties of the members and show a desire to participate in the democratic legislative process. It does not mandate an internal democratic structure.

Parties that are represented in the National Council are financed by public funds. Parties not represented in the National Council only receive public funds in an election year if they won at least 1 percent of the votes in the last election.

There is no provision for banning a political party. However, courts and administrative bodies may decide whether a party has violated the prohibition of reviving Nazi or fascist ideology, if this question is raised in a specific proceeding.

Since the early 1990s, four parties have been represented in every National Council: two larger parties, the Austrian People's Party (Österreichische Volkspartei) and the Social Democratic Party (Sozialdemokratische Partei Österreichs), as well as two smaller parties, the Freedom Party (Freiheitliche Partei Österreichs) and the Green Alternative (Grüne Alternative).

CITIZENSHIP

Austrian citizenship is primarily acquired by birth under the principle of *ius sanguinis;* a child acquires Austrian citizenship if at least one parent is an Austrian citizen, no matter where he or she is born. The law provides for the possibilities of acquiring citizenship in special cases.

FUNDAMENTAL RIGHTS

Austrian fundamental rights are embodied in constitutional acts, such as the 1867 State Fundamental Law, or treaties under international law, such as the Treaty of Saint Germain. The relevant documents date from several

historical epochs and display different understandings of fundamental rights. This makes Austrian fundamental rights guarantees unique. In 1958, the European Convention on Human Rights and Fundamental Freedoms became part of the constitutional system. As a result of the gradual development of rights in Austria, individual constitutional provisions overlap. In addition, certain guarantees of fundamental rights are laid down in special constitutional laws and in single constitutional provisions in ordinary statutory law, as is the case for the law on data protection.

All these provisions guarantee the traditional, classic set of human rights. Social rights, such as the right to work, education, and welfare, are somewhat underrepresented as the constitution lacks explicit clauses on those matters. However, the actual state powers specified in the constitution presuppose extensive state activities in the social realm. Whether social fundamental rights should be embodied in a new Austrian constitution is a crucial issue currently being debated by the constitutional convention.

Since the 1867 constitution, the Austrian system has distinguished between rights that apply to every human being and those rights reserved for Austrian citizens only. Because of the constitutional status of the European Convention on Human Rights and Fundamental Freedoms, a number of traditional citizens' rights have now become general, such as freedom of association and freedom of assembly.

Impact and Functions of Fundamental Rights

Although there is no explicit ranking of fundamental rights, the right to equal treatment can be viewed as the most important. The Constitutional Court must ensure that this principle is at the forefront of the complex modern society and determine its parameters.

While the term *equality before the law* suggests only that laws must be equally applied, it has become clear that lawmaking itself is bound by the principle of equality. Therefore, Austrian constitutional doctrine also speaks of an equality in law.

At present, the principle of equality is understood to mean objectivity and reasonableness in legal regulations. Organs of the executive branch may not make arbitrary decisions and must observe the principle of proportionality. The legislature must ensure that any legal differentiation is based on reasonable criteria and must also respect proportionality.

According to a modern understanding of fundamental rights, the state must promote conditions whereby fundamental rights can actually be exercised as far as possible. Whether an objective obligation of the state creates an enforceable claim or only a justification for state subsidies must be investigated in each individual, concrete case.

Limitations to Fundamental Rights

According to the 1867 State Fundamental Law, rights can be limited only when the restrictions are specified in the law explicitly, as they are in many cases. In contrast, the reservations found in the European Convention of Human Rights and Fundamental Freedoms are of a more practical nature, implying a process of weighing the legal merits of each case. The most important instrument available for such calculations is the principle of proportionality, the idea that the means applied must relate to the aims pursued. This principle implies a balancing of the legal and factual merits in every case. The least oppressive path must be taken in pursuing the aim intended. In other words, only pressing social needs can justify limiting the right in question.

Proportionality may be considered the unchallenged principle of the law of the European Union. It permeates the entire legal system.

ECONOMY

The constitution in Austria does not require a free market system. However, certain fundamental economic rights that allow free, private economic activities are guaranteed. They include freedom of property, acquisition, profession, and association. State authorities must not interfere in bargaining between trade unions and employer's associations. Such activities may only be restricted for public reasons, in accordance with the principle of proportionality.

With regard to labor law, Austria can be described as an extended welfare state. European Community Law limits the national legislators' margin of appreciation, including that of the constitutional legislator.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a human right. This guarantee also includes the rights of religious communities. Today, it is generally accepted in Austria that it is a primary responsibility of the state to support religious communities in order to protect the religious interests of the individual adherents.

The legal system regulating the relations between the state and religious communities is based on the principles of religious neutrality, equality, and self-determination. While there is no established state church, there are two categories of religious communities who enjoy special legal status. Certain churches and religious societies are recognized by ministerial order and have public law status. Other religious communities are registered with the state with private law status, according to a special law on religious associations. There are differences between these two categories of religious groups in various legal spheres, such as denominational religious instruction in schools and preferential treatment in tax law. The constitutionality of these differences is in dispute.

Today, 13 religious communities enjoy public law status. These include not only the larger groups such as Catholics, Protestants, Muslims, and Orthodox Christians but also smaller communities such as the Church of Jesus Christ of Latter-day Saints and the New Apostolic Church, Jews, and Buddhists.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are established as a militia army. Men above the age of 18 must serve for nine months. Women have been allowed to volunteer since 1999. According to Article 9a of the 1929 constitution, nonmilitary service, lasting 12 months, is provided for conscientious objectors.

The armed forces are part of the executive branch according to the constitution. The federal president is commander in chief. The power of mobilization is divided between the federal president and the minister of defense; the latter needs prior authorization from the federal administration.

The armed forces are entrusted with the defense of the nation; the protection of constitutional institutions, democratic liberties, public order, and internal safety; and, finally, the rendering of aid in case of a natural disaster or extraordinary accident.

AMENDMENTS TO THE CONSTITUTION

Constitutional laws or constitutional provisions contained in simple laws can be passed by the National Council. A quorum of at least half the members is required, and the measure must win two-thirds of the votes cast. The approval of the Federal Council is required; in case such laws or provisions limit the lawmaking competence of the *Länder*. A complete revision of the constitution requires approval by a popular referendum.

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Richard Potz

AZERBAIJAN

At-a-Glance

OFFICIAL NAME
Republic of Azerbaijan

CAPITAL
Baku

POPULATION
7,868,385 (July 2004 est.)

SIZE
33,436 sq. mi. (86,600 sq. km)

LANGUAGES
Azerbaijani (Azeri) 89%, Russian 3%, Armenian 2%, other 6%

RELIGIONS
Muslim 93.4%, Russian Orthodox 2.5%, Armenian Orthodox 2.3%, other 1.8%

NATIONAL OR ETHNIC COMPOSITION
Azerbaijani 90.6%, Lezgin 2.2%, Russian 1.8%, Armenian 1.5%, Talysh 1%, other (made up of Avars, Meskhetian Turks, Georgians, Ukrainians, and other nationalities) 2.9% (as of 1999)

DATE OF INDEPENDENCE OR CREATION
August 30, 1991

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 12, 1995

DATE OF LAST AMENDMENT
August 24, 2002

Azerbaijan is a democratic republic based on the rule of law with separation of state powers into the legislative, executive, and judicial branches. Although proclaimed a unitary republic by the constitution, Azerbaijan has an autonomous state on its territory—the Nakhchivan Autonomous Republic—which enjoys a relatively limited form of self-government. The constitution of 1995, which is the supreme law, declares that the principal aim of the state is to ensure human rights and fundamental freedoms. The rights and liberties set forth in the constitution have a direct binding effect; citizens may challenge any violation of constitutional provisions by lodging a complaint with the Constitutional Court.

The president is the head of state. The constitution vests vast executive functions with the president, who appoints and dismisses the prime minister and members of the cabinet. The parliament is formed on the basis of general, equal, free, and direct suffrage and represents the major political parties in the country.

The economy is based on free market interactions and diverse forms of ownership. The constitution guarantees religious freedom and states that all religions are equal before the law. Religion is separate from the state. The military is totally subordinate to the civil government. General conscription applies to all men over 18, but the constitution provides for alternative service. Under the constitution, Azerbaijan rejects war as a means to resolve international conflicts and intends to live in peace with all nations of the world.

CONSTITUTIONAL HISTORY

The first polity in the territory of Azerbaijan, called Manna, existed between the ninth and the sixth centuries B.C.E. It was followed by two other states—Aderbaygan (Atropatena) and the Caucasian Albania. The first Turk-speaking, ethnically Azerbaijani states appeared in the Middle Ages—the Shirvanshakhs, Qaragoyunlu, Agh-

goyunlu, and finally Sefevi states. The latter existed for nearly 300 years until it disintegrated into several semi-independent khanates and sultanates in the 18th century. As a result of the various Russo-Persian wars of the 19th century, Azerbaijan was divided between Russia and Iran, with the latter gaining most of the country.

On May 28, 1918, after the revolutionary events of 1917 in Russia and the collapse of the Russian Empire, the Azerbaijan Democratic Republic was founded. For the first time, the country formed a parliament, which adopted the declaration of statehood. As the first parliamentary democracy in the Islamic world, the Azerbaijan Democratic Republic received de facto recognition by the Allies as an independent nation in January 1920. The parliament appointed the prime minister, who was vested with the power to govern the state. The Azerbaijan Democratic Republic became the first Muslim state to grant women suffrage. The first republic existed for only 23 months, until the end of 1920, when Bolshevik Russia's Red Army invaded and terminated independence. In 1922, the Soviet Socialist Republic of Azerbaijan "voluntarily" joined the Soviet Union. The constitution of the Azerbaijan Soviet Socialist Republic was adopted in 1925. It established a single-party system of governance with separation of state powers into the legislative, executive, and judicial branches. The constitutions of 1937 and 1978 had likewise a rather ideological nature and were aimed at preserving the core ideas and foundations of the Communist regime.

The Azerbaijan Soviet Socialist Republic ceased to exist at the collapse of the Soviet Union in 1991; on August 30 of that year, Azerbaijan declared its independence from the Soviet Union. The Constitutional Act on State Independence, dated October 18, 1991, established the foundations for the political and economic structure of the Third Republic—the Republic of Azerbaijan. The current constitution, which was developed in accordance with the fundamental principles and norms of international law, was adopted in 1995 by a referendum; it proclaims the country a democratic, secular, and unitary republic based on the rule of law.

FORM AND IMPACT OF THE CONSTITUTION

The Republic of Azerbaijan has a written constitution, codified in a single document. International treaties to which Azerbaijan is a party constitute an integral part of its legislative system. The constitution states that in the event of conflict between the normative legal acts forming part of the Azerbaijani legislative system and the provisions of international treaties to which Azerbaijan is a party, the international treaty provisions shall prevail. Only the constitution and statutes adopted by a referendum prevail over those treaties.

The constitution is first in the hierarchical scale of legislative components, followed by acts adopted by a referendum, laws, presidential decrees, decisions of the cabinet of ministers, and normative acts of the central executive bodies such as ministries and state committees.

BASIC ORGANIZATIONAL STRUCTURE

The constitution stipulates that Azerbaijan is a unitary republic. The territory of the republic is divided into more than 80 administrative districts (called *rayons*). The president appoints and dismisses the heads of local executive bodies, who implement the executive power in the respective *rayons* and major cities. The president also determines the responsibilities of the local executive bodies.

The Nakhchivan Autonomous Republic is an autonomous state within the Republic of Azerbaijan. The constitution vests legislative powers in the autonomous republic's parliament, or Ali Mejlis, while executive and judicial functions are vested in its cabinet of ministers and courts, respectively. The constitution and laws of the Republic of Azerbaijan, decrees of the president, and decisions of the cabinet of ministers of Azerbaijan have binding effect in the territory of the autonomous republic. Accordingly, the legislative system of the Nakhchivan Autonomous Republic, including its constitution, laws, and decisions of the cabinet of ministers, cannot contradict the respective components of the Azerbaijani legislative system. According to the constitution of Azerbaijan, the Ali Mejlis of the autonomous republic may adopt general legislation on economic and social development, such as its annual budget, tax issues, protection of the environment, and public health.

LEADING CONSTITUTIONAL PRINCIPLES

Azerbaijan is a democratic, constitutional, and secular republic where governance is based on the principle of division of powers; the legislative, executive, and judicial branches act jointly and are independent within the framework of their authority.

The supreme aim of the Azerbaijani state is to ensure human rights and fundamental freedoms. The state guarantees the rule of law as an expression of the people's will. Religion is separate from the state. All religions are deemed equal before the law, and there is no established state religion. Azerbaijan intends to remain faithful to universal human values, to live in peace and freedom with all the nations of the world, and to cooperate with them to that end.

CONSTITUTIONAL BODIES

The major constitutional bodies are the president; the cabinet of ministers, headed by the prime minister; the

National Assembly called the Milli Mejlis; and the judiciary, including the Constitutional Court.

The President

The president of the Republic of Azerbaijan is the head of state and the supreme commander in chief of the armed forces. According to the constitution, executive powers are vested not in the cabinet, but in the president, who determines economic and social policy. The president appoints and dismisses the prime minister in coordination with the Milli Mejlis; he or she also appoints members of the cabinet of ministers, the prosecutor general, and judges, except the judges of the Constitutional, Supreme, and Economic Courts. The president also signs and issues laws, concludes international treaties, declares states of emergency and martial law, settles citizenship questions, decides on granting of political asylum, and grants pardons.

The president is elected for a five-year term and can be reelected successively only once. A candidate for the presidency is considered elected if more than half of the voters who participated in the election voted for him or her.

The Cabinet of Ministers

The cabinet of ministers is answerable exclusively to the president. It is headed by the prime minister, who is appointed by the president. The latter determines the activities of the cabinet. All ministries and other central executive bodies report to the cabinet. The cabinet resigns on the day a new president takes office.

The Milli Mejlis (National Assembly)

The legislative power in Azerbaijan is exercised by the unicameral Milli Mejlis. It consists of 125 deputies elected on the basis of the majority of votes in single-member districts and general, equal, and direct suffrage by free, individual, and secret ballot. The term of office of the Milli Mejlis is five years.

The Milli Mejlis passes laws, approves the state budget and controls its implementation, and appoints the judges of the Constitutional, Supreme, and Economic Courts.

The Lawmaking Process

According to the constitution, the Milli Mejlis has authority to adopt general legislation in a variety of areas. Once passed by the Milli Mejlis, a law is submitted to the president for signing. The president can reject the law and return it to the Milli Mejlis together with his or her own proposals. Parliament can override the president's objection by a qualified majority. However, the president has absolute veto power with respect to constitutional laws, which introduce additions to the constitution of Azerbaijan.

The Judiciary

According to the constitution, judicial power in Azerbaijan is exercised only by courts of law and on the basis of due process. The judicial system consists of first instance courts, appellate courts, and a Supreme Court, which functions as the court of final appeal; it is the last instance in civil, criminal, and other cases.

The Constitutional Court decides whether laws, presidential decrees, court decisions, and other normative legal acts conform to the constitution and settles disputes over the authorities of the legislative, executive, and judicial branches. Relevant state authorities as well as individuals may directly appeal to the Constitutional Court.

THE ELECTION PROCESS

All Azerbaijani citizens have the right both to vote and to be elected to government bodies. The voting age is 18.

POLITICAL PARTIES

Azerbaijan has a pluralistic system of political parties. A party can be banned only by a court decision.

CITIZENSHIP

A person born to an Azerbaijani citizen or in the territory of Azerbaijan shall be a citizen of the Republic of Azerbaijan. A person is considered an Azerbaijani citizen if one of his or her parents is an Azerbaijani citizen.

Under no circumstances may a citizen of the Republic of Azerbaijan be deprived of Azerbaijani citizenship.

FUNDAMENTAL RIGHTS

The Republic of Azerbaijan is a party to all the major multilateral human rights treaties, including the European Convention on Human Rights. According to the constitution, the rights and freedoms enumerated therein are to be exercised in accordance with international treaties. Thus, in the sphere of human rights (and only in that sphere), international treaties take precedence over the constitution.

The constitution declares the protection and promotion of human rights and fundamental freedoms to be the supreme aim of the state. It further obliges the legislative, executive, and judicial branches to observe and protect the human rights and freedoms it enumerates.

The constitution guarantees the full set of universally recognized human rights and civil freedoms. Article 25 guarantees everyone's equality before the law and prohibits any forms of discrimination. Articles 44 and 45 provide for the right to preserve one's national

and ethnic identity and to use one's native language, including the right to receive education in one's native language.

Impact and Functions of Fundamental Rights

The basic rights set forth in the constitution are directly applicable; therefore, citizens may challenge in court any decisions, acts, or omissions that infringe on the rights and freedoms established by the constitution. Moreover, provisions of international treaties to which Azerbaijan is a party may be cited in the courts.

Limitations to Fundamental Rights

According to the constitution, the implementation of certain rights and freedoms can be partially or temporarily limited (while taking into account Azerbaijan's international obligations) upon a declaration of war, martial law, or state of emergency; or in the interests of national security, public safety, or the economic well-being of the country; or for the prevention of disorder or crime. The limitations must be proportionate to the legitimate aim pursued. The population shall be notified in advance of the limitations on their rights and freedoms.

ECONOMY

According to the constitution, the state is to create favorable conditions for the development of the economy, based on market relationships and diverse forms of ownership. It must guarantee free enterprise and prevent monopolies and unfair competition. The constitution guarantees the right of everyone to engage in all kinds of economic activity either alone or jointly with others, provided such activities do not contradict the law.

RELIGIOUS COMMUNITIES

The constitution guarantees the right to freedom of religion or belief. Everyone is free to define his or her attitude toward religion, to profess any religion alone or in community with others, and to express and disseminate his or her beliefs. Yet the law prohibits foreign citizens and stateless persons from engaging in religious propaganda. Additionally, dissemination and propaganda of religions that violate human dignity and contradict the principles of humanity are banned.

Religion and religious communities are separated from the state in Azerbaijan, and the state does not interfere in the activities of religious communities. All religions and religious communities are equal before the law, and there is no established state religion.

The state educational system is secular.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution states that the Republic of Azerbaijan rejects war as a means of encroaching upon other states' independence or settling international conflicts. The armed forces have the sole purpose of ensuring the country's safety and defense.

In Azerbaijan, the military is totally subordinate to the civil government. The president of the republic is the supreme commander in chief of the armed forces.

General conscription applies to all men of 18 to 37 years of age. Women between the ages of 19 and 40 years can volunteer. The duration of active military service is 18 months. According to the constitution, active military service can be replaced by alternative service if serving in the military runs counter to a person's convictions.

Azerbaijan has acceded to the Nuclear Non-Proliferation Treaty as a nonnuclear weapons state and participates in the North Atlantic Treaty Organization's (NATO's) Partnership for Peace.

AMENDMENTS TO THE CONSTITUTION

Changes in the text of the constitution can be made only through referendum. Certain fundamental provisions are not subject to change at all. Proposals aimed at the destruction of any of the rights and freedoms set forth in the constitution or at their limitation to a greater extent than is provided for in international treaties to which Azerbaijan is a party cannot be put to nationwide vote.

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Elvin Aliyev

BAHAMAS

At-a-Glance

OFFICIAL NAME
Commonwealth of the Bahamas

CAPITAL
Nassau

POPULATION
301,790 (2005 est.)

SIZE
5,358 sq. mi. (13,878 sq. km)

LANGUAGES
English

RELIGIONS
Baptist 32%, Anglican 20%, Roman Catholic 19%, Methodist 6%, Church of God 6%, other Protestant 12%, none or unknown 3%, other 2%

NATIONAL OR ETHNIC COMPOSITION
Black 85%, white 12%, Asian and Hispanic 3%

DATE OF INDEPENDENCE OR CREATION
July 10, 1973

TYPE OF GOVERNMENT
Constitutional parliamentary democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
June 20, 1973

DATE OF LAST AMENDMENT
None

The Bahamas is a parliamentary democracy and a constitutional monarchy within the British Commonwealth of Nations. The executive, judicial, and legislative powers are separated. The country is organized centrally. Fundamental rights and freedoms enjoy constitutional protection, and effective measures exist to provide redress for their violation.

The executive head of state is the British monarch, represented by an appointed governor-general. Political power is effectively exercised by the cabinet, headed by the prime minister. The cabinet relies on parliamentary support. The members of the House of Assembly are elected by popular vote, whereas the members of the Senate are appointed by the governor-general. The party system is pluralistic.

The constitution grants freedom of conscience. The state is not affiliated to any religious group. The constitution protects the enjoyment of private property.

CONSTITUTIONAL HISTORY

Constitutional history in the Bahamas begins in 1647 when the islands, already an English colony, were granted by the English king, Charles I, to a group of Protestant settlers from England and Bermuda, called the Company of the Adventurers for the Plantation of Eleutheira. The system of self-government provided for by the royal order was so revolutionary that one can say it establishes the first republic in the Western Hemisphere: All free men of the settlement were to be represented in a Senate. An elected governor and 12 elected counselors were to take care of the daily affairs of the government of the colony. Freedom of religion was granted.

A group of about 70 settlers arrived on one of the then-uninhabited islands in about 1648. Internal disagreements caused the company to split up, and a major group settled on another island.

At the end of the 17th century, British-sponsored privateers used the numerous mostly uninhabited islands and islets of the archipelago as their favorite hideout. The pirates even proclaimed their own republic, with no laws or government except a magistrate.

To fight the buccaneers, Britain installed a royal governor in 1718. In 1729, a bicameral legislature was instituted to complete the government of the colony. This system of government persisted for almost 250 years.

During this period, the franchise was based on property, effectively reducing the electorate to a small group of wealthy white male landowners and merchants. This

became even more true after the 1780s, when, after the American War of Independence, thousands of English loyalists moved to the Bahamas, taking with them their slaves of African descent to work cotton plantations. Universal suffrage was not introduced until 1969.

As a result of the century-long exclusion from the electoral process, political awareness among the black majority did not arise until the 1950s. In 1953, the first Bahamian political party, the Progressive Liberal Party (PLP), was formed by blacks who were discontented with the policies of the governing elite and the concentration of wealth in the hands of a few white Bahamians.

In the 1960s, gradual steps toward independence were taken. A new constitution replaced the rule of the royal governors with a premier and a cabinet in 1964. Internal self-government was gained under the 1969 constitution. The Bahamas became fully independent from Great Britain in July 1973.

The predominant figure in the transition and early independence periods was Lynden O. Pindling, leader of the PLP and the country's first black prime minister. He remained in office until 1992.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is set out in the Bahamas Independence Order 1973. It is the supreme law of the Bahamas and prevails over any other law made by Parliament.

BASIC ORGANIZATIONAL STRUCTURE

The Bahamas is organized centrally. The country is divided into 21 districts. These local entities are administered by the national minister of local affairs, who appoints commissioners for the districts.

LEADING CONSTITUTIONAL PRINCIPLES

The Bahamas is a parliamentary democracy and a constitutional monarchy under the British Crown. The country forms part of the Commonwealth of Nations. There is clear division of power among the legislative, the executive, and the judicial powers and an adequate system of constitutional checks and balances exists. The judiciary is independent. The constitution protects individual fundamental rights.

CONSTITUTIONAL BODIES

Constitutional bodies are the governor-general, the Parliament, and the cabinet of the Bahamas.

The British Monarch and the Governor-General

The executive head of state is the British monarch, represented by a governor-general appointed by the monarch. The governor-general appoints the prime minister, the ministers, and the senators and exercises the power of pardon. In most cases, the governor-general is obliged to act on the advice of the cabinet. The governor-general's duty to act on constitutional advice is not legally enforceable.

The Cabinet of the Bahamas

The cabinet of the Bahamas, headed by the prime minister, has responsibility for the general direction and control of the government. In practice, the prime minister is the most powerful political figure in the executive. The governor-general appoints as prime minister that member of the House of Assembly who commands the support of the majority of the members. The other ministers are appointed from among the members of either house of Parliament. The cabinet is collectively responsible for its policies to Parliament and may be dismissed from office by a vote of no confidence.

The Parliament of the Bahamas

The Parliament of the Bahamas is based on the Westminster model. It is composed of the British monarch, the House of Assembly, and the Senate.

There are 38 elected members in the House of Assembly, elected from districts of equal population.

The Senate consists of 16 members, all appointed by the governor-general. Nine are appointed on the advice of the prime minister, four on the advice of the leader of the opposition, and three on the advice of the prime minister after consultation of the leader of the opposition. The Parliament's term of office ends after five years.

The Lawmaking Process

Laws are made by both houses of Parliament. General legislative bills may be introduced in either house by any member. To pass, they require the approval of a majority of votes in both houses. The House of Assembly may, however, ultimately override the rejection of a bill by the Senate. To go into effect, the governor-general's formal assent on behalf of the Crown is required.

Bills on issues of public finance may only be introduced to the House of Assembly.

The Judiciary

The legal system of the Bahamas follows the British model and is adversarial in both criminal and civil cases. The judiciary is independent of the legislative and the executive branches.

The judiciary is composed of a Supreme Court and a Court of Appeal. The constitution confers on the Supreme Court original jurisdiction to hear civil and criminal matters, as well as cases of violations of fundamental rights and freedoms. It can hear only certain constitutional issues concerning the membership in the House of Assembly or the Senate. The Supreme Court's decisions may be appealed to the Court of Appeal. The court of last instance is the Judicial Committee of the Privy Council in London.

THE ELECTION PROCESS

Generally, every Bahamian aged 21 or older is eligible to run for office as a member of Parliament. Candidates must have resided in the Bahamas for at least one year immediately before the election. Prisoners under death sentence and members of the police or the armed forces are not eligible to stand.

Further details on the electoral process are specified in the electoral law. At present, there is full general adult suffrage for all citizens aged 18 or older. Seats are won by a majority of votes in each district. Voters participate in the political process directly when voting on constitutional amendments in a popular referendum.

POLITICAL PARTIES

The party system is pluralistic. The electoral system favors larger major parties; as a result, there are only two political parties in the Bahamas, the Progressive Liberal Party and the Free National Movement.

CITIZENSHIP

Every person born on Bahamian territory to Bahamian parents or born abroad to a father who has Bahamian citizenship automatically attains citizenship. Others may apply for citizenship under certain conditions—children born to foreign parents in the Bahamas, children born abroad to a mother with Bahamian citizenship, or women married to Bahamian men.

FUNDAMENTAL RIGHTS

Individual fundamental rights are protected under Chapter III of the constitution. The rights granted are mainly the classic liberal rights. Protection is given to life, liberty, and the security of the person; to freedom of conscience, expression, assembly, and association; all are ensured by the protection of the law. Protection from discrimination on grounds of race, origin, color, religion, or sex is strongly emphasized. Redress for violations of fundamental rights may be sought in the Supreme Court without prejudice to any other legal action.

Fundamental rights are limited by the rights and freedoms of others or the public interest. Generally, fundamental rights and freedoms are respected by Bahamian public authorities.

ECONOMY

The country's economy is market based. The constitution provides for the protection of property as a fundamental right in Section 27.

RELIGIOUS COMMUNITIES

The constitution grants freedom of conscience, religious belief, and observance. There is no established or official state religion. Religious communities have the same rights and obligations as most legal entities.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Bahamas has a small army made up of volunteers. There is no conscription. The army is under the control of civilian authority.

The governor-general has the power to declare a state of public emergency. The proclamation is generally valid for 14 days and may be extended to a maximal period of six months. It may be revoked by the House of Assembly.

AMENDMENTS TO THE CONSTITUTION

Amendments to essential provisions of the constitution, such as guarantees of fundamental rights or matters relating to the cabinet or the judiciary, require the approval of three-fourths of all the members of each house of Parliament. All other provisions may be altered with the approval of two-thirds of all the members of each house. In addition, any amendment to the constitution must be approved by a majority of the electors in a popular referendum.

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Larissa Zabel

BAHRAIN

At-a-Glance

OFFICIAL NAME
Kingdom of Bahrain

CAPITAL
Manama

POPULATION
677,886, including 235,108 nonnationals (July 2004 est.)

SIZE
280 sq. mi. (712 sq. km)

LANGUAGES
Arabic

RELIGIONS
Predominantly Muslim (est. Shia 70%, Sunni 30%), Jewish, Christian, and Hindu minorities

NATIONAL OR ETHNIC COMPOSITION
Bahraini 63%, Asian 19%, other Arab 10%, Iranian 8%

DATE OF INDEPENDENCE OR CREATION
August 15, 1971 (from U.K.)

TYPE OF GOVERNMENT
Constitutional hereditary monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 6, 1973

DATE OF LAST AMENDMENT
February 14, 2002

After almost three decades during which Bahrain's constitution had been suspended, the ruler of Bahrain promulgated a thoroughly amended constitution on February 14, 2002. In 2001, a general referendum had approved the National Action Charter, a document specifying some of the planned amendments. Nonetheless, the status of the constitution of 2002 remains politically contested. While the government views the constitutional amendments as legitimized by the referendum, opposition groups have questioned the procedural legality of this process. Moreover, these groups also raise objections regarding the contents of some amendments, most notably the bicameral nature of the parliament, the National Assembly. The constitution of 2002 has introduced an appointed Consultative Council (*majlis ash-shura*) as an upper house, complementing the elected Chamber of Deputies (*majlis an-nuwwab*). The ongoing political debate on this issue may well result in further amendments.

The 2002 constitution explicitly bases the political system on both the Islamic concept of consultation (*shura*) and "the whole human heritage in both East and West." It transforms the "State of Bahrain" into the "Kingdom of Bahrain," thus elevating the *amir* to a king. It provides for a separation of powers among the legislative, executive, and judicial branches. Universal suffrage for all Bahrainis, male and female, is guaranteed.

As head of state, the king appoints the prime minister and the cabinet. Although not stipulated in the constitution, in practice, ministers holding central portfolios (defense, foreign affairs, interior, oil) are chosen from the ranks of the ruling family.

Political and civil rights are guaranteed without discrimination on the basis of origin, language, religion, creed, or sex, except in matters concerning personal status such as marriage or inheritance. Civil rights may effectively be limited when their expression violates fundamental religious beliefs or endangers national unity. The constitution also guarantees social and economic rights within an overall free market economy.

Islam is the state religion, but non-Muslim minorities, including nonmonotheistic ones, are free to practice, maintain places of worship, and display religious symbols.

CONSTITUTIONAL HISTORY

The islands' ruling family, the Al Khalifa, who originated in the interior of Arabia, established themselves on the Gulf archipelago of Bahrain in the late 18th century. From the beginning of the 19th century, Bahrain was under British domination. In the 1930s, calls for popular participation and constitutionalism surfaced, taking on an anticolonial tone by the 1950s. Only when independence from the United Kingdom was achieved in 1971 was a first constitution drafted. Late that year, spurred at least in part by Iranian claims on Bahraini territory, the then-*amir,* Shaykh Issa b. Salman Al Khalifa, decided to introduce a constitution "on democratic principles." Subsequently, he ordered the formation of a 40-man constituent assembly, of which 22 members were elected by a general if exclusively male vote. The constitution, promulgated on December 6, 1973, established a system with a separation of powers, but the executive remained dominant as the legislative power was "vested in the Amir and the (unicameral) National Assembly." Roughly two-thirds of its members were elected by universal male suffrage. Ministers were considered ex officio members.

After a conflict over a drastic security bill proposed by the government, the *amir* dissolved the National Assembly on August 26, 1975, thus effectively suspending the constitution after only two years. Demands to resume constitutional and parliamentary life were frequently raised, notably in several popular petitions during the 1990s. In 1992, the government attempted to counter these demands by establishing an appointed consultative council, but violent protests began in 1994. After rising to power upon his father's death in 1999, Shaykh Hamad b. Issa Al Khalifa embarked on a far-reaching reform program. An appointed committee was charged with drafting a "National Action Charter." In an attempt to establish a new contract between the ruler and the ruled, the document proposed to reinstate constitutional life, expand public participation, and hold free elections. The charter included a call to transform the State of Bahrain into the Kingdom of Bahrain and a proposal for a bicameral legislature. The National Action Charter was accepted in a popular referendum on February 14, 2001, by 98.4 percent of the votes. One year later, on February 14, 2002, the ruler promulgated the amended constitution without further referendum.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is contained in a written document. International law must be transformed into national law in order to be applicable within the country.

BASIC ORGANIZATIONAL STRUCTURE

Bahrain is subdivided into five governorates (*muhafazat*) and 12 municipalities (*manatiq* or *baladiyyat*). Municipal council members are elected, but the main legislative and administrative functions are assigned to the central government.

LEADING CONSTITUTIONAL PRINCIPLES

Bahrain is a hereditary monarchy based on the Islamic heritage of counsel (*shura*) and popular participation. Primogeniture within the ruling family is specified. The Islamic Sharia is "a," not "the" principal source of government. According to Article 1 of the constitution, "the system of government is democratic, sovereignty being in the hands of the people, the source of all powers," but other constitutional articles show a concentration of power with the king. The separation of powers is not very rigid. Article 32 states: "Legislative authority is vested in the King and the National Assembly in accordance with the constitution. Executive authority is vested in the King together with the Council of Ministers and Ministers, and judicial rulings are issued in his name."

CONSTITUTIONAL BODIES

The main bodies are the king, the Council of Ministers, the bicameral National Assembly, and the judiciary, including the Constitutional Court. A financial control office charged with budget supervision has also been established.

The King

The king is the head of state and exercises his powers directly and through his ministers. He appoints and dismisses the prime minister, the ministers, and the higher judges. He is the supreme commander of the Defense Force. The king may propose laws and amendments to the constitution, and he may order a popular referendum on important laws.

The Council of Ministers

While the king is part of the executive authority and can choose to chair any cabinet session, the day-to-day business of the administration rests with the Council of Ministers. Among them, the prime minister enjoys a privileged position; unlike any other cabinet minister, the prime minister can not be subjected to a vote of no confidence. The National Assembly can, however, decide by a two-thirds majority that cooperation with the prime min-

ister is not possible. The king will then either dismiss the prime minister or dissolve the Chamber of Deputies.

The National Assembly

The National Assembly consists of the Consultative Chamber (*majlis ash-shura*) and the Chamber of Deputies (*majlis an-nuwwab*). Each chamber has 40 members. The term of office is four years.

Members of the Consultative Chamber are appointed by the king. The chamber has the same legislative power as the Chamber of Deputies but with fewer supervisory powers. The Chamber of Deputies is elected by free, direct, general, and secret ballot. In addition to its legislative functions, the Chamber of Deputies is entrusted with the governmental supervision.

The Lawmaking Process

Bills are presented by the Council of Ministers to both chambers. Members of either chamber may send proposals to the Council of Ministers, but they cannot themselves draft bills. For a bill to become law, it must be approved by both chambers. If the king returns a draft without approval, it must be reapproved by two-thirds of the National Assembly in order to become law.

The Judiciary

The legal system is based on a mix of British common law and Sharia law, the latter reflecting the one Shiite and two Sunni schools present in Bahrain. The judiciary is organized into two branches, civil law courts and Sharia courts. Only issues related to the personal status of Muslims are within the jurisdiction of the Sharia courts.

The 2002 constitution established a Constitutional Court. Its president and six members are appointed by royal decree. Any legislator, member of the Council of Ministers, or—conditional on relevance in another law case—individual can challenge the constitutionality of laws in the Constitutional Court. Any convictions issued under a law that has been found unconstitutional are automatically null and void.

THE ELECTION PROCESS

All Bahraini men and women over the age of 21 are allowed to vote. Citizens of the other Gulf Cooperation Council states (Saudi Arabia, Kuwait, Qatar, Oman, and the United Arab Emirates) may vote only when they have dual nationality. The minimal age to stand for elections is 30 years.

POLITICAL SOCIETIES

While political parties remain illegal, political societies are allowed to function as parties in most respects. They field candidates for election and act as parliamentary blocs.

CITIZENSHIP

Bahraini citizenship is either acquired by descent from a Bahraini father or granted by merit. The transmission of citizenship through female descent is currently debated. The granting of Bahraini citizenship to military and police staff of foreign origin is politically controversial.

FUNDAMENTAL RIGHTS

Civil liberties include safeguards against illegal searches, arrests, detention, forced confession, and physical and psychological torture, as well as the rights to trial, freedom of conscience, freedom of speech, academic freedom, freedom of the press, privacy of homes, freedom to form associations and trade unions and hold public assembly with prior notification. Social and economic goals are also stated in the constitution, as the state aims to provide education, social security and insurance, housing for the poor, and medical care. The state undertakes to guarantee job opportunities for citizens and fair work conditions.

Impact and Functions of Fundamental Rights

Since the civil and social rights guaranteed in the 2002 constitution are a fairly recent development, a number of laws predating the constitution that limit those rights are still in effect. Amendments to these prereform laws (the penal code, the law on public gatherings, and others) are still being debated in the National Assembly. Stability in government institutions and in society as a whole must be achieved for these rights to be fully exercised.

Limitations to Fundamental Rights

The constitution stipulates that guaranteed freedoms cannot be limited; however, limitations are allowed when national unity is endangered, a situation that remains rather ill defined. Shiites complain of discrimination, especially with regard to job opportunities in the armed forces.

ECONOMY

The constitution guarantees the right to private ownership and freedom of capital. At the same time, it obliges the state to work toward social justice. Natural resources, such as oil and gas, are considered state property. The state aims to foster economic development and works toward the establishment of a unified market for states of the Gulf Cooperation Council. Protection of the environment and wildlife is another stated goal.

RELIGIOUS COMMUNITIES

Islam is the state religion. Jews, Christians, and (exceptionally for the region) nonmonotheistic minorities such as Hindus are free to practice their religion, maintain places of worship, and display religious symbols.

MILITARY DEFENSE AND STATE OF EMERGENCY

The organization of the armed forces is not detailed in the constitution. No general conscription exists. The king is the supreme commander of the Defense Force, which, according to Article 33, "is directly linked to the king, and maintains the necessary secrecy in its affairs." Wars of aggression are forbidden. Defensive war and martial law are declared by royal decree and then presented to the National Assembly, which must consent.

AMENDMENTS TO THE CONSTITUTION

A majority vote of two-thirds of the members of both parliamentary chambers, fully assembled, is required to pass any amendment to the constitution. The state religion, the system of constitutional monarchy, civil liberties and equality, and the bicameral system cannot be amended.

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Katja Niethammer

BANGLADESH

At-a-Glance

OFFICIAL NAME
People's Republic of Bangladesh

CAPITAL
Dhaka

POPULATION
144,319,630 (July 2005, est.)

SIZE
55,813 sq. mi. (147,570 sq. km)

LANGUAGES
Bangla (only official language), English, Urdu

RELIGIONS
Muslim 88.3%, Hindu 10.5%, Buddhist 0.6%, Christian 0.3%, other 0.3%

NATIONAL OR ETHNIC COMPOSITION
Bengalian 98%, tribal groups, non-Bengali Muslim

DATE OF INDEPENDENCE OR CREATION
December 16, 1971

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 4, 1972

DATE OF LAST AMENDMENT
May 16, 2004

Bangladesh is a parliamentary democracy based on nationalism, democracy, socialism, and Islam. The legislative and executive are divided; the judiciary is independent in the higher courts but forms part of the executive in the lower courts. Bangladesh is a unitary state with a tendency toward decentralization. The country is subdivided into administrative divisions.

The constitution contains a large section on human rights, but their enforcement has not always been guaranteed. The Supreme Court has jurisdiction over violations of fundamental rights, but the exercise of this jurisdiction is limited by a vast backlog of cases.

The president is the ceremonial head of state; executive power rests with the prime minister, who is selected by the president. The president receives advice from the prime minister in almost all matters. The unicameral parliament is composed of members who are elected by universal suffrage.

Although Islam is the state religion, other religious organizations are allowed to exercise their faith. The economy is socialist with an ever-increasing proportion of private businesses.

CONSTITUTIONAL HISTORY

Bangladesh is a relatively young country, having attained independence only in 1972, but it has a rich and diverse cultural and legal history. It is located to the east of today's India in an area formerly known as East Bengal.

In about 300 B.C.E. Bengal formed the eastern part of the Mauryan Empire, the first great Indian empire, which stretched over almost the entire subcontinent. Bengal was only loosely attached to the succeeding Indian empires, and in about 750 C.E., it won independence under a Buddhist dynasty, which was then replaced by Hindu rulers. In 1203, the last Hindu ruler was overthrown by Muslims who owed allegiance to the Pathan Empire, a state to the northwest of Bengal ruled by Sunni Muslims. Bengal paid tribute in the form of war elephants. After some decades of independence in the 14th and 15th centuries, Bengal was incorporated into the Mughal Empire, the most powerful state in India and Pakistan in the 16th and 17th centuries. Under the Mughals, Bengal's integration into the subcontinent began. However, because of its remoteness from

the center and poor lines of communication, the region retained some independence.

In the mid-17th century, the British East India Company established a trading outpost in Bengal and began gaining influence. In 1757, the British gained formal control over Bengal in exchange for an annual tribute to the Mughal emperor.

In the 19th century, Indians launched several rebellions against the British. The most severe, which occurred in 1858, led to the formal transfer of power from the East India Company to the British Crown and the incorporation of Bengal into India. The administration installed by the British was made up mostly of Hindus; Muslim Bengalis were not allowed to join the military.

As early as 1875, the Muslim leader Sir Syed Amad Khan proposed a two-nation theory to improve the status of Muslims in India. At first, Muslims were discouraged from joining the Indian National Congress (INC) that was founded by Hindus in 1885. Eventually, Muslims succeeded in installing a voting system in the INC, based on religious affiliation. In 1906, Aga Khan founded the Muslim League. Attempts at cooperation between the INC and the Muslim League failed because the Government Act of 1919, which provided for separate electorates, assured a Muslim majority in only one province. In Bengal, which was clearly Muslim, Hindus still controlled the provincial government.

After World War II (1939–45), general elections in 1946 resulted in a major victory for the Muslim League in Bengal. The state then threw its support behind the establishment of an independent Pakistan, which the British government opposed. When the British tried to pass power to the INC in British India, the Muslim League threatened to declare independence anyway. In 1947, Britain decided on independence for two states. Their original plan included an option for Bengal to obtain independence on its own. But Nehru opposed this plan, and in the end, Bengal was given the choice of joining either Pakistan or India. The Bengal legislative assembly voted to be incorporated into Pakistan as long as the state was not divided. The Hindu-dominated western part of Bengal, however, decided to split off and be incorporated into India. After bloody struggles, when, on August 15, 1947, the two countries gained independence, the Hindu-majority areas joined India, and East Bengal joined Pakistan.

Under the 1935 Government of India Act, all of Pakistan was ruled by a strong governor-general, who appointed the governors of each province. East Bengal soon was given a government of the Urdu-speaking minority (Urdu is the dominant language of today's Pakistan). The struggle in the province increased when the Muslim League clashed with other Muslim parties in elections and strikes after the elections. In 1956, the Pakistani constitution was adopted, and East Bengal became East Pakistan. However, unrest and political turmoil did not cease; in fact, political instability became a major feature of both sections of the Pakistan state.

The constitution established that although East Pakistan held 56 percent of the population, West and East Pakistan must be represented equally in parliament. This led to the underrepresentation of the east.

East Pakistanis felt that they were subordinated to West Pakistan. Only two Bengalis were part of the Pakistani government in the early 1950s, and in the military there were few Bengalis, as they had been deemed a nonmartial race under British rule and thus were never allowed to join the army.

In 1962, a new constitution was enacted for Pakistan, but it was suspended so soon that, practically, it never had effect. The frictions between East and West led to the founding of the East Pakistan Awami Muslim League to promote Bengali interests, later called the Awami League. From the 1960s, this party sought autonomy for East Pakistan. In the national elections of 1970–71, the Awami League won almost all East Pakistani seats for the national assembly and was by far the strongest power in the joint parliament. Talks were opened on constitutional amendments and changes in government, but they eventually failed. The Pakistani president suspended parliament indefinitely, and unrest followed in East Pakistan. On March 26, 1971, after brutal repression from the Pakistani military, the East proclaimed its independence as the People's Republic of Bangladesh. Because of refugee pressure along India's borders, India intervened, and on December 16, 1971, the Pakistani forces surrendered.

On November 4, 1972, Bangladesh adopted its constitution, which is still in force today. The constitution established a secular, nationalist, democratic, and socialist Bangladesh and was modeled on the Indian constitution, although omitting India's federalism. It created a strong executive prime minister and a ceremonial head of state, the president.

The nationalization of manufacturing and trading, begun after independence from Pakistan, became an enormous burden for the government because the economic situation was deteriorating rapidly. In 1974, the president declared a state of emergency and had the constitution amended to limit legislative and judiciary powers as well as to establish a strong president. A one-party system was instituted. In August 1975, the president and his family were assassinated.

An era of military coups and martial law administrations followed. In 1977, the constitution was amended to abolish secularism and introduce Islam as the sole basis for state policy. The one-party system was abolished. Only in the mid-1980s were the political agenda liberalized and attempts at decentralization undertaken. In 1986, the constitution was amended to confirm previous actions under martial law. After this amendment, martial law was lifted. In 1988, the constitution was further amended to proclaim Islam as the state religion. Opposition parties fought the government and the present system of a strong president. Violence and demonstrations then led to the resignation of the president.

In 1991, free elections were held, and the electorate approved of several constitutional amendments reestablishing the parliamentary system and reducing the president to a ceremonial role. This new start was followed by opposition attacks on the government and civil unrest in many parts of the country. In 1996, a constitutional amendment introduced a new constitutional body—the "nonparty caretaker government," which was to assume office during elections. Nevertheless, the situation in Bangladesh had not stabilized by the first years of the 21st century.

FORM AND IMPACT OF THE CONSTITUTION

Bangladesh has a single written constitution. It is the supreme law of the state, and all national laws derive their validity from it. According to Article 7 of the constitution, any law inconsistent with it is void. The constitution also provides for voiding all laws that are not in conformity with the fundamental rights enumerated in Articles 26–47. Its importance is further derived from the fact that it is the founding document of an independent Bangladesh and therefore the result of centuries of struggle for independence. The constitution has been repeatedly changed and amended during its more than 30 years of existence.

BASIC ORGANIZATIONAL STRUCTURE

Bangladesh is a unitary state, but for administrative purposes, it is subdivided into several levels (six divisions, 64 districts, 464 subdistricts, and 4,451 unions). Since the 1980s, the governments of Bangladesh have tried to decentralize authority by strengthening local bodies. Parliament has given elected local governments powers of taxation and responsibilities for public services, economic development, and the maintenance of public order. The most important local body is the *union parishad,* the members of which are elected and represent the views of the villages under its jurisdiction.

LEADING CONSTITUTIONAL PRINCIPLES

Bangladesh is a parliamentary democracy based on nationalism, socialism, and, since a constitutional amendment in 1977, Islam. Since 1988, Islam has been the state religion (Article 2A), but other religions can be practiced in "peace and harmony." The constitution contains a section on fundamental principles of state policy and a separate section on fundamental rights. The fundamental principles include the participation of women, the promotion of local government, free education, and separation of the judiciary and executive. These principles cannot be enforced by court rulings. The constitution attempts to achieve socialism through the means of democracy. Socialism, according to the constitution, means economic and social justice.

CONSTITUTIONAL BODIES

The Bangladeshi constitution provides for the following main constitutional bodies: the president, the prime minister and cabinet, a special government body called "Non-Party Caretaker Government," the unicameral parliament, and the judiciary, consisting of a Supreme Court and subordinate courts.

The President

The president is the constitutional head of state of the People's Republic of Bangladesh. Constitutionally, the president has discretion in the appointment of the prime minister and the chief justice and the authority to administer mercy and grant pardons. The president also formally appoints the cabinet ministers after the prime minister has chosen the candidates and is commander in chief of the military. The president takes precedence over all other citizens. All actions of the executive are to be expressed in the name of the president.

The president has a rather ceremonial position; he or she is obliged to follow the advice of the prime minister in all matters not related to those mentioned earlier. Whether or not advice was given cannot be challenged in courts. The executive power therefore rests with the prime minister.

The president is elected for a five-year term by parliament and can hold office for a maximum of two terms, even nonconsecutively. Candidates for the presidency must be 35 years of age or older. The president can be removed from office by parliament through an impeachment process or on grounds of incapacity.

The Prime Minister and the Cabinet

The prime minister is the key executive figure in Bangladesh. All executive power is to be exercised by or on the authority of the prime minister. The prime minister is appointed by the president and must be a member of parliament. The president is obliged to select a member who appears to have a majority in parliament. Thus the president regularly selects from among the winning party in parliamentary elections.

The prime minister is the head of the cabinet and determines the number of ministers, ministers of state, and deputy ministers. At least 90 percent of the cabinet should consist of members of parliament; the remainder can be chosen from among independent persons who are not disqualified from running for parliament. The cabinet is collectively responsible to parliament.

The prime minister can ask the president to dismiss any of the cabinet ministers at any time, and the cabinet is deemed to have resigned when the prime minister resigns from office or ceases to be a member of parliament. If parliament gives a no-confidence vote, the prime minister may ask the president to dissolve parliament. The president then has the choice either to choose a new prime minister or to dissolve parliament.

The House of the Nation (Parliament)

The Bangladeshi parliament (House of the Nation) is the central legislative organ in the People's Republic. It is a unicameral body with 300 seats. The most recent constitutional amendment, in effect since May 2004, enlarged the body on a preexisting provision with an additional 45 seats, which are all reserved for women. These 45 seats are to be filled in proportion to the representation of parties in parliament. Members of parliament enjoy immunity for actions in parliament. The majority in parliament often takes the form of a coalition, as many parties are elected to parliament.

Parliament is summoned and dissolved by the president. Its legislative powers are limited only by the constitution. Parliament has power over taxation and must approve the budget.

Every person over 25 years of age who is not disqualified by constitutional provisions is eligible to run for parliament. Members of parliament are elected by universal suffrage from single constituencies in a "first-past-the-post" system. They serve for a period of five years. Members of parliament lose their seats if they leave the party that nominated them or vote against that party in parliament.

The Lawmaking Process

Every bill passed in parliament must be presented to the president for assent. If the bill is not returned within 15 days, it is deemed to have received assent. If the president returns the bill with a message detailing concerns and requesting reconsideration, parliament deliberates and votes again. This time, a majority of the total members of parliament must vote in favor. It is then returned to the president, who then must assent to it. The president does not have the right to veto any bills concerning financial issues such as taxes or borrowing.

The Nonparty Caretaker Government

After political turmoil in the mid-1990s and national boycotts by opposition parties, parliament enacted the 13th constitutional amendment that established a neutral body to conduct parliamentary elections: the nonparty caretaker government. It comes into existence when parliament is dissolved and ceases to exist once the new prime minister has entered office.

The nonparty caretaker government is headed by the chief adviser, who is either the immediate former chief justice or another former chief justice, and consists of not more than 10 advisers who cannot be members of political parties. They are appointed by, and responsible to, the president and perform the administrative duties of government but do not make policy decisions.

The purposes of the caretaker government are to ensure fair elections and to prevent the executive from influencing the election process.

The Judiciary

The Bangladeshi constitution contains a large section on the judiciary and proclaims freedom of the judiciary from the executive power. It consists of the Supreme Court, the higher courts, and lower courts. While the Supreme Court and higher courts have displayed a certain degree of independence, the lower courts are still controlled by the executive and deemed part of it. The highest court in the country is the Supreme Court, which comprises an Appellate Division and a High Court Division. The Supreme Court is the guardian of the constitution, and its decisions are binding on all lower courts.

The Appellate Division is headed by the chief justice, who is appointed by the president. It hears appeals from decisions of the High Court Division on questions of constitutional interpretation, capital cases, and cases that the Appellate Division grants leave to appeal. The president can refer any matter of importance to the Appellate Division for deliberation and an advisory opinion.

The High Court Division not only has jurisdiction over decisions of subordinate courts in civil and criminal matters but also has original jurisdiction. Especially in questions of fundamental rights, the High Court Division can, upon application of an aggrieved person, issue orders and directions. It also has the constitutional right to transfer cases from lower courts to its own jurisdiction.

Lower courts exist on division, district, subdistrict, union, and local levels, with magistrates and judges appointed by the president.

In 2001, the Appellate Division of the Supreme Court affirmed a High Court Division order to the government of 1997 to separate the judiciary from the executive. While the judgment has not yet been implemented, the Supreme Court has granted extensions, as the government has shown itself willing to cooperate. The Supreme Court expects a timeline of six to seven years for full implementation.

In addition to the court system, there is an informal system of justice that takes care of approximately two-thirds of all cases on the local level. The disputes are decided by members of the local government.

THE ELECTION PROCESS

All Bangladeshis over the age of 18 have the right to vote in elections. Parliamentary elections follow the first-past-the-post system.

POLITICAL PARTIES

Bangladesh has had a pluralistic party system from its inception. However, strong presidents and military interventions assured that up until the 1990s, there was a tendency for powerful single parties to dominate parliamentary elections.

In 1975, a formal one-party system was created by a constitutional amendment, but by 1978, restrictions on parties were removed. Up to the present, opposition parties in parliament tend to distrust the ruling parties, with resulting strikes and civil unrest.

There are no explicit provisions on political parties in the constitution.

CITIZENSHIP

The constitution contains no provisions on citizenship, but it includes references to citizenship laws enacted in 1972 and 1978. Bangladeshi citizenship is primarily acquired by birth in the country or to a Bangladeshi father abroad. As Bangladesh, with approximately 2,500 inhabitants per square mile, has the highest population density in the world, immigration was never as common as emigration. Under the 1978 Citizenship Act, foreign women can obtain Bangladeshi citizenship if they are married to a Bangladeshi and have resided in Bangladesh for a minimum of two years. Any other person can obtain citizenship after five years of residence. Dual citizenship is prohibited.

FUNDAMENTAL RIGHTS

Part III of the constitution, directly following the fundamental principles of state policy, is a section of 23 articles on fundamental rights. These fundamental rights can be enforced by the Supreme Court. Any provisions in a law found to be not in accordance with fundamental rights are considered void. The fundamental rights section includes all classic human rights. The constitution differentiates between citizens' rights and universal rights that apply to citizens and noncitizens alike.

Citizens' rights include equality before the law; prohibition of discrimination; equal opportunity in public employment; freedom of assembly, movement, association, thought, speech, and conscience; freedom of profession; freedom of religion; and protection of privacy. Fundamental rights awarded to all persons include the right to life and personal liberty, habeas corpus, and prohibition of forced labor.

Impact and Functions of Fundamental Rights

According to all major human rights groups, the enforcement of fundamental rights remains weak today in Bangladesh. The long periods of martial law that started in the mid-1970s and continued until the mid-1980s undermined many fundamental rights. The executive still influences the press and media, thereby inhibiting freedom of speech.

Limitations to Fundamental Rights

Most fundamental rights are not without limits. The constitution imposes several direct limits on certain of them. For example, the prohibition of forced labor can be suspended by any law for public purposes. Various other fundamental rights can be limited for reasons such as morality, decency, public order, or public interest.

ECONOMY

The constitution calls the state the People's Republic of Bangladesh and calls it a socialist country. Therefore, a fundamental principle of state policy is that the people own or control all instruments and means of production and distribution (Article 13). However, this article also allows private ownership.

Shortly after independence and the proclamation of the constitution in the mid-1970s, the difficulties of public ownership became apparent. With the economy slumping, private ownership began to be promoted, and it has since increased. But with changing governments, policies have also changed, and many important areas of the economy remain under government control.

RELIGIOUS COMMUNITIES

Under the heavily contested eighth constitutional amendment, Islam became the state religion of Bangladesh in 1988. However, the constitution grants freedom of religion to all religious communities that practice their faith peacefully. The first constitution stated that Bangladesh was a secular state, but this was repealed in 1977 when Islam was proclaimed the solitary base of the state.

Bangladeshis have a long record of amicable relations among faiths. Religious organizations are not required to register with government agencies and can build houses of worship, travel freely, and proselytize. However, if they receive foreign financial aid, they must register with the Nongovernmental Organizations Affairs Bureau, which can deny and cancel the registration and block foreign financial aid to religious communities.

The government supports Muslim, Hindu, Buddhist, and Christian houses of worship with grants. Religious education is part of the curriculum of government schools. Parents have the right to have their children taught their own religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces of Bangladesh are divided into the army, navy, and air force, with the president as commander in chief. Bangladesh has never known conscription, but the Bangladesh Army Act provides for its possible introduction. Persons can enter the military from the age of 16 onward. The army of 110,000 is a defensive military. The navy and air force are each made up of 7,000 people. Since its independence, Bangladesh has not engaged in any wars. The military has been called upon to provide assistance during catastrophes and internal struggles, especially during the regularly occurring flooding of the country during the monsoon.

The constitution makes only marginal provisions for the military, mainly declaring the president to be commander in chief and specifying parliament's budgetary role. Most military policy and regulation is left to acts of parliament.

Bangladesh's military takes an active part in United Nations Peace Keeping Missions; Bangladeshi service members have done duty in many areas of conflict around the world.

A state of emergency can be proclaimed by the president and is valid for up to 120 days, if parliament does not prolong it. The proclamation can be issued in advance of the emergency if there is imminent external or internal danger. The state of emergency permits the suspension of freedom of movement, assembly, association, thought, conscience and speech, and profession, as well as property rights. The president can suspend the judicial enforcement of fundamental rights for the duration.

AMENDMENTS TO THE CONSTITUTION

The Bangladeshi constitution has been changed several times since its enactment.

Amendments or revisions of the constitution require a two-thirds majority of the total members of parliament. The president has no veto power. Any amendment to Article 8 (the fundamental principles of state policy), Article 48 (on presidential elections), Article 56 (on the appointment of the prime minister and cabinet ministers), and Article 142 (on amendments) has to be referred by parliament to a popular referendum.

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Oliver Windgätter

BARBADOS

At-a-Glance

OFFICIAL NAME
Barbados

CAPITAL
Bridgetown

POPULATION
279,254 (July 2005 est.)

SIZE
166 sq. mi. (431 sq. km)

LANGUAGES
English

RELIGIONS
Protestant 67% (Anglican 40%, Pentecostal 8%, Methodist 7%, other 12%), Roman Catholic 4%, unaffiliated or other 29%

NATIONAL OR ETHNIC COMPOSITION
African descent 90%, white 4%, Asian or mixed 6%

DATE OF INDEPENDENCE OR CREATION
November 30, 1966

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 22, 1966

DATE OF LAST AMENDMENT
None

Barbados is a parliamentary democracy and a constitutional monarchy within the British Commonwealth of Nations. There is a clear division of powers among the executive, the judiciary, and the legislature. The country is organized centrally. Fundamental rights and freedoms enjoy constitutional protection, and effective measures for redress for their violation exist.

The head of state is the British monarch, represented by an appointed governor-general. Political power is exercised by the cabinet, headed by the prime minister. The cabinet relies on parliamentary support. In Parliament, the members of the House of Assembly are elected by popular vote, and the members of the Senate are appointed by the governor-general. The party system is pluralistic.

Freedom of conscience is granted. The state and religious communities are separated. The constitution protects the enjoyment of private property.

CONSTITUTIONAL HISTORY

Although Barbados was a British colony for centuries, the country has a long parliamentary and constitutional history.

The island was settled in 1627 by the British. Production of sugarcane on large plantations operated with African slaves began in the 1640s. In 1639, the island's freeholders formed a House of Burgesses, later to become the House of Assembly; it was only the third representative assembly anywhere in the British Empire.

During Britain's civil wars in the 17th century, Barbados supported the Crown and declared itself independent from Britain. Invaded by a fleet sent by Oliver Cromwell, Barbados had to sign the Charta of Barbados in 1652. Although originally a document of surrender, the Charta was the basis for a considerable measure of local self-governance for centuries. Under the document, executive power was vested in an appointed governor, representing the British monarch. Laws were made by the House of Assembly, in which every parish of the island was equally represented. The House of Assembly retained the right to pass all money bills, including the governor's pay, an effective tool to exert control over the colonial administration.

The franchise was based on property, reducing the electorate to a small group of wealthy male landowners. As a result, the majority of the population of African

descent was excluded from the electoral process even after slavery was abolished in 1834–38. An executive committee to support the governor with functions similar to those of a cabinet was formed in 1881.

Political organization among the black population started in the 1920s. In 1951, universal adult suffrage was introduced, and in 1954, Sir Grantley Adams became the country's first black premier.

From 1958 until 1962, Barbados formed part of the West Indies Federation, which comprised 10 British island colonies in the Caribbean. In 1964, the executive committee was abolished in favor of ministerial government by a cabinet. In 1966, Barbados gained full independence from Great Britain.

Discussions on turning the country into a republic have flared up regularly since the 1970s. A Constitutional Review Commission recommended in 1998 that the country's system of government should be a parliamentary republic with a president as head of state. In January 2005, the Barbadian prime minister announced a referendum on the matter that has not yet taken place.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Barbados is set out in the Barbados Independence Order 1966. The constitution is the supreme law and prevails over any other law made by Parliament.

BASIC ORGANIZATIONAL STRUCTURE

Barbados is organized centrally. All the country's affairs are administered by the central government and statutory boards. There is no local government.

LEADING CONSTITUTIONAL PRINCIPLES

Barbados is a parliamentary democracy within the British Commonwealth of Nations. At least at present, the country is a constitutional monarchy under the British Crown. Legislative, executive, and judiciary powers are separated, and there is an adequate system of constitutional checks and balances. The judiciary is independent.

CONSTITUTIONAL BODIES

Constitutional bodies are the monarch and governor-general, the cabinet, Parliament, and the judiciary.

The British Monarch and the Governor-General

The head of state is the British monarch, represented by an appointed governor-general, who exercises the executive powers on the advice of the cabinet through appointed officials. In practice, the principal political power lies with the prime minister and the cabinet. However, the governor-general's duty to act on constitutional advice is not legally enforceable.

The Forde Constitutional Review Commission recommended in 1998 that if Barbados should become a republic, the head of state should be a president with Barbadian citizenship, inheriting the present functions and powers of the governor-general. This president should be elected by an Electoral College composed of both houses of Parliament.

The Cabinet

According to the constitution, the cabinet of Barbados, headed by the prime minister, advises the governor-general on the exercise of the executive authority. In practice, however, the prime minister is the most powerful political figure in the executive. The governor-general appoints as prime minister the member of the House of Assembly who commands the support of the majority of that house. The other ministers are appointed from among the members of either house of Parliament.

The cabinet is collectively responsible for its policies to Parliament and may be voted out of office by a vote of no confidence.

The Parliament

The Parliament of Barbados is based on the Westminster model. It is composed of the British monarch and the two houses of Parliament—the House of Assembly and the Senate. The House of Assembly has 30 members who are elected in general elections, providing equal representation for the citizens of each constituency.

The Senate consists of 21 members, all appointed by the governor-general. Twelve are appointed on the advice of the prime minister, two on the advice of the leader of the opposition, and seven at the governor-general's discretion to represent religious, economic, social, or any other interest the governor-general deems appropriate.

The Parliament's term of office is five years.

The Lawmaking Process

Laws are made by Parliament. Bills may be introduced by any member of either house. Passage requires the approval of a majority of votes in both the House of Assembly and the Senate. However, the House of Assembly can ultimately override the Senate's rejection. Money bills containing solely financial provisions can only be introduced in the House of Assembly and may be passed with-

out the Senate's consent. For a bill to go into force, the governor-general's formal assent on behalf of the Crown is required.

The Judiciary

The legal system is based on the British adversarial system in both civil and criminal cases. The judiciary is independent of the executive and the legislative.

The constitution provides for a Supreme Court of Judicature; composed of a High Court and a Court of Appeal. Each of these courts has four judges, with the chief justice presiding in both.

The High Court is the court of original jurisdiction for civil and criminal matters as well as for individual allegations of violations of fundamental rights and freedoms. There is no further constitutional jurisdiction. The High Court's decisions may be appealed in the Court of Appeal.

The court of last instance used to be the Judicial Committee of the Privy Council in London. It has now been replaced by the Caribbean Court of Justice of the Caricom Single Market and Economy (CSME).

Important rulings of the Judicial Committee in recent years concerned the consistency of the death sentence with the constitution of Barbados. At present, a number of cases are pending with the Inter-American Commission on Human Rights challenging the mandatory death sentence for murder without provision for extenuating circumstances.

THE ELECTORAL PROCESS

Any person aged 21 or older is eligible to stand for office as a member of Parliament. Ministers of religion may not run for the House of Assembly, and holders of certain public offices in the judiciary and the executive may not serve in either house of Parliament.

Further details on the electoral process are specified in the electoral law. All citizens aged 18 or older may vote. Constituencies are won by majority of votes.

POLITICAL PARTIES

The party system is pluralistic. However, the electoral system favors major parties, and, as a result, there are only three political parties in Barbados. The two larger parties represented in Parliament are the Barbados Labour Party (BLP) and the Democratic Labour Party (DLP).

CITIZENSHIP

Citizenship is acquired by any person born on Barbadian territory or to a father who is a citizen of Barbados. Women can become citizens by marriage.

FUNDAMENTAL RIGHTS

Chapter III of the constitution provides for the protection of individual rights. It provides protection for life, liberty, and security; for the privacy of an individual's home; against deprivation of property without compensation; and for protection of the law. Additionally, it secures freedom of conscience, of expression, and of assembly and association. Fundamental rights can be limited to protect the rights and freedoms of others or the public interest. Generally, fundamental rights and freedoms are respected by public authorities.

Redress for violations of fundamental rights may be sought in the High Court without prejudice to any other legal action.

ECONOMY

The economy is market based.

The constitution provides for the protection of property as a fundamental right. Deprivation of property is strictly limited and may not be exercised without compensation. Any person claiming such compensation must be given access to the High Court for the determination of his or her rights and the amount of compensation.

RELIGIOUS COMMUNITIES

Freedom of conscience is granted as a fundamental right and the government strives to protect this right. The constitution offers no special protection for any religious community. Ministers of religion are not eligible to become members of the House of Assembly.

MILITARY DEFENSE AND STATE OF EMERGENCY

Barbados has a small army made up of volunteers. The army is responsive to civilian authority. Besides being responsible for national security, the Barbados Defense Force assists the police forces regularly in times of emergency, the sugar harvest, or any other special need.

The power to declare a state of public emergency is vested in the governor-general. The proclamation of a state of emergency is generally valid for one month and may be extended to a period of up to six months. It may be revoked by the House of Assembly.

AMENDMENTS TO THE CONSTITUTION

Amendments to most sections of the constitution require a majority of two-thirds of all the members of each house

of Parliament. Amendments establishing new forms of association with any other part of the Commonwealth of Nations require only a simple majority of votes of all members of both houses.

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Larissa Zabel

BELARUS

At-a-Glance

OFFICIAL NAME
Republic of Belarus

CAPITAL
Minsk

POPULATION
9,950,900 (2005 est.)

SIZE
80,155 sq. mi. (207,600 sq. km)

LANGUAGES
Belarusian, Russian

RELIGIONS
Eastern Orthodox 70%, Roman Catholic 20%, unaffiliated or other 10%

NATIONAL OR ETHNIC COMPOSITION
Belarusian 81.2%, Russian 11.4%, Polish 3.9%, Ukrainian 2.4%, other 1.1%

DATE OF INDEPENDENCE OR CREATION
August 25, 1991

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Republic

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
March 30, 1994; fundamentally revised by a national referendum November 24, 1996; effective from November 27, 1996; at a national referendum on October 17, 2004, the constitution was changed again when the electorate (allegedly) supported lifting the two-term limit on the presidency.

DATE OF LAST AMENDMENT
October 17, 2004

Belarus is a social state based on democracy and the rule of law; fundamental human rights are acknowledged. Democracy, the rule of law, and human rights have traditionally not existed in Belarus. They have yet to be implemented in all layers of the society.

The country is organized as a unitary republic with a very strong president from whom most political power radiates. According to the constitution, power is divided; it provides for free elections held on the basis of universal, equal, and direct suffrage by secret ballot.

Religious freedom is guaranteed. The constitution does not prescribe any particular economic system, but many features of the old planned economy still exist. The military is subordinated to the president, who is the commander in chief in peace and wartime.

Belarus pledges to make its territory neutral and nuclear-free.

CONSTITUTIONAL HISTORY

The earliest state institutions appeared on the territory of Belarus in the seventh to the ninth century C.E. In the 13th century, the Belarusian principalities participated in the formation of the Grand Duchy of Lithuania.

Starting in 1468, various legal codes were written; because of many inconsistencies in the courts, the grand duke called for a consistent general law, which went into force in 1530. Between 1772 and 1795, Belarus was gradually incorporated into the empire, where there were generally no limits to the czar's authority.

The first Russian Constitution (1906) maintained that autocracy since the powers of the parliament were limited and the ministers were exclusively responsible to the czar.

After a short period of independence from 1918 to 1919, the territory of Belarus was gradually incorporated

into the Soviet Union as the Belarusian Soviet Socialist Republic (BSSR).

In the Soviet era, the BSSR saw four different constitutions, each of which was based on the ideology of Marxism-Leninism. As a result of turbulent events in the Soviet Union, BSSR proclaimed its independence on August 25, 1991; subsequently its name was changed to the Republic of Belarus.

In March 1994, Belarus approved a new constitution, which contained provisions for a separation of powers and effective mechanisms of checks and balances. Democracy, protection of human rights, a constitutional court, and a presidential office were also established.

In June 1994, the first presidential elections were held. Alexander G. Lukashenka, who campaigned against corruption and advocated closer ties to Russia and more state control, received 85 percent of the votes in the second round.

Though Lukashenka was elected with an overwhelming majority, conflicts with different parts of the political establishment soon emerged. The Constitutional Court soon found that several of the president's decrees were unconstitutional and, consequently, were invalid. The president reacted by issuing a decree at the end of 1995 obliging the government and local authorities to disregard the court's rulings. This decree was also declared unconstitutional.

The president's relationship to both the pre- and postindependence parliament was also problematic, and Lukashenka twice used national referendums to resolve those conflicts. In both cases the people supported the president, but the November 1996 referendum was very controversial. Lukashenka proposed amendments to the constitution that were so comprehensive that the Constitutional Court considered it to be a new constitutional draft. The court consequently stated that such amendments could not be subject to a referendum because a new constitution cannot be adopted through a plebiscite. Nevertheless, more than 70 percent of the electorate supported the president.

In October 2004, the constitution was changed again as a result of a national referendum, in which the electorate allegedly supported the president's wish to run for a third term, and as such the two-term limit on presidency was abolished.

The amended constitution seems to be influenced by several sources. There are provisions from the American, French, and Soviet constitutions.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is one written document that has supreme legal force. In case of discrepancy between a law, decree, or ordinance and the constitution, the constitution is to prevail.

Though the constitution is relatively new, it has had a major impact because of its differences from the Soviet model. The changes adopted in 1996 have also had a significant impact, since they turned Belarus from a parliamentary to a presidential state, where the president has extensive powers.

BASIC ORGANIZATIONAL STRUCTURE

Belarus is a unitary state, arranged in three tiers: regions, districts, and cities. Local administration is based on local councils and on local executive and administrative authorities. The citizens elect the local councils for a four-year term.

The chairs of the local executive and administrative authorities are appointed and dismissed by the president. Other subnational officials are appointed either by the corresponding legislative bodies or by the head of the local or regional executive branch.

LEADING CONSTITUTIONAL PRINCIPLES

Belarus is defined as a unitary republic and a democratic and social state, based on the rule of law. Furthermore, Belarus pledges to be a neutral and nuclear-free state. The constitution recognizes universal principles of international law and provides that the country ensure that its legislation complies with such principles. It is also stated in the constitution that Belarus recognizes the values common to all humankind.

The constitution stipulates the division of powers, but not consistently. Checks and balances among the branches of government have been supplanted by the domination of the executive.

CONSTITUTIONAL BODIES

The most important body is the presidency. Others are the administration or Council of Ministers, the two chambers of the National Assembly or parliament, and the judiciary, which are all subordinate to the president.

The President

The president is the head of state and the guarantor of stability in the country. The president has a constitutional right to convene and dissolve the parliament and to issue decrees that have the force of laws. The president appoints all significant officeholders both in the central government and in the regions. The president is outside the framework of the separation of powers and coordi-

nates and mediates among the other branches of state power. The president enjoys immunity, and the law protects his or her honor and dignity.

The president is elected directly by the people for a term of five years. The president may be impeached by a two-thirds vote of the deputies in both chambers, and both chambers must act within one month of each other.

The Council of Ministers (The Administration)

The Council of Ministers consists of the prime minister, two vice–prime ministers, and other ministers. The president with the consent of the House of Representatives appoints the prime minister. The Council of Ministers is accountable to the president and responsible to the parliament.

The National Assembly (The Parliament)

The National Assembly is the representative and legislative body. It consists of two chambers, the House of Representatives (the lower chamber) and the Council of the Republic (the upper chamber), which represent the various territories.

Both chambers are elected at the same time for four years. Their sessions begin and end at fixed dates, and they meet for 170 days each year.

The Lawmaking Process

Legislative initiative belongs to the president, the deputies of the two chambers of parliament, the Council of Ministers, and a bloc of a minimum of 50,000 eligible voters. However, only the president and the Council of Ministers have the right to introduce draft laws to the House of Representatives that involve a decrease of state funds or an increase in expenditures.

The Judiciary

The constitution states that judges shall be independent and subordinate to law alone. However, appointment of most judges is under presidential control, and so is dismissal from some of the important judicial posts.

The Constitutional Court

The Constitutional Court, which supervises the constitutionality of all enforceable enactments, can only examine cases on recommendation of the president, the chambers of parliament, the Supreme Court, the Supreme Economic Court, or the Council of Ministers.

The Constitutional Court consists of 12 judges. The president appoints the chairperson and five members, and the Council of the Republic elects the additional six members. Judges serve a term of 11 years.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Citizens over the age of 18 are eligible to vote in elections.

Presidential elections and elections to the lower chamber of parliament are free and held on the basis of universal, equal, and direct suffrage by secret ballot. Elections to the upper chamber are partly indirect; in addition, eight of its members are appointed by the president.

Citizens who are at least 35 years old and who have been residents in Belarus for at least 10 years prior to the election may be elected president. To be nominated, candidates need a minimum of 100,000 signatures of eligible voters.

Citizens who are at least 21 years old may be elected to the House of Representatives. One deputy is elected from each of 110 constituencies. Candidates can be nominated by political parties, labor collectives, or citizens.

Citizens who are at least 30 years old and who have been living in the respective region at least five years prior to the election may be elected to the Council of the Republic. The council consists of 64 deputies. Eight are appointed by the president, and eight are chosen from every region and from the capital by deputies of local councils; all members must be approved by the president's representatives in the regions.

Other Forms of Political Participation

It is possible to hold referendums on the national and on the local level, and citizens also have the right to hold rallies, assemblies, marches, demonstrations, and pickets.

POLITICAL PARTIES

Belarus is a pluralistic state where the diversity of political institutions, ideologies, and views is acknowledged.

Political parties need to register with the authorities. There are 17 registered political parties. A few of them support the current regime, while the majority are in the opposition. In general, they enjoy little popular support and have few members. It is possible to ban parties, but this has only happened once.

CITIZENSHIP

Citizenship is primarily acquired by birth. A child born to Belarusian parents becomes a Belarusian citizen, regardless of his or her place of birth.

FUNDAMENTAL RIGHTS

According to the constitution, the people of Belarus adhere to the values common to all humankind. Article 2

states that the supreme goal and value of society and the state are to guarantee the individual his or her rights. The constitution enunciates a long list of fundamental rights and a number of duties.

Belarus is a social state, and thus many social rights are granted to the citizens.

Functions and Impact of Fundamental Rights

Everyone has the right to appeal to international organizations to defend his or her rights, provided all internal state means of legal defense have been exhausted.

Limitations to Fundamental Rights

The constitution provides that restrictions on personal rights and liberties shall be permitted only in the instances specified in law, in the interest of national security, public order, or the protection of the morals and health of the population or the rights and liberties of other persons. No one may enjoy advantages and privileges that are contrary to the law.

ECONOMY

The constitution does not prescribe any particular economic system. Property can be private as well as state owned, but some natural resources can only be state owned. After independence, the privatization of state enterprises began, but from 1995, the political agenda changed, and the process has since dramatically slowed. Nationalization of property is only permitted in case of public need.

The National Bank is under direct governmental supervision, and the president has the right to appoint and dismiss the chairperson and the entire board. The president has dismissed the chairperson only once.

RELIGIOUS COMMUNITIES

Religions and faiths are equal before the law, and everyone is guaranteed freedom of belief. The law states, however, that unregistered religious activity is illegal.

The authority responsible for registration had by January 2002 registered 26 different denominations. They included the traditional Belarusian religious groups, several nontraditional groups, and a few Eastern religious groups.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution expects Belarus to defend its independence, territory, and constitutional system and to safeguard law and order. Every citizen is responsible for defending the country. Men are required to perform 18 months of military service from the age of 18. The president is the commander in chief, and he or she also appoints the heads of the Security Council. The president can impose martial law, announce mobilization, and declare a state of emergency.

The powers of parliament may be extended in the event of war.

AMENDMENTS TO THE CONSTITUTION

Only the president or a minimum of 150,000 citizens can initiate changes to the constitution. The issues in question must be debated and approved twice by at least two-thirds of both chambers of parliament, which must act with at least a three-month interval between the two votes in each house.

Sections one, two, four, and eight, which concern the principles of the constitutional system, can be amended only by a referendum. The constitution cannot be changed during a state of emergency or during the last six months of the term of the House of Representatives.

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Susanne Hansen

BELGIUM

At-a-Glance

OFFICIAL NAME
Kingdom of Belgium

CAPITAL
Brussels

POPULATION
10,309,700 (2005 est.)

SIZE
11,799 sq. mi. (30,559 sq. km)

LANGUAGES
Dutch, French, German

RELIGIONS
Roman Catholic 70%, Protestant 1%, Muslim 4%, nonbelievers and small religious groups 25%

NATIONAL OR ETHNIC COMPOSITION
Dutch-speaking region 57.81%, French-speaking region 31.95%, bilingual region of Brussels-Capital 9.56%, German-speaking region 0.68%

DATE OF INDEPENDENCE
November 18, 1830

TYPE OF GOVERNMENT
Parliamentary monarchy

TYPE OF STATE
Federal state that grew out of a unitary decentralized state

TYPE OF LEGISLATURE
Bicameral parliament (federal), asymmetric regional structures

DATE OF CONSTITUTION
February 7, 1831

DATE OF LAST AMENDMENT
March 26, 2005

Belgium is a parliamentary democracy based on the rule of law with a division of executive, legislative, and judicial powers. At the same time, it is a constitutional monarchy. Belgium has three communities: the French, the Flemish, and the German. It is divided into three regions (the Walloon Region, the Flemish Region, the Brussels-Capital Region). The constitution offers adequate guarantees for the protection of human rights. There is a Court of Arbitration that determines whether legislation is in compliance with the allocation of powers provided under the constitution and its enabling laws.

The king is the head of state. The monarchy is the living symbol of the continuity of the nation. The real power lies with the administration, which is responsible to Parliament. Democratic elections are compulsory for all citizens 18 years old and older. Belgium has a pluralistic system of political parties. As no political party extends across all the linguistic communities, there are no parties operating on the entire territory of Belgium.

Religious freedom is guaranteed. The state and religious communities are mutually independent. The economic system is a social market economy, with strong but slowly weakening trade unions. The military is entirely subject to the civil government.

CONSTITUTIONAL HISTORY

The Kingdom of Belgium was created in 1830; yet its roots go much deeper. In the late Middle Ages, present-day Belgium was divided into various autonomous counties, principalities, and cities. In the 15th century, the dukes of Burgundy undertook a successful centralization policy, which led to the creation of the 17 provinces covering the current Belgium, the Netherlands, Luxembourg, and parts of northern France. The 17 provinces were linked by dynastic bonds but also by common political institutions.

Mary of Burgundy (1457–82) married Maximilian of Austria, putting the realm under the Habsburg dynasty. The Habsburg Holy Roman Emperor Charles V (1500–58) maintained the centralization policy started by the dukes of Burgundy. His son, Philip II (1527–98), ruled the provinces from Spain, pursuing an absolutist policy at a time of political and religious instability. His unconditional support of the Roman Catholic Church provoked the northern, Protestant part of the 17 provinces to revolt. As a result of the Union of Utrecht (January 1579), an independent state was proclaimed in the north—the Seven United Provinces. The intelligentsia from the south left for the north. This, together with a blockade of the crucial port of Antwerp, led to a deep economic crisis in what was left of the 17 provinces, more or less corresponding with the current Belgium. Political autonomy decreased. Various foreign rulers occupied the country, including the Austrians (1714–94) and the French (1795–1814). At the Convention of Vienna in 1815, Prussia and England wanted to create a barrier against French imperialism by reunifying the old 17 provinces together with the prince-bishopric of Liège. This led to the creation of the United Kingdom of the Netherlands (1814–30), governed by the Dutch king, William I.

The industrial and economic policies conducted by this king were efficient, but in various other fields, William I was less successful. In order to create a spirit of national unity, the king tried to unify the education system under the state and to build a Catholic Church free of foreign control. The powerful Roman Catholic Church opposed both reforms.

Liberals were also disappointed with the king. William I promoted the use of Dutch language, making it mandatory in the administration and to some extent even in the schools of the southern provinces. The liberals did not appreciate this policy, as many of them belonged to the French-speaking upper middle classes; they also opposed the constitution of 1815, which endowed the king with very broad powers. The king considered himself to be vested with all powers that were not formally attributed to some other body.

Ultimately, the king created an almost unanimous feeling of discontent in the south.

Since peaceful opposition was of no avail, a revolution broke out. The September riots of 1830 led to the proclamation of Belgian independence on November 18 of that year. After the first elections, in which only 1 percent of the Belgian population was entitled to vote, the National Congress finalized a draft text for the Belgian constitution. Although the new constitution was influenced by older documents, including the 1815 United Kingdom of the Netherlands constitution and the French constitutions of 1791 and 1830, it was seen as quite innovative. Tolerant liberals and open-minded Catholics found it a very balanced document. Belgium became a constitutional monarchy, with a king who had to accept the responsibility of his government ministers before parliament. Rights and liberties were clearly specified.

The system of parliamentary monarchy introduced in Belgium soon appealed to other nations in Europe. Between 1837 and 1866, the Belgian constitution was more or less copied by other constituent assemblies, such as those of Spain (1837), Greece (1844 and 1864), Luxembourg (1848), Prussia (1850), and Romania (1866). It was a source of inspiration for many other countries.

Today, the 1831 constitution still exists. However, it has undergone some important changes, especially concerning democratic standards and federalism. The first two revisions of the constitution (1893, 1920–21) turned the liberal constitution of 1831 into a really democratic one. In 1831, only persons paying at least a certain amount of taxes were allowed to vote. The 1920–21 revision of the constitution formalized universal adult male suffrage, ratifying a condition that had existed de facto since 1919. The constitution explicitly provided that the right to vote could be extended to women by a two-thirds vote in the parliament. This was done in 1948.

In 1831, Belgium was a unitary state. Since 1970, the country has gradually become a federal state. The fourth state reform of 1992–93 finally stabilized this centrifugal process. The federal character of the state is now solemnly proclaimed in the amended Article 1 of the constitution: “Belgium is a federal state, composed of the communities and the regions.”

Belgium is a member state of the European Union and a member of the North Atlantic Treaty Organization (NATO).

FORM AND IMPACT OF THE CONSTITUTION

Belgium has a written constitution, codified in a single document, made and modified by a constituent assembly that uses a procedure more formal and more difficult than the procedure used to pass ordinary federal laws. The constitution is a solemn, rather inflexible set of rules that are the supreme law of the land.

The highest lawmaking authorities are those at the international level. Internally, there are three levels of norm-making authorities. In descending order, they are the constitution-making level, the legislative level, and the executive level.

The constitutionality and the legality of all norms can be reviewed by courts or tribunals or by administrative agencies, with but one exception: the constitution itself. Where fundamental rights and freedoms are concerned, the courts and tribunals must test the legality of a norm in the formal constitution in light of international treaties to which Belgium has adhered.

The Belgian constitution, in the substantive meaning of the word, is not to be found in toto in the text bearing the title of *constitution,* nor is every article of the written constitution truly a fundamental and general rule, concerned with the institution and powers of the state or the

rights of the individual. The substantive constitution has many rules originating in other sources than the constituent assembly.

The substantive constitution includes most articles of the formal constitution but also of decrees on legislation passed prior to the 1831 constitution, certain federal acts, and custom or unwritten rules.

BASIC ORGANIZATIONAL STRUCTURE

Belgium is a federal state with a parliamentary system. The country comprises communities and regions. The communities and regions have partly overlapping territories, though their authority covers different subject matters. Moreover, each has its own institutions.

The constitution acknowledges the existence of three communities: the French community, the Flemish community, and the German-speaking community. If *communautarisation* (the creation of the communities) was principally a response to Flemish aspirations, *regionalisation,* the creation of the regions, sought to meet the desire for economic autonomy of the Walloons. Three regions exist: the Walloon region, the Flemish region, and the Brussels-Capital region.

The double set of federated entities has created a complex institutional framework. Each community and each region has a legislative body, called a council, and an administration, called the executive. Yet, instead of six councils and executives, there are in fact only five. In Flanders, the councils and executives of the Flemish community and the Flemish region, though not legally merged, are organized and managed as one entity.

Contrary to the situation in most federal states, the communities and regions in Belgium are not empowered to create the rules concerning their own institutions. They cannot have a constitution of their own. The rules that determine the composition and operation of their institutions are provided for in the federal constitution and in the double and ordinary majority legislation implementing the constitution.

Each of the two types of federal unit has its own exclusive powers. The powers of the communities relate to cultural matters such as education, aspects of health care and social assistance, language, cooperation between the communities, and international cooperation. The regions have broad powers in the economic area, including environment, rural development, housing, nature conservation, water policy, economic affairs, energy policy, public works and transport, and employment policy.

The constitution also recognizes and guarantees the existence of 10 provinces and of an undefined number of municipalities. All these are territorial subdivisions with a political structure that participates in the main functions of the state. They have the power to issue legislation, to shape their own policies in the light of the local general welfare, to raise taxes, and to approve their own budget.

LEADING CONSTITUTIONAL PRINCIPLES

Belgium's system of government is a parliamentary monarchy. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances.

The decision of the National Congress in 1831 to make Belgium a hereditary monarchy was a pragmatic and political choice. On the one hand, a hereditary monarch seemed to allow a more perfect parliamentary system, and on the other hand, a judicious choice of a monarch would make the new state more acceptable to the powers of the time. The parliamentary regime rests upon the principle of periodic free elections to form an assembly competent to create legislation and with the power to control the executive.

The rule of law also is a leading principle. The written constitution sets out and limits the power of the state and of all authorities within the state. The Belgians were of the opinion that people build a state because they need such a social structure. Consequently, the state should be their protector and their servant. In that regard, the first article of the constitution, dealing with the institutions and the powers of the state, clearly states that all powers emanate from the people and must be exercised in the manner established by the constitution.

Other important principles are the equality of all Belgians before the law and the guarantee of individual liberty. The constitution contains a well-elaborated bill of rights that is not limited to Belgians but is extended to all foreigners who find themselves on Belgian territory.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the king, the federal administration, and the Parliament. The Court of Arbitration also plays a vital role. The lawmaking process and the judiciary are worked out in detail.

The King

The king is the head of state. Because the king himself is inviolable and unaccountable, he appoints ministers and state secretaries who are responsible for his acts. Consequently, the constitutional notion of the king refers both to the person of the king himself and to the responsible ministers and state secretaries. The executive has therefore a dualistic structure.

The monarchy is hereditary in the line of natural legitimate heirs of King Leopold I, in order of primogeniture. Since the 1991 revision of the constitution, the succession of the throne has been extended to female descendants.

The king cannot act independently and has no personal power. He exercises all his powers together with the ministers. However, the fact that the king has no personal power does not mean that he has no political influence. That influence can only apply insofar as it is accepted by the ministers and through them by Parliament. The king exercises his political influence most of all during the process of forming a new federal government and through his consultations.

Historically, Belgian kings often saw their role as active participants in politics. For example, King Leopold III found himself in open conflict with his ministers before and during World War II (1938–45). On July 16, 1951, he abdicated under heavy political and social pressure.

King Baudouin, in 1990, refused to sign a liberal law on abortion. To solve the constitutional problem that resulted, Baudouin was declared to be in a state of incapacity. The ministers meeting in council, under their own responsibility, exercised the powers of the king and signed the new law, and the king resumed his functions.

In general, the evolution of Belgium toward a federal state resulted in an increased role for the monarchy, which now functions as a link between the federal entities and a counterbalance to centrifugal tendencies.

The Federal Government

The federal government (administration) is the political nerve center of Belgium. Regional structures are becoming increasingly important, but the federal government remains the dominant factor.

The king appoints the ministers and state secretaries. De facto, he accepts the candidates proposed by the coalition partners in the administration. King Baudouin (1930–93, king since 1951) sometimes refused to appoint ministers he disliked personally. His successor, Albert II, discontinued this debatable tradition.

Since 1970, the constitution requires a balanced composition of the Council of Ministers. With the possible exception of the prime minister, the Council of Ministers is composed of an equal number of French-speaking and Dutch-speaking ministers.

The federal administration is based upon a parliamentary majority. In normal circumstances, the king decides who will form the new administration, most of the time the same person as the future prime minister. However, he does not exercise that role after a "constructive motion of no confidence," when the House of Representatives withdraws its confidence in a "constructive way," by directly appointing a successor to the prime minister at the same time as the no-confidence vote, or within a period of three days after a motion of confidence has been rejected.

The constitution does not provide a solution when this successor fails to form a new administration. However, parliamentary elections are the most likely result.

The Federal Parliament

The federal Parliament has two branches, the House of Representatives and the Senate.

The House of Representatives is composed through direct elections, for a maximal period of four years. The number of members is fixed at 150. The House of Representatives exercises general political control over all the decisions of the federal government. It also plays a key role in the process of legislation, sometimes together with the Senate. The constitution splits federal subject matter into three parts: those in the sole competence of the House of Representatives, those that are equally within the competence of the two houses and require an identical procedure and decision in both, and those in the competence of the House of Representatives but that the Senate may discuss and seek to amend.

The Senate has four categories of members: (1) senators appointed by and from within the councils of the three communities (Flemish, French, and German), (2) senators elected by each language group (Flemish and French), (3) senators co-opted by the senators representing the Flemish or the French citizens, and finally (4) senators by law, namely, the children of the king, or, if the king has no children, the descendants of the reigning branch of the royal family. Currently, the Senate is seen primarily as a place for deeper reflection on issues of importance to the country.

The Lawmaking Process

The initiative for legislation lies with the administration and with each member of the two houses. Once a bill is introduced by the administration, Parliament cannot refuse to discuss it. Each house can refuse to discuss a private member's bill but does so very rarely, for instance, when the proposed text is manifestly unconstitutional.

In case a bill is adopted, the government transmits it to the king, who signs it, sanctions it, and promulgates it as a statute.

The Court of Arbitration

The Court of Arbitration, a constitutional court, was created during the 1980 constitutional revision. The establishment of a constitutional court was an important innovation in Belgian constitutional law. Even in 1980, the innate mistrust of a "government by judges" did not disappear entirely, and the court's jurisdiction was limited to conflicts of power between the various legislatures. This was even reflected in the name given to the court, Court of Arbitration.

The court's jurisdiction was extended during the third state reform in 1988–89. The court was now empowered to review whether legislative norms (federal statutes and decrees, and ordinances of communities and regions) conformed to three constitutionally guaranteed fundamental rights: the principles of equality and nondiscrimination and the right to and freedom of education.

The Judiciary

The judiciary in Belgium is independent of the executive and legislative branches and is a powerful factor in legal life. The Belgian judicial organization is built on two main principles: that there should be a court or tribunal for every dispute and that the ordinary courts and tribunals are competent for all disputes about individual rights.

The ordinary courts and tribunals are organized according to the principles of specialization and territorial justice. In this system, the Cour de Cassation (court of final appeal) is the Supreme Court.

In the realm of administrative courts and tribunals, the highest and most important court is the Council of State, created only in 1946.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All representative assemblies are composed through elections organized according to the same principles: universal suffrage in single-member districts, compulsory voting, publicity (transparency), periodic and free elections, secrecy of the vote, and proportionality.

Citizens of the European Union who do not have Belgian nationality but live in Belgium can take part in the elections and in elections for the European parliament, after registration as voters. Starting in 2006, non–European Union residents will also be able to vote in municipal elections.

In the elections, seats are distributed among the districts in proportion to population. Candidates are elected by votes cast for them or for their party via proportional representation.

POLITICAL PARTIES

Belgium has a pluralistic system of political parties. They play an important part in the public life of the country, even though they are not mentioned in the constitution and are merely de facto associations having no legal personality. They receive funding from the state in proportion to their electoral strength.

Since usually no party is able to secure an absolute majority in elections, coalition governments are required. The process of forming an administration after general elections is mainly the result of negotiations among parties. The parties and their leaders, and not the electorate, have the final say. In particular, the growing linguistic and community division of political parties has resulted in an increasing number of parties and in the need to form coalitions across these divides.

CITIZENSHIP

Belgian citizenship is primarily acquired by birth. A person whose father or mother, on the date of birth, is a Belgian national becomes a Belgian citizen, even if that person is born outside Belgium.

Obtaining Belgian citizenship for foreigners living in Belgium has become increasingly easy.

FUNDAMENTAL RIGHTS

Fundamental rights are very important in the Belgian constitution. Their prominent presence in 1831 was one of its main attractions. These rights derive from the following principles:

All human beings are born persons at law. This means that they never can be made into mere objects of law or human actions. This is the reason why slavery, under whatever name or in whatever form, is prohibited.

The recognition of every human as a person is the first step in the recognition of human dignity. This dignity entails further that he or she is entitled to certain care and attention from the society in which he or she lives. This care finds expression in specific rights such as the social, economic, and cultural rights mentioned in the constitution, but also in the right of equal treatment.

Equality is also a key notion. The constitution says that the Belgians are equal before the law. This does not mean that the treatment is materially equal. While equals will be dealt with equally, those who are unequal will be subject of a different legal approach.

Of utmost importance is the principle of legality: A lower norm should always rest upon a higher norm, and a lower norm should never be inconsistent with a higher norm. Since all authorities function under the law, they all have to conform to these highest norms in whatever they do.

A further key idea is the presumption of freedom. The individual is allowed to do everything that is not explicitly forbidden by law.

Finally, there is a ban on preventive measures. This principle is recognized by an unwritten rule with constitutional authority. Preventive measures are interventions by the authorities aimed at preventing the exercise of freedoms by a general rule (e.g., by forbidding all public processions).

The importance of fundamental rights cannot be overestimated. They have a defensive function; yet they also involve the right to participate in the democratic political process. Moreover, they are also an important source of emancipation.

Yet, fundamental rights and freedom are not absolute. They have both natural and legal limits. Three natural limits can be evoked: Rights have no effect outside the context of human existence and activity; they cannot be used in opposition to their reason of existence; the very existence of other persons who have the same personal freedom also constitutes a natural border.

ECONOMY

The Belgian constitution does not specify an economic system. Taken as a whole, the Belgian economic system

can be described as a social market economy. The constitution provides for a right to education and guarantees socioeconomic fundamental rights. Some of these socioeconomic fundamental rights are specified in ordinary legislation, such as the right to social relief and assistance.

RELIGIOUS COMMUNITIES

Freedom of religion and belief is constitutionally recognized in Belgium. There is no established church, but the state maintains privileged relationships with six recognized religious groups (Catholics, Protestants, Anglicans, Jews, Muslims, and Orthodox Christians) as well as with nonconfessional humanists. In principle, the salaries and pensions of their ministers are paid for by the state. Separation is not the best way to describe the actual relationships between religion and state; mutual independence gives a better idea. This characterization emphasizes not only freedom but also the notion of accepting each other's existence.

The independence and self-determination of the religious communities are very important. However, in recent years, secular judges have played a greater role in religious administration. They can rule whether a challenged decision by a religious body was made by the right church authority and in accordance with correct internal procedure.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces fall under the competence of the federal government. In matters of national defense, the executive power plays a predominant role, subject to the ordinary procedures of political supervision. The king has the power to command the armed forces, declare war, and conclude peace treaties as well as treaties of alliance and commerce.

Generally, Parliament can intervene only after the decisions have been made. Nevertheless, a prior decision of Parliament is necessary in some cases. It determines the method of recruiting for the army and determines its size.

No foreign troops can be admitted to the service of the state, nor can they occupy or pass through its territory, except by virtue of a law. In pursuance of this provision, a law of 1962 provides that armies of countries that, as is Belgium, are part of NATO may be stationed on Belgian territory or may pass through it. The military always remains subject to civil government, whatever the political or military circumstances.

Compulsory military service no longer exists. When it did, conscientious objection was allowed, with alternative service required, a system that led to some problems with Jehovah's Witnesses.

AMENDMENTS TO THE CONSTITUTION

The constitution forbids all revisions in time of war or periods when the two houses of Parliament cannot converse freely on federal territory. Revision of the article concerning the status and powers of the king is forbidden during times when the king cannot exercise his authority by himself. Otherwise, revision is possible. The constitution provides a somewhat long amendment procedure, requiring the cooperation of two consecutive parliaments and the approval of the text by a two-thirds majority in both houses.

The process has three phases: (1) a statement of revision by the three branches of the federal legislature (House of Representatives, Senate, and king), enumerating the articles of the constitution they think should be revised; (2) the regularly scheduled elections that follow the statement of revision, which allow the voters to elect candidates who represent their views concerning the revision; and (3) the work of the constituent assembly, which is free to revise the constitution or not and to decide the wording of the modifications, within the limits enumerated in the statement of revision.

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Rik Torfs

BELIZE

At-a-Glance

OFFICIAL NAME
Belize

CAPITAL
Belmopan City

POPULATION
272,945 (2004 est.)

SIZE
8,867 sq. mi. (22,966 sq. km)

LANGUAGES
English (official), Spanish, Mayan, Garifuna (Carib), Creole

RELIGIONS
Roman Catholic 49.6%, Protestant (Anglican 5.3%, Methodist 3.5%, Mennonite 4.1%, Seventh-Day Adventist 5.2%, Pentecostal 7.4%, Jehovah's Witnesses 1.5%) 27%, none 9.4%, other 14%

NATIONAL OR ETHNIC COMPOSITION
Mestizo 48.7%, Creole 24.9%, Maya 10.6%, Garifuna 6.1%, with minority groups of North Americans, Europeans, Chinese, and East Indians

DATE OF INDEPENDENCE OR CREATION
September 21, 1981

TYPE OF GOVERNMENT
Constitutional monarchy with parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
September 21, 1981

DATE OF LAST AMENDMENT
December 31, 2001

Belize is a constitutional monarchy with Queen Elizabeth II of the United Kingdom as titular head of state, represented locally by a Belizean governor-general. The country enjoys a parliamentary democracy based on the rule of law with a clear division of executive, legislative, and judicial powers and with a recognized leader of the opposition.

Belize has a written constitution, which is expressly recognized as the supreme law; any other law inconsistent with it is, to the extent of the inconsistency, null and void. The governor-general's functions are mostly representative and ceremonial; the governor-general assents to all laws passed by the National Assembly of Belize.

The central figure in the administration of Belize is the prime minister, who is the leader of the political party that commands the support of the majority of the members of the House of Representatives.

The cabinet consists of the prime minister and other cabinet ministers, who are appointed by the governor-general acting on the advice of the prime minister. It is the principal executive instrument of policy, responsible for the general direction and control of the government of Belize. Cabinet ministers must be members of the House of Representatives or the Senate.

Periodic elections, usually every five years, are held for membership of the House of Representatives. These elections are free, general, and direct on the basis of a pluralistic system of political parties. The Senate, which together with the House of Representatives constitutes the legislature of Belize, is composed of appointed members.

Religious freedom is guaranteed, and state and religious institutions are separated. The economic system can be described as a developing market economy. The military and the police are subject to the civil government by law and in fact.

CONSTITUTIONAL HISTORY

The country that is today known as Belize was, during the classic Maya period (300–900 C.E.), part of the Maya Empire with a flourishing Maya Indian civilization.

The advent of a European presence in the area, after the Spanish expansion into the New World in the 1500s, was the beginning of modern Belize. English buccaneers used the coastal waters around the area to prey on Spanish shipping; they subsequently established settlements in the Belize River valley to engage in logging, after buccaneering was abolished in 1667.

The settlements grew and expanded without any formalization of their legal status. The first attempt to constitute some formal governance for the area was Burnaby's Code in 1765. The code was named after Admiral Burnaby, the then commander in chief of Jamaica, who visited the area to ensure that the settlers were allowed to cut timber. The simple regulations introduced by the code were intended to maintain some sort of order.

On September 10, 1798, the Baymen, as the settlers came to be known, together with their African slaves who had been taken in to help cut log wood and timber, beat back Spanish attempts to overrun the settlements at the Battle of Saint George's Caye. By the end of the 18th century, a rudimentary system of government existed in the Bay Settlement. This consisted of a paid superintendent; a bench of seven magistrates elected annually who acted in both a judicial and executive capacity; and a public meeting as a legislative body. A supreme court was established in 1819, and a legislative assembly met for the first time in January 1854 with 21 members, of whom 18 were elected and three nominated by the superintendent. In 1862, Britain declared British Honduras, as the settlement began to be formally known, a Crown Colony.

Constitutional self-government was achieved in 1964 with George Price as the premier. In 1973, the country's name was officially changed to Belize, and the capital moved from Belize City to Belmopan.

After a Constitutional Conference in London in April 1981, Belize formally became independent and a member of the Commonwealth on September 21 of that year. It later was admitted to the United Nations.

Belize is also a member of the Caribbean Economic Community (CARICOM), a treaty arrangement designed to foster and enhance regional cooperation and development. Two important institutions in this regard are in the process of implementation and establishment, namely, the CARICOM Single Market and Economy (CSME) and the Caribbean Court of Justice (CCJ).

FORM AND IMPACT OF THE CONSTITUTION

Belize has a written constitution contained in a single document called the Belize Constitution. The constitution takes precedence over all other national law, and any such law inconsistent with it must yield. Although the constitution in its substantive provisions is silent concerning international law, the preamble does state that "the people of Belize . . . require policies of state . . . which protect the environment, which promote international peace, security and cooperation among nations, the establishment of a just and equitable international economic and social order in the world with respect for international law and treaty obligations in the dealings among nations." In order to be applicable in Belize, international law must be in accord with the constitution; treaties must be incorporated into law by an act of the National Assembly. Generally, laws in Belize do comply with the constitution, as its principles and provisions loom large during consideration of the bills and later application of the law.

BASIC ORGANIZATION STRUCTURE

Belize is a unitary state with a central form of government. It is divided into six districts: Belize, Cayo, Corozal, Orange Walk, Stann Creek, and Toledo. It has a representative form of local government. Two cities have elected councils and mayors—Belize and Belmopan. There are also elected Town Boards, mayors for the major towns, and Village Councils with elected chairpersons. Local government is not mentioned in the constitution; it is regulated by various acts.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government is based on the principle of parliamentary democracy along the British Westminster model. The constitution provides for a division between the executive and legislative bodies, but the Westminster style of parliamentary democracy results, in practice, in majority support for the executive in the legislature. The judicial powers are separate and are vested in an independent judiciary.

The Belize constitution is characterized by a number of leading principles: Belize is a sovereign democratic state with a constitutional monarchy in whom all executive powers are vested; it is based on the rule of law. Executive powers are, in practice, carried out by a prime minister with the assistance of a cabinet of ministers.

The constitution is expressly declared to be the supreme law. The rule of law is therefore fundamental. A leading principle of the constitution is its protection of fundamental rights and freedoms. All state actions or legislative measures must generally conform with and not derogate from these rights and freedoms, except to the limited extent permitted by the constitution itself. Part of the structure of the constitution is the freedom of religion, which makes Belize a secular state.

CONSTITUTIONAL BODIES

The principal bodies provided for in the constitution are the governor-general, the prime minister and the cabinet

ministers, the legislature, the judiciary, and the Public Service Commission.

The Governor-General

The governor-general is her majesty's representative in Belize; the holder of the office must be a citizen of Belize. The office, although largely ceremonial, involves some important functions such as appointing the prime minister, who is the leader of the political party that commands the majority of the members of the House of Representatives. The governor-general also appoints the judges of both the Supreme Court and the Court of Appeals; in the case of the chief justice and the justices of the Court of Appeals, he or she follows the advice of the prime minister after consultation with the leader of the opposition.

Executive authority in Belize is vested in her majesty the queen and is exercised on her behalf by the governor-general, in practice by the prime minister and other ministers of the administration. The prime minister is required to keep the governor-general fully informed of the general conduct of the government. There are provisions for acting governor-general and deputy to the governor-general, but there is no provision on the removal of the governor-general, who is said to hold office during her majesty's pleasure.

The Prime Minister and the Cabinet

The Belize constitution vests executive authority in her majesty the queen of England. It is exercised on her behalf by the governor-general either directly or through subordinate officers. The National Assembly does have some powers to confer executive authority on persons other than the governor-general, but this provision has never been put into effect.

The office of prime minister looms large in the exercise of executive or administrative powers. Although most appointments to important public offices are formally made by the governor-general, these appointments are made on the advice of the prime minister. For some appointments, such as the chief justice, justices of the Court of Appeal, and the chair of the Public Services Commission, the governor-general also consults the leader of the opposition.

The prime minister's functions are not explicitly stated in the constitution, but he or she is effectively the head of the executive branch. The prime minister together with other ministers compose the cabinet; together, they act as the principal executive instrument. The prime minister advises the governor-general on the appointment to the offices of ministers and ministers of state from among members of the House of Representatives and the Senate.

The prime minister is appointed by the governor-general; he or she must be a member of the House of Representatives and the leader of the political party that commands the support of the majority of its members. The prime minister can be removed from office within seven days of a successful resolution of no confidence in the House of Representatives, unless the minister resigns or asks the governor-general to dissolve the National Assembly. Any minister's office becomes vacant if the holder ceases to be a member of the House of Representatives other than by dissolution of the National Assembly. In the case of a cabinet minister, the governor-general can keep him or her in office on the advice of the prime minister.

The Lawmaking Process

The National Assembly, the legislature of Belize, is composed of the House of Representatives and the Senate; it has the power to make laws for the peace, order, and good government of the country. Bills must be proposed by the Senate and the House of Representatives and then assented to by the governor-general, after which they become acts.

The Judiciary

The judiciary is independent of the administration and forms a separate branch of the government. The highest court for Belize is still Her Majesty's Privy Council in London, which hears both civil and criminal cases on appeal.

The Court of Appeal is the next court below the Privy Council, and all appeals from the Supreme Court go to the Court of Appeal. The Supreme Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. This in practice means that the Supreme Court hears constitutional cases as well. In this connection, it has decided important cases involving fundamental human rights such as the protection of property, the right not to be deported without due process of law, and the right of an unmarried woman not to be discriminated against on the grounds of her pregnancy. These decisions were upheld by the Court of Appeal.

The Public Service Commission

The Public Service Commission is provided for in Chapter VIII of the constitution. It comprises a chairperson and 18 other members, including some ex-officio members. The chair and non–ex-officio members are appointed by the governor-general, acting on the advice of the prime minister, after consultation of the leader of the opposition.

The commission is responsible for the appointment of persons to hold or act in offices in the public service and exercises disciplinary control over public officers, including those in the military service.

THE ELECTION PROCESS

The minimal voting age is 18. General elections for the House of Representatives are held at periodic intervals of not longer than five years. The prime minister can ask the governor-general to dissolve the National Assembly

and determine the date of general elections. Every Belizean over the age of 18 and resident in Belize for at least one year immediately before the date of nomination is entitled to stand for elections.

POLITICAL PARTIES

Belize has a pluralistic system of political parties that compete vigorously to form the government. The right to associate, and to form or belong to a political party, is guaranteed as a fundamental right by the constitution. There is no power to prohibit or ban political parties except those whose membership is restricted on grounds of race or color.

CITIZENSHIP

Belizean citizenship is primarily acquired by birth. This means that every person born in Belize immediately before Independence Day (September 21, 1981) automatically became a citizen on that day; persons naturalized under the British Nationality Act 1948 while resident in Belize also became citizens of Belize on Independence Day. Persons born outside Belize are also Belizean citizens if a parent or grandparent was a citizen of Belize upon independence.

Every person born in Belize after Independence Day is a citizen at the date of birth, provided neither parent is a diplomat accredited to Belize or neither parent is a citizen of a country with which Belize is at war and the birth occurred in a place under the occupation of that country.

Citizenship can also be acquired by registration, for example, by any person who is married to a Belizean citizen or by persons continuously resident in Belize for five years immediately before the date of application for registration. The constitution allows a Belizean citizen to have dual nationality.

FUNDAMENTAL RIGHTS

The constitution provides in Chapter II for the protection of fundamental rights and freedoms. It guarantees the traditional set of liberal human rights, and civil liberties in addition to some social rights, such as the right to work and the right to privacy and family life.

The constitution first recognizes the entitlement of individuals to fundamental rights and freedoms and then proceeds to guarantee various specific rights and freedoms. The fundamental rights and freedom set out in the constitution have binding force for the legislature, the executive, and all public authorities.

Section 3 sets out the fundamental rights and freedoms of the individual guaranteed by the constitution, Section 4 provides for the protection of the right to life, and Section 5 protects the right to personal liberty. Finally, Section 6 protects the equality of every person before the law and every person's entitlement without any discrimination to the equal protection of the law.

Impact and Functions of Fundamental Rights

The fundamental rights and freedoms provided for and guaranteed in the constitution occupy a central place in the governance of Belize and underpin the supremacy of the constitution itself. Therefore, in the interpretation and application of every law, the rights and freedoms specified in the constitution are always borne in mind. However, these rights more readily apply in the relationship between the individual and government and persons or institutions who could be said to exercise governmental functions or powers. These rights and freedoms do not readily apply in relationships among private persons, who, depending on the right in question, may have a private law remedy in contract or tort. The Supreme Court is given an original jurisdiction to hear and determine any alleged violation of the fundamental rights and freedoms.

Limitations to Fundamental Rights and Freedoms

The constitution recognizes limitations on the various enumerated rights and freedoms; these are designed only to ensure that the enjoyment of the stated rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

THE ECONOMY

The Belize constitution does not specify a particular economic system. However, the second preambular paragraph states that the people of Belize respect the principles of social justice and believe that the operation of the economic system must result in the community's material resources' being so distributed as to subserve the common good. It also states that there should be adequate means of livelihood for all and that labor should not be exploited or forced by economic necessity to operate in inhumane conditions. The constitution, however, explicitly guarantees freedom of property, the freedom of occupation or profession or trade, and the right to form associations. The equal protection of the law for all and the equality of every person before the law also guarantee the sanctity of contracts. Belize is a developing country with an economic system that can be described as a free market economy.

RELIGIOUS COMMUNITIES

Freedom of religion or conscience is expressly recognized and protected as a fundamental human right; it involves

rights for "every recognized religious community." There is no established state church or religion, but there is a collaborative relationship between the government and various religious denominations and groups in the field of education. The state pays most of the salaries of teachers in schools run by these denominations and groups. However, public authorities observe neutrality in their relationship with religious communities. Persons attending educational institutions or in detention or serving in armed forces are not required to take part in any religious ceremony, observance, or instructions that do not relate to their own religions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides for the appointment of the commandant of the Belize defense force (by the governor-general with the advice of the prime minister) but is otherwise silent on the composition, maintenance, and deployment of armed forces in Belize. Such details are provided for in the Defence Act. The defense force is charged with defending Belize, supporting civil authorities in the maintenance of order, and performing such other duties as may be defined by the governor-general. It is, however, clear that the constitution considers the armed forces to be under the authority of the civil government.

There is no conscription in Belize nor requirement for military service. Military service is by voluntary enlistment in periodic recruitment campaigns by the military. The issue of conscientious objection does not arise in Belize as all members of the armed forces are voluntary recruits. No one under 18 years may enlist in the military.

The constitution provides for a "period of public emergency." This is stated to exist in three situations: (1) when Belize is engaged in any war, (2) when there is a proclamation by the governor-general that a state of public emergency exists, or (3) when there is in force a resolution by the National Assembly declaring that the democratic institutions in Belize are threatened by subversion. A proclamation of a period of public emergency may be made as a consequence of such events as earthquakes, hurricanes, floods, or other natural disasters.

A period of public emergency is limited in duration, though it is subject to renewal. The governor-general is empowered to make regulations for the period and purpose of the public emergency. The regulations or orders made thereunder may amend or suspend the operation of any law except the constitution itself. Even in the latter case, however, such emergency regulations cannot be found to violate fundamental constitutional rights and freedoms. Therefore, a period of public emergency can undermine some of those rights.

The National Assembly plays a major role in declaring, continuing, or revoking such a period; as such, an emergency will never result in a change of administration or institution. The proclamation may authorize any person or authority (including the military) to make orders and rules for the emergency.

AMENDMENTS TO THE CONSTITUTION

The Belize constitution itself states how any of its provisions can be amended or altered by the National Assembly. It stipulates certain safeguards that make it difficult to change certain provisions, including the amendment process, fundamental rights and freedoms, the judiciary, and provisions relating to the legislature, its dissolution, and general elections.

Any bill to alter these provisions must be supported by not less than three-quarters of all members of the House of Representatives and shall not be submitted to the governor-general for assent before 90 days have passed after the first introduction of that bill into the house and before the proceedings on the second reading of it in the house have started. Any other provision of the constitution can be altered by the House of Representatives by a vote of at least two-thirds of all members on its final reading.

Every bill proposing an amendment of any section of the constitution must be accompanied by a certificate signed by the Speaker of the house certifying that the provisions of the constitution on alteration have been complied with before it is submitted to the governor-general for assent.

The Referendum Act of 1999 provides that any proposed alteration of the constitution that derogates from the fundamental rights and freedoms guaranteed therein must be submitted to a referendum.

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Abdulai Osman Conteh

BENIN

At-a-Glance

OFFICIAL NAME
Republic of Benin

CAPITAL
Porto-Novo

POPULATION
7,460,025 (2005 est.)

SIZE
44,310 sq. mi. (114,763 sq. km)

LANGUAGES
French (official language), Baatonu, Basa, Dendi, Ditammari, Fon, Fulfulde, Gen, Gulmacema, Gun, Hausa, Nateni, Waama, Yoruba, and many others

RELIGIONS
Traditional 50%, Christian 30%, Muslim 20%

NATIONAL OR ETHNIC COMPOSITION
Aja, Waci, Gen, Xuéda, Xwla, Ayizo, Toli and Fon (south), Yoruba and Gun (Eastern South), Maxi and Yoruba (center), Batumbu, Dendi, Mokole, Fulbe, Cenka, Hausa, Betammaribe, Waaba, Bebelbe, Natemba, Yowa, and Lekpa (north)

DATE OF INDEPENDENCE OR CREATION
August 1, 1960

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 11, 1990

DATE OF LAST AMENDMENT
No amendment

Benin is a unitary democratic state. Its constitution guarantees a wide range of human rights. In 1989, an uprising of the population in which different social groups went on strike forced the government to adopt major political changes, principal among which was the introduction of democracy. The government abandoned the one-party system and called for a national conference, which took place in February 1990 with the participation of all social groups (*forces vives de la nation*) to discuss the new system. The conference called for drafting a new constitution to embed the principles and processes expected of a democratic state. The new constitution was adopted by referendum on December 11, 1990, and is still operative. This constitution establishes a multiparty system with a presidential regime and an independent judiciary. State and religion are separated. There is a market economy.

CONSTITUTIONAL HISTORY

In 1894, after King Gbèhanzin was defeated by French troops, Danhomè (Dahomey) became a French colony. On September 29, 1958, Danhomè voted to remain in the French Community, and on February 15, 1959, the Territorial Assembly adopted the first constitution. On August 1, 1960, the Republic of Danhomè became independent, and the Territorial Assembly adopted the second constitution. In 1963, a military coup d'état headed off an imminent civil war, and a third constitution was adopted by referendum on January 5, 1964. After several additional military coups, a fourth constitution was adopted by referendum on March 31, 1968. Another coup in 1969 installed a military council, which proclaimed yet another constitution on May 7, 1970, which was suspended by another military coup on October 26, 1972.

The country adopted the Marxist-Leninist form of government in 1974 and changed its name to the People's Republic of Benin the following year. On November 30, 1975, a constitutional commission was set up to draft the country's sixth constitution, which was adopted by the National Council on September 9, 1977. In 1989, after multiple strikes and a general social crisis, the government called for a National Conference to discuss the political future. The conference decided to rescind the constitution, put in place a transitional government, and set up a commission to draft a new constitution. The draft produced by the commission was adopted by referendum on December 2, 1990. The act, including the constitution, was published on December 11, 1990. The conference also changed the name of the country to the Republic of Benin. This last constitution includes the African Charter on Human and Peoples' Rights as an annex so that any citizen or resident of the Republic of Benin may seek redress in the courts in case of violation of his or her rights as recognized in the regional human rights system.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is composed of 160 articles, including the African Charter on Human and Peoples' Rights as an annex. It establishes that international law prevails over national law, subject to the principle of reciprocity in international relations, meaning that Benin fulfills its international obligations as long as its treaty partner acts accordingly.

BASIC ORGANIZATIONAL STRUCTURE

The constitution sets up a presidential regime, with some checks and balances. The state is unitary, and there are 12 regions.

LEADING CONSTITUTIONAL PRINCIPLES

In the constitution, there are two leading principles. One is the protection of human rights, established by Articles 7 to 40 and by the African Charter on Human and Peoples' Rights. A Constitutional Court is established with a primary responsibility to ensure such protection. The second principle is democracy combined with the rule of law. The Republic of Benin is governed by institutions established by the constitution, and the citizens are required to disobey any regime that is in violation of the constitution. This principle is reinforced by the African principle of prohibition of unconstitutional change of regime or government.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president, the executive government, the National Assembly, the Constitutional Court, and the rest of the judiciary.

The President

The president is the head of state. He or she is elected by the citizens for a term of five years and can be reelected only once. The president exercises executive power and shares the initiative for legislation with the members of the National Assembly. A presidential candidate must be a citizen of Benin who has lived in the country for the previous 10 years, of good moral standing, between the ages of 40 and 70, and in good health. The Constitutional Court has the jurisdiction to ensure that those conditions are met.

The Executive Government

The executive government is appointed by the president after consulting the National Assembly. The president is the head of government. The president appoints a cabinet minister to coordinate the action of the executive, with informal approval of the National Assembly.

The National Assembly

The National Assembly has legislative power. It shares the initiative for legislation with the president, adopts legislation, and exercises control over the actions of the executive. It is composed of deputies elected for a term of four years. The number of deputies, as established by legislation, is currently 83.

The Constitutional Court

The Constitutional Court must ensure that any law adopted by the National Assembly is in conformity with the constitution and that human rights are respected by the state and individuals. It is composed of seven judges, three appointed by the president of the republic and four by the Bureau of the National Assembly, who serve for a term of five years, renewable only once. The Constitutional Court was set up in June 1993.

The Lawmaking Process

The National Assembly meets twice a year for its ordinary sessions, which last not more than three months each. The right to introduce legislation is shared by the president of the republic and the deputies, but only the deputies can vote on proposals. A simple majority is usually sufficient, except for laws on specific important matters, called organic legislation. Organic legislation, such as the rules for the functioning of the Constitutional Court, requires an absolute majority. The constitution prescribes the possible subject matter of laws.

The Judiciary

The independence of the judiciary is provided for in the constitution, which establishes a Supreme Court as well as additional courts and tribunals. The constitution also states that judges shall be guided only by the law. The Supreme Court is the highest Beninese court and is competent to hear all matters related to the administration, individuals, and national budget. It is also competent to hear matters related to local elections.

In 1999, a High Court of Justice was established in order to try the president of the republic and other members of the executive government when an alleged crime was committed in the pursuit of their functions. It is composed of the members of the Constitutional Court, except its president, six members of the National Assembly, and the president of the Supreme Court.

THE ELECTION PROCESS

All Beninese above 18 years of age have the right to vote. Candidates for elections, other than the presidential election, must be at least 25 years old. To stand for the presidential election, candidates must be at least 40 years old, but younger than 70.

POLITICAL PARTIES

Political parties are allowed as long as they are in conformity with the principles stated in the constitution, specifically concerning human rights and freedom.

CITIZENSHIP

The issue of citizenship is a matter of law. Nationality is acquired by birth or marriage. A child who has one Beninese parent is Beninese, unless he or she chooses not to accept the nationality.

FUNDAMENTAL RIGHTS

The constitution establishes a complex system of human rights protection. It addresses the gamut of political, civil, economic, social, and cultural rights and includes references to the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights, and other international legal materials. Not only are these rights protected in the relationship between the state and the individual but also between individuals. The constitution also affirms the duties that are the counterparts to the rights. The individual has duties in relation to the state but also to the community and the family.

Impact and Function of Fundamental Freedoms

Human rights became central to the political and social struggle of the Beninese people, and most of the demands in 1989 related to the infringement of fundamental rights. The constitution highlights those rights and provides for judicial protection by the Constitutional Court.

Limitations to Human Rights and Fundamental Freedoms

The only limitation of human rights are duties placed upon the individual. Those duties are also protected by the Constitutional Court. The court's jurisprudence has clarified the impact of human rights, especially the impact of freedom.

ECONOMY

The constitution does not stipulate an economic system of choice but provides for the protection of economic rights.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is recognized in the constitution, and there is separation between state and religion. The constitution calls Benin a secular state. The Constitutional Court acts as a human rights court to ensure that religious freedom is respected by the government and individuals.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the head of the armed forces. Any soldier seeking to run in the presidential election must resign from the armed forces beforehand. Defending the state is an obligation of all citizens. There is compulsory military service, but the National Assembly has not adopted any legislation to implement this provision as yet. Considering the history of coups in Benin, the constitution states that a military coup is a breach of duty, is actionable as treason, and calls for civil disobedience in opposition to such coups. The constitution prohibits the president from requesting any external military assistance when faced with a civil crisis or war, except in case of a military coup.

The constitution also provides for a state of emergency, during which the president is granted full powers, subject to the control by the National Assembly, which is automatically called into an extraordinary session.

AMENDMENTS TO THE CONSTITUTION

Amending the constitution is a long and difficult process. The president of the republic and the members of the National Assembly have the initiative. After the proposal, whether from the president of the republic or the assembly, three-fourths of the assembly have to approve the amendment, which is then submitted to referendum; a referendum can be avoided if four-fifths of the members of the National Assembly approve the amendment. The form of the regime (republic) and secularism (*laïcité*) cannot be amended.

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Roland Adjovi

BHUTAN

At-a-Glance

OFFICIAL NAME
Kingdom of Bhutan

CAPITAL
Thimphu

POPULATION
2,185,569 (July 2004 est.)

SIZE
18,147 sq. mi. (47,000 sq. km)

LANGUAGES
Dzongkha (official), Sharchop, Nepali, Bumthapkha, Khengkha, and 14 other minority languages

RELIGIONS
Vajrayana Buddhism 75%, Hinduism 25%

NATIONAL OR ETHNIC COMPOSITION
Northern Bhutanese (Ngalong, Sharchop, and smaller groups) 65%, Lhotshampa (of Nepalese descent) 30%, indigenous or migrant tribes 5%

DATE OF INDEPENDENCE OR CREATION
Consolidation begun in 1616; monarchy established 1907

TYPE OF GOVERNMENT
Emerging parliamentary democracy

TYPE OF STATE
Constitutional monarchy

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
2005 draft awaiting referendum

DATE OF LAST AMENDMENT
No amendment

Bhutan is a traditional monarchy in the process of becoming a parliamentary democracy. King Jigme Singye Wangchuk (1972–) is head of state. The king transferred royal powers to an elected Council of Ministers by royal edict in 1998 and is no longer head of the administration. The chair of the Council of Ministers acts as head of the administration.

At present, there is no written constitution. In December 2001, the current king issued a royal edict declaring that Bhutan should have a written constitution. A draft was prepared by a 39-member committee and submitted to the king in October 2002. The draft constitution was launched publicly on March 26, 2005. A public referendum on the constitution was postponed to 2008.

CONSTITUTIONAL HISTORY

Until the 17th century, Bhutan was not a unified country. In 1616, the *zhabdrung,* Ngawang Namgyal (1596–1651), arrived from Ralung in southern Tibet after a dispute over his succession. *Zhabdrung* is a title for that spiritual leader of Bhutan and means "at whose feet one submits." Following an active policy of consolidating his authority in Bhutan, the *zhabdrung* unified Bhutan under the Drukpa (a religious community) theocracy. The system of government introduced by the *zhabdrung* took its definitive form in the 1640s.

Political affairs were under the control of the *Desi* (the theocratic civil government), while the monks were organized along the lines of the Ralung monastery in Tibet under a head abbot, or *je khenpo* (the elected head of the state monastic body). This system of government, with separate persons responsible for religious and secular affairs, was and is known as the dual system. Bhutan itself was divided into three large regions, each with a governor and a head lama. At the lowest level, village elders were appointed to look after several villages each and transmit orders from the *dzong* (fortress/monastery) to the local people. Although this dual system of

government remained in place until the monarchy was established in 1907, the system was significantly weakened by the late 18th century, and Bhutan experienced ongoing conflicts between vying lords during the 19th century.

The monarchy was established in 1907 when a political vacuum appeared after the death of *Zhabdrung* Jigme Chogyel in 1904. A petition to appoint Ugyen Wangchuk as king was submitted to the State Council and unanimously approved. Ugyen Wangchuk was appointed as hereditary king on December 17, 1907. During his reign, he focused on stabilizing the political situation. Under his successor, Jigme Wangchuk (1926–52), the administrative system of the kingdom was reformed with a move toward greater centralization. There were reforms designed to reduce the threat of insurrection by powerful officials, establish an accountable administrative cadre, and reduce the tax burden on the common people.

The next king, Jigme Dorje Wangchuk (1952–72), introduced wide political, social, and economic reforms, which have continued to shape contemporary Bhutan. In 1953, the king established a National Assembly with 150 members. In 1965, a Royal Advisory Council was created. Various categories of serfs and slaves were liberated and a major program of land reform undertaken. Understanding the importance of international recognition, especially after the occupation of Tibet by Chinese forces in 1950, Bhutan joined the Colombo Plan in 1962; having sought United Nations membership since 1948, Bhutan was finally admitted in 1971.

The fourth and current king, Jigme Singye Wangchuk (1972–), ascended the throne at age 17. Under his direction, the process of modernization and ongoing transformation of Bhutan has continued.

FORM AND IMPACT OF THE CONSTITUTION

At present, the kingdom is governed by constitutional practices that have been developed over the last century, notably since the reign of King Jigme Dorji Wangchuk. A draft written constitution has been prepared by a Constitutional Drafting Committee established in 2001 and was made public in March 2005. The king initiated the drafting process and will personally tour the kingdom to present the draft constitution to the people prior to its debate in the National Assembly.

BASIC ORGANIZATIONAL STRUCTURE

Bhutan is divided into 20 administrative districts called *dzongkhag*. The *dzongkhag* varies significantly in geographical area, population size, and economic strength. Each one is administered by a district administrator.

Each *dzongkhag* has its own district court; there are two subdistrict courts in two of the larger districts. In accordance with the move toward decentralization, Dzongkhag Development Committees (DYT) have been set up, with responsibility for planning and coordinating development. Below the Dzongkhag Development Committee, Gewog Development Committees (GYT) are responsible for the lowest administrative and development functions.

LEADING CONSTITUTIONAL PRINCIPLES

Bhutan is transforming itself from a traditional monarchy into a parliamentary democracy. There is an emphasis on ensuring a strong division of the executive, legislative, and judicial powers.

The constitutional system is defined by the notion of Tsa Wa Sum—the king, the people, and the nation. Bhutan stresses the importance of balancing change with traditional values, including a code of conduct called *driglam namzha*. These traditional elements are counterbalanced by an emphasis on the rule of law, accountability, efficiency, and transparency in the operation of the state. These principles will be recast in the new written constitution.

CONSTITUTIONAL BODIES

The main bodies are the king, the Royal Advisory Council, the cabinet, and the National Assembly. Below these are the district and local development committees. The judiciary is independent of both the executive and legislature.

The King

Until 1998, the king was both head of state and head of the administration. The monarchy was established in 1907 and has been responsible for promoting the ongoing political and economic transformation of Bhutan. The monarchy remains central to Bhutanese identity and is deeply cherished. A vote of confidence was held during the National Assembly in 1999 and was overwhelming in its support for the king. Although no longer head of the administration, the king retains immeasurable personal influence and authority.

The Royal Advisory Council

The Royal Advisory Council was formally constituted in 1965 as the highest advisory body. It is made up of nine members. Six counselors are elected by the National Assembly through secret ballots for each of the districts, two

representatives are nominated by the monks, and there is one representative of the administration, who acts as ex-officio chair. The six elected counselors serve for three years; the monk body representatives serve for one year only. Election to the Royal Advisory Council automatically makes the counselors members of the National Assembly and the cabinet.

The Cabinet

The cabinet (Lhengay Zhungtshog) was originally created in 1968 by the National Assembly. Until 1998, the cabinet was presided over by the king and made up of representatives appointed by him. Since 1998, the cabinet (now Council of Ministers) is elected by secret ballot by the assemblies and exercises full executive powers. A chairperson is appointed from among the elected ministers, and the position rotates annually. The cabinet ministers head the various government ministries, and the chair is in effect head of the administration.

The National Assembly

Established in 1953, the National Assembly has 150 members: 105 elected representatives of the people, 10 from the Central Monk Body, and 35 nominated by the government. The National Assembly elects the Council of Ministers, approves the annual budget, and, as its main function, passes legislation drafted by the ministries. The members serve for three years.

The Lawmaking Process

According to the 2005 draft constitution, parliament will consist of the Druk Gyalpo (the king of Bhutan) and of two chambers: the National Assembly and the National Council. A bill passed by one chamber is submitted to the other chamber for approval. If parliament passes the bill, it enters into force with the assent of the king. If one chamber does not approve a bill but amends it or objects to it, this bill is returned to the other chamber for reconsideration. If the other chamber refuses to incorporate the amendments or objections, it submits it to the king, who arranges for a joint session of both chambers. The bill is deemed to have passed after a certain period without passing or returning by the other chamber. A joint sitting also takes place when the king does not grant assent. Upon deliberation and passing of the bill in a joint session, it is again submitted to the king for assent, whereupon assent shall be granted to the bill.

The District and Local Level Development Committees

In 1981, the District Development Committees were established, followed in 1991 by the creation of Block Development Committees. They represent the decentralization of administration in Bhutan and focus on planning and implementing development strategies.

The Judiciary

The judiciary gained full independence from the administration in the early 1990s. There are plans to create a Supreme Court, which will act as the Constitutional Court. At present, the highest court in Bhutan is the High Court of Justice. There are eight High Court judges presided over by the chief justice. The chief justice is chair of the Constitutional Drafting Committee. Below the High Court are 20 district courts and two subdistrict courts with general jurisdiction. In a recent electoral corruption case, the High Court upheld the sentences awarded by the Chukha district court to those offering and accepting bribes during recent elections to the Royal Advisory Council.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Elections for local administrator in 199 of the 201 village blocks were held in November 2002. It was the first secret ballot election held with universal suffrage, with each adult over the age of 21 (male and female enjoying equal rights) eligible to vote, rather than a representative from each village household as in the past.

POLITICAL PARTIES

At present, there are no officially recognized political parties in Bhutan. The draft constitution incorporates provisions for the creation of political parties and for granting to the winning party in a general election the right to form the new administration. The party with the second highest number of votes will form the opposition.

CITIZENSHIP

Citizenship is primarily acquired by birth, provided both parents are Bhutanese. The Citizenship Act of 1985 sets out various conditions for the granting of naturalized citizenship or registration for those individuals permanently resident in Bhutan from 1958.

FUNDAMENTAL RIGHTS

There is no bill of rights currently in Bhutan. At present, the supreme laws stress the equality of all before the law, irrespective of social status or wealth. The draft constitution is

believed to contain an explicit statement of the basic rights of Bhutanese citizens. These will include freedom of association, freedom of movement, and freedom of expression and religious belief. In effect, the draft constitution provides for the direct incorporation of basic human rights set out in the 1948 Declaration on Universal Human Rights.

Impact and Function of Fundamental Rights

Awareness of human rights and fundamental freedoms is developing through access to external media. Bhutan is a United Nations (UN) signatory and by implication supports human rights. In recent years, Bhutan has actively worked to implement the Conventions on the Elimination of Discrimination against Women and Children's Rights.

Limitations to Fundamental Rights

Since there currently is no bill of rights, no legal limitations apply.

ECONOMY

The Bhutanese state is the primary employer in the country and is heavily involved in its economic development. The district and local development committees are responsible for preparing five-year plans for their respective areas, which may include the promotion of the district and local economy.

RELIGIOUS COMMUNITIES

Because of its intertwined political and religious history and the continuing links between the Bhutanese state and the Druk Kagyu religion, Bhutan is officially a Buddhist kingdom. The Central Monk Body under the authority of the Je Khenpo, the head abbot, continues to receive state support in return for the religious activities performed by the monk body for the spiritual and material well-being of the kingdom. Freedom of religion is recognized; however, the state prohibits religious proselytizing.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Bhutanese army and police force are accountable to the chief operations officer of the royal Bhutan army, who is appointed by the king.

A militia force of volunteers, including women, was trained prior to recent military action against Indian guerrilla camps in southern Bhutan in December 2003. There is no compulsory military service and thus no provision for conscientious objection.

AMENDMENTS TO THE CONSTITUTION

An unwritten constitution developed with the establishment of the National Assembly. All changes to the current unwritten constitution require approval by the National Assembly.

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Richard Whitecross

BOLIVIA

At-a-Glance

OFFICIAL NAME
Republic of Bolivia

CAPITAL
La Paz (seat of administration); Sucre (capital and seat of judiciary)

POPULATION
8,857,870 (2005 est.)

SIZE
424,164 sq. mi. (1,098,580 sq. km)

LANGUAGES
Spanish, Quechua, Aymara (all official)

RELIGIONS
Roman Catholic 95%, Protestant (Evangelical Methodist) 5%

NATIONAL OR ETHNIC COMPOSITION
Quechua 30%, Mestizo (mixed white and Amerindian ancestry) 30%, Aymara 25%, white 15%

DATE OF INDEPENDENCE OR CREATION
August 6, 1825 (from Spain)

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral congress

DATE OF CONSTITUTION
February 2, 1967

DATE OF LAST AMENDMENT
July 6, 2005

Bolivia is a presidential democracy. It is a social and democratic state of law. The recent constitution provides for a rigid separation of executive, legislative, and judicial powers. Since its independence, Bolivia has had more than 190 administrations. Organized as a unitary state, it is made up of nine departments.

A characteristic feature of the Bolivian constitutional system is the right of the National Congress to resolve presidential elections if no candidate receives an absolute majority. The traditionally strong executive, however, tends to overshadow the congress, whose role is generally limited to debating and approving legislation initiated by the executive.

The constitution provides for far-reaching guarantees of human rights. A national plan of action for the promotion and protection of human rights was adopted in 1999 to ensure their effectiveness.

Congressional elections are by universal, direct, equal, individual, secret, free, and obligatory suffrage. Citizens can initiate legislation and referendums. A pluralistic system of political parties has evolved.

The constitution recognizes the Roman Catholic apostolic religion and guarantees freedom of religion or belief. The economic system can be described as a social market economy. According to the constitution, the armed forces are under civilian control.

CONSTITUTIONAL HISTORY

The first great Andean empire on the high plateau between the mountains had emerged by 600 C.E. This was the territory of the Tiahuanaco Empire near the southeastern side of Lake Titicaca. In the 15th century it became part of Tahuantinsuyu, the empire of the Quechua-speaking Incas.

The colonial period from 1532 to 1825 began with the arrival of Spanish conquistadors and ended with independence from Spain. The official capital city of La Plata,

known today as Sucre, was founded in 1538–39. It was the first of several settlements and later became the center of the Audiencia de Charcas—all the Spanish colonies were governed by regional councils (*audiencias*), with combined administrative, executive, and judicial powers.

The exploitation of the large silver deposits in Charcas was initially under the authority of the viceroy of Lima. The viceroyalty encompassed the entire South American continent apart from the Portuguese colony of Brazil. In 1776, the territory of Charcas was transferred to the newly formed viceroyalty of Río de la Plata (today Argentina, Paraguay, Uruguay, and Bolivia). The *encomienda,* a trusteeship system that had been introduced to all the Spanish colonies by the Laws of Burgos (1512), was also applied here. The Spanish king was believed to be the natural leader, chosen by God, to govern America.

Spanish authority in the New World weakened during the European wars of the Napoleonic era (1798–1815). In La Plata, the first calls for independence arose as early as 1809, but it was 16 more years before this goal was realized. When Argentina became independent from Spain in 1810, the Audiencia de Charcas was transferred to the viceroyalty of Peru. The territory became a battleground between Argentinean republican forces and royalist troops from Peru, which itself became independent in 1821. In the end, Antonio José de Sucre, in command of Simón Bolívar's Colombian troops, defeated the last Spanish garrison. The future status of Upper Peru (as Bolivia was then known) was a delicate issue, involving local interests as well as those of Argentina and Peru. Sucre called together a General Assembly (Asamblea Deliberante) in La Plata. It adopted the declaration of independence for the provinces of Upper Peru and then constituted itself as the República Bolívar (1825, soon changed to Bolivia). The famous liberator himself ruled the country, but he left for Peru after five months. As his successor, Sucre became president.

Bolívar presented a draft constitution, as he had been asked to do, in 1826. It reflected his fear of the growing disorder in all the liberated countries of South America. With a lifetime presidency, an independent judiciary, a tricameral congress, and an electoral body, it vested wide-ranging powers in the executive. The president even had the right to nominate his successor. The final version of the constitution remained heavily weighted toward the executive. Bolívar's vision of a League of Hispanic-American States "united in heart" did not prevail. The Congress of Panama (1826), in which all these states should have been represented, was a fragmentary affair. In the names of both the country and its capital, however, the memory of the two famous liberators has been preserved.

Some of the leaders, or caudillos, who followed involved themselves in the internal struggles of Peru; others struggled to prevent the annexation of Bolivia. Frequent changes in regime were then often accompanied by changes of the constitution—more than a dozen between 1831 and 1880.

The 1831 constitution introduced a bicameral legislature. The president was given the power to dissolve congress, but the new constitution abolished the lifetime presidency and limited it to renewable four-year terms. In contrast, the actual power of the president, Andrés de Santa Cruz, increased. He was a Mestizo and the first native-born president. With the support of Bolívar, he had briefly been president of Peru (1826). During his rule, he established a short-lived confederation of Bolivia and Peru (1836–39).

As an exception to the general rule of instability, the 1880 constitution lasted for almost 58 years, although it was amended several times. The constitution of 1878 had introduced the power of congress to summon the ministers for questioning and strengthened the legislature in other ways as well. With the 1880 constitution, Bolivia achieved a functioning constitutional system of political parties, interest groups, and an active legislature.

In contrast to this political stability, significant territorial and social changes occurred. During the War of the Pacific with Chile (1879–83), Bolivia lost access to the seacoast. In the War of Acre (1903), it lost Amazonian territories to Brazil, and it lost land to Paraguay in the Chaco War (1932–35). The seacoast, officially ceded to Chile in exchange for transit rights to the harbor of Arica (1904), is still the subject of Bolivian claims.

In 1952, a revolutionary party seized control of the government. The Movimiento Nacionalista Revolucionario (MNR) introduced far-reaching economic and social policy changes, such as universal suffrage, nationalization of the mines, and agrarian reforms. Those were mostly included in the revised 1961 constitution before the army finally deposed the government in 1964.

The 1967 constitution was a partial return to the liberal tradition of the 1880 document. The military leader, General René Barrientos, who had seized the government, sought democratic legitimacy; in exchange, he was willing to adapt his more radical plans. According to the constitution, Bolivia was a unitary republic with a democratic and representative democracy. Sovereignty resided in the people. The strong executive tradition, however, continued to exist in practice. In 1974, for instance, it was declared that the constitution remained in force only insofar as it did not contradict the statute of government, a decree law. Bolivians suffered through several more military presidents, and political instability continued as late as 1982.

In 1994, the constitution was heavily amended. The 1995 codification introduced a Constitutional Tribunal and explicitly provided for the collective rights of indigenous people. For the first time in Bolivian history, an Aymara Indian had been elected as vice president. After ongoing protests and political violence, further changes in 2004 introduced some direct democratic elements, including citizens' legislative initiatives, a referendum, and a Constituent Assembly.

Bolivia today is a member state of the Organization of American States (OAS), which promotes the idea of inter-American cooperation.

FORM AND IMPACT OF THE CONSTITUTION

The constitution (Constitución Política del Estado) consists of a single written document and additional interpretative laws (*leyes interpretativas*). The constitution takes precedence over all other national law.

BASIC ORGANIZATIONAL STRUCTURE

Bolivia is a unitary state made up of nine departments. Senior departmental officials are still appointed by the central government. Departments and local communities have received greater autonomy under the laws on administrative decentralization and popular participation.

LEADING CONSTITUTIONAL PRINCIPLES

Article 1 reads: "Bolivia, free, independent, sovereign, multi-ethnic and culturally pluralistic, constituted as a unitary Republic, adopts for its government the democratic representative and participative form, founded in the unity and solidarity of all Bolivians." It further declares Bolivia as a "social and democratic state of law," built on liberty, equality, and justice.

Article 2 establishes the legal structure: "Sovereignty resides in the people; it is inalienable and imprescriptible; its exercise is delegated to the legislative, executive and judicial powers." Direct democracy, whereby people decide directly on the relevant issues by means of a referendum, is also applied.

The Bolivian constitution also defines a number of special directives, such as the economic and financial directive, the social directive, the agrarian and rural labor directive, and the cultural directive. They serve as directive principles to ensure fundamental rights as well as the orderly operation of government.

CONSTITUTIONAL BODIES

The predominant bodies are the president, the vice president, the bicameral parliament (Congreso Nacional), and the judiciary including the Constitutional Tribunal. A number of other bodies complete this list, such as the Cabinet (Consejo de Ministros), the Constituent Assembly (Asamblea Constituyente), and the Public Defender (Defensor del Pueblo).

The President and Vice President

Although the constitution establishes the division of powers, the presidential system as a whole gives great visibility and political power to the president.

The president of the republic is both the chief of state and the head of the executive. The president appoints and dismisses the ministers of state. Responsibilities reserved for the chief executive include issuing appropriate decrees and orders, negotiating and concluding treaties (which must be ratified by the National Congress), conducting foreign relations, and administering the national revenues (in accordance with the laws).

Every year, the president opens the session of congress before an assembly of both chambers. On this occasion the president makes a state of the nation address. The president of the republic must submit the national budget to the National Congress. The president may not leave the national territory without congressional assent.

The president is captain general of the armed forces. The forces of the national police are subordinate to the president through a minister of state. The president may designate the commander in chief of the armed forces and the commander general of the national police. The power of appointment enables the president to exercise control over the large number of public servants at all levels of government.

The president is elected by direct suffrage for a five-year term and cannot be reelected to a successive term, although he or she may run again after one term has passed. No active member of the armed forces or clergy is allowed to run for president.

The vice president also has a very strong position, as he or she is elected together with the president. The vice president is president of the Senate as well as president of the National Congress.

The National Congress (Congreso Nacional)

Congress is the legislative body. It consists of two chambers, the Chamber of Deputies and the Senate.

Congress rules on the lawfulness of the election of the president and the vice president and swears them in. An important power is the right to resolve elections in which the winning candidate did not receive an absolute majority of valid votes. The Bolivian system has therefore been called parliamentarized presidentialism. It is presidentialist because the president is elected for a fixed term and, even though chosen by congress, does not depend on its continuing confidence. It is parliamentarized because the president is chosen by the legislature on the basis of post-electoral bargaining when no candidate has received an absolute majority.

The legislature also appoints justices of the Supreme Court, approves international agreements, and passes the annual budget (which must be submitted by the executive in a timely fashion.

Any legislator may request an oral report from a cabinet minister (*petición de informe oral*). If dissatisfied with the replies, parliament may exercise the right of interpellation and censure the cabinet minister by an absolute

majority. Traditionally, a censured minister must resign and be replaced by the president.

Both chambers have a five-year term. Senators or deputies must be at least 35 and must have fulfilled their military duties.

During congressional recesses, the constitution provides for a congressional commission (*comisión de congreso*) to be elected by the members of each chamber. If necessary, the commission can convene an extraordinary session of congress.

Chamber of Deputies (Cámara de Diputados)

The Chamber of Deputies is responsible for overseeing the ministers. It can also initiate legislation.

The Chamber of Deputies elects justices of the Supreme Court from a list submitted by the Senate; it approves the executive's requests for a declaration of a state of siege and transmits to the president of the republic a list of names from which the latter must select the heads of social and economic institutions in which the state participates.

The Chamber of Senators (Cámara de Senadores)

The Senate plays a role in approving certain appointments and in appointing and impeaching certain officials. It approves ambassadors and promotions in the armed forces every year. The Senate submits to the president a list of candidates for comptroller general, attorney general, and superintendent of the national banking system. It also hears accusations against members of the Supreme Court of Justice raised by the Chamber of Deputies.

The Lawmaking Process

A bill must be passed by the legislature and must be signed by the president to become a law. Besides members of parliament, the president and vice president and even individual citizens have the right to present bills to parliament for consideration. After it has been submitted, it may be approved, amended, or rejected.

Once the bill is passed in one chamber of parliament, it is forwarded to the other chamber. If the other chamber approves the bill, it is sent to the executive for promulgation.

If the bill has been amended, the initial chamber examines it again. Then the amended bill is either passed by an absolute majority or examined by the two chambers meeting in joint session. A bill that has been finally rejected by either chamber cannot be resubmitted during the same annual session.

If the executive disapproves, the executive returns the bill to the chamber that originated it. The latter meets with the other chamber in joint session, which can amend the bill according to the executive's wish or override the veto by a two-thirds majority.

The law is binding from the day of its publication, unless otherwise specified in the law itself. Besides the exceptions explicitly outlined by the constitution, laws do not have a retroactive effect. They can only be applied for the future.

The Judiciary

Bolivia follows the civil law system. Legislation is the primary source of law, as opposed to case law or jurisprudence. Judges are supposed to determine what the law says. If judges are merely regarded as the "voice of the law," this implies a limitation to their freedom of interpretation. In Bolivia, this limitation is expressed even with regard to the constitution; congress has the power to enact laws interpreting certain aspects of the constitution. However, this opportunity does not mean that the National Congress is generally responsible for constitutional interpretation.

Under the Bolivian constitution, the judicial branch is independent of other government branches. It consists of the Supreme Court, the Constitutional Tribunal, the Judicial Council, and other courts.

The Bolivian Supreme Court (Corte Suprema de Justicia de la Nación) is the highest court of appeal. District Superior Courts (Cortes Superiores de Distrito) are courts of appeal for each department into which the country is geographically divided. They deal with appeals from the lower courts (*juzgados de partido, juzgados de instrucción,* and *juzgados de contravención*). The Supreme Court consists of 12 justices called ministros and is divided into five chambers.

The Constitutional Tribunal (Tribunal Constitucional) was introduced in 1994 and began its work in 1999. It has exclusive jurisdiction over all constitutional questions. It is independent and subject only to the constitution. The tribunal consists of a president and six magistrates, who form a single chamber.

The importance of the tribunal arises from the fact that all exercise of state power must be in compliance with the constitution. The tribunal can declare acts of parliament void. Concerning fundamental rights, the tribunal reviews decisions on petitions of habeas corpus and *amparo*. Whereas *amparo* is a general procedural remedy against violations of fundamental rights, the remedy of habeas corpus is a specific one against arbitrary arrest.

In addition to the high legal and political impact some of the court's decisions have had, the tribunal has had positive repercussions for public opinion in Bolivia. An example is the decision to uphold civilian jurisdiction in a case involving alleged killings by army troops. Bolivia's military court system had asserted jurisdiction over the case.

The Council of Judicature (Consejo de la Judicatura) is the administrative and disciplinary body of the judicial power. The council selects candidates for judges to be appointed by congress or by the Supreme Court. It is composed of four councilors, plus the president of the Supreme Court, who also presides over the council.

Other Constitutional Bodies

A two-thirds parliamentary vote can convene a Constituent Assembly (Asamblea Constituyente). It has the sole purpose of reviewing the entire constitution. The Public Defender (Defensor del Pueblo) ensures the compliance of administrative activities with fundamental rights and guarantees.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Bolivians over the age of 18 have the right to vote in elections. Suffrage is universal, direct, equal, individual, secret, free, and obligatory and relies on a public counting of votes and on a system of proportional representation.

The constitution now stipulates that the people govern through their representatives and through a Constituent Assembly, citizen's legislative initiatives, and referenda. These direct democratic elements within the constitution are being applied. For example, the people have voted about the export of Bolivian natural gas.

Parliamentary Elections

The 27 Senate members are elected by proportional representation from party lists. The Senate is composed of three senators for each department. They are elected by universal and direct suffrage: two for the majority party and one for the minority, according to law.

The members in the Chamber of Deputies are elected from party lists but also from districts. Of a fixed number of 130 deputies, 68 are chosen in single-member districts according to a winner-take-all vote (first-past-the-post system). The remainder are chosen by party list on the basis of proportional representation in nine regional multimember districts. Every voter, therefore, has two votes. There is a 3 percent threshold for representation at the national level for the party lists.

In 2005, four major political parties were represented in the chamber.

Presidential Elections

Should presidential candidates fail to win an absolute majority of votes, the result is determined by a secret ballot in congress for the leading two candidates.

POLITICAL PARTIES

The Bolivian party system has evolved from a highly fragmented one to a moderate multiparty system. There is no single predominant party, nor are there alternating majorities. The historical problem of minority governments has almost been solved by the postelectoral bargaining in congress, which tends to ensure majority legislative support.

According to the constitution, representation of the people is exercised through political parties as well as citizens' groups and indigenous peoples (*agrupaciones ciudadanas* and *pueblos indígenas*). The legal personality of all these units is acknowledged. The right to become organized is guaranteed by the constitution and further regulated by law (Ley de Partidos Políticos).

CITIZENSHIP

Bolivian citizenship is generally acquired by birth. It is of no relevance where a child is born. Dual citizenship is recognized.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights and duties in Part One, Title One, almost at the start of the document. In doing so, the framers of the constitution emphasized the importance of these rights.

The constitution guarantees the classic set of individual civil liberties such as the rights to "life, health, and safety" as well as freedom of expression. It also protects collective activities such as freedom of assembly and freedom of religion. Moreover, the constitution guarantees social rights such as the right to work, to social security, and to education. All these rights have binding force for the legislature, the executive, and the judiciary in accordance with the laws that regulate their exercise.

The prohibition of servitude is taken as the starting point. A general equal-treatment clause is contained in Article 6, which prohibits discrimination on the basis of race, sex, language, religion, political or other opinion, origin, economic, or social condition. Paragraph 2 reads: "Human dignity and freedom of the person is inviolable. To respect them and protect them is a primary duty of the state."

Articles 7 and 8 generally enumerate a number of classic rights and duties, which have been further regulated by law. Title Two contains several specific guarantees, including the remedies of habeas corpus and *amparo*.

The constitution states that public officials are liable to pay compensation for damage caused by their abuse of certain powers in the absence of a declaration of a state of siege. Citizens also enjoy the right to demand information about themselves (*habeas data*).

Impact and Functions of Fundamental Rights

Fundamental rights in Bolivia represent protection for citizens against a state that has been subjected to frequent changes of administration. Certain constitutional provisions specifically address the armed forces, such as the crime of sedition.

In addition to the traditional set of human rights, there are special constitutional directives that serve as principles to ensure social rights. For example, the constitution recognizes the social, economic, and cultural rights of the indigenous peoples within the national territory and protects them. Some of the social rights provisions serve merely as symbols of the people's struggle for better living conditions rather than as effective protections.

Bolivia has ratified a number of international human right treaties that also have an impact on the protection of fundamental rights. A national plan of action for the promotion and protection of human rights was adopted in 1999. A public defender or ombudsperson oversees the protection of fundamental rights.

Limitations to Fundamental Rights

Fundamental rights are not without limits. Article 7 starts with a general limitation clause, and specific rights contain specific limitation clauses. There is no explicit principle of proportionality to limit the limitations. The constitution underlines that no explicit constitutional guarantee shall be taken as a denial of other rights and guarantees.

ECONOMY

The Bolivian constitution itself does not specify a specific economic system, but it contains several regulations in that sphere. It mandates that the economic system must aspire to principles of social justice in order to ensure to all inhabitants a life worthy of the human being. The private concentration of economic power is prohibited to the extent that it endangers the economic independence of the state. The issue of external economic power is not addressed in the constitution.

Private property is guaranteed as long as it is not used in a way prejudicial to the collective interest. Certain property is regarded to be national property, and the state is allowed to program economic development. According to the constitution, Bolivia is defined as a "social democratic state of law," built on liberty, equality, and justice. Labor is a duty and a right, and it constitutes the basis of the economic and social order. The economic system can generally be described as a social market economy.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed, as are rights for religious communities. The constitution recognizes and upholds the Roman Catholic apostolic religion, while also guaranteeing the public exercise of any other form of worship.

Clergy and ministers of any religious faith are forbidden to be president or vice president. They may run for the office of national representative if they resign their position at least 60 days before the election.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution identifies three states affecting the country or a portion of its territory: peace, war, and siege.

The president of the republic may declare war with the assent of the National Congress. The president is captain general of the armed forces and directs operations in the event of war. There is a law governing the Supreme Council of National Defense.

In the case of a grave danger caused by "internal disturbance" (*conmoción interna*) or international war, the president, with the approval of the cabinet, may declare a state of siege. The executive may not prolong such a state of siege beyond 90 days nor declare another one within the same year, except with the consent of congress.

Even during war, the rights and guarantees granted by the constitution may not be suspended ipso facto or in a general fashion. The limits may be applied against specified persons charged on good grounds with conspiring against the public order. The administration must report the reasons for the declaration to congress at its next session.

Article 115 reads: "Neither Congress nor any other association shall grant to the executive extraordinary powers, the whole of the public power or give it supremacy by which the life, the honor and the property of the Bolivians shall be at the mercy of the government or any other person whatsoever."

The law requires all Bolivian men who have reached the age of 18 to serve in the armed forces for one year. When the annual intake into the armed forces cannot be made up on a voluntary basis, recruitment is compulsory. A voluntary premilitary service (*servicio premilitar*) for boys and girls between 15 and 19 years of age coexists alongside compulsory military service. Conscientious objection is not recognized.

AMENDMENTS TO THE CONSTITUTION

The same rules apply for amendments to the constitution itself and to laws interpreting the constitution. The amendment provisions may also be amended themselves. Amendments may be either partial or total.

A partial amendment can be made by ordinary law; it requires two separate enactments, in different legislative terms. The first enactment provides a specific reference to the need for amendment (Ley de Necesidad de Reformas). It includes a rough list of all the changes envisaged. The bill must be approved by two-thirds of the members present in both chambers of congress. It is then sent to the executive for promulgation. The executive shall not have the right to veto the law declaring the amendment.

The second enactment provides for the final approval of the proposed amendment. The matter is taken up in

the first meetings of the legislative session of a new constitutional term. It must be approved by a two-thirds vote of the National Congress in each chamber, starting with the one in which the amendment was proposed. It then shall be sent to the executive for its promulgation without right of veto.

The constitution allows for the reform of the constitution as a whole. This is done exclusively by a Constituent Assembly, convoked by a special law (Ley Especial de Convocatoria). It must be approved by two-thirds of the members present in both chambers of congress. The executive shall not have the right to veto it.

The principles, guarantees, and rights affirmed by the constitution may not be altered by laws that regulate their exercise. They are enforced even in the absence of specific regulations.

A Constituent Assembly began its work in 2005.

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Michael Rahe

BOSNIA AND HERZEGOVINA

At-a-Glance

OFFICIAL NAME
Bosnia and Herzegovina

CAPITAL
Sarajevo

POPULATION
3,600,000 (2005 est.)

SIZE
19,741 sq. mi. (51,129 sq. km)

LANGUAGES
Bosnian, Serbian, and Croatian

RELIGIONS
Muslim 42.8%, Orthodox 30.2%, Catholic 17.6%, other 9.4%

NATIONAL OR ETHNIC COMPOSITION
Bosniac (Muslim) 43.5%, Serbian 31.2%, Croatian 17.4%, Yugoslavian 5.5%, and other 2.4% (the Law on Protection of Rights of the Members of National Minorities specifically lists 17 national minorities—Albanian, Montenegrin, Czech, Italian, Jewish, Hungarian, Macedonian, German, Polish, Gypsian, Romanian, Russian, Ruthenian, Slovakian, Slovenian, Turkish, and Ukrainian)

DATE OF INDEPENDENCE OR CREATION
April 6, 1992

TYPE OF GOVERNMENT
Parliament democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 14, 1996

DATE OF LAST AMENDMENT
No amendments

At the very moment of becoming independent on April 1992, Bosnia and Herzegovina was caught up in a war that lasted almost four years, ending only with the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina in November 1995. Integral to this agreement is the Constitution of Bosnia and Herzegovina.

The constitution proclaims that Bosnia and Herzegovina is a democratic state, which operates under the rule of law, based on free and democratic elections. It belongs to a complex state community of parliamentary democracies, organized federally. It comprises two entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska), each having its own constitution and very significant state powers. The federal institutions of Bosnia and Herzegovina do not have the jurisdictional scope that modern federally organized states generally have.

The state authority is based on the principle of separation of powers into legislative, executive, and judicial. The Constitution of Bosnia and Herzegovina gives special importance to human rights and basic freedoms. It emphasizes full respect for the international legal documents governing this area.

The function of chief of state is performed by a trinominal presidency, while legislative power rests with the Parliamentary Assembly. The members of these bodies are elected by citizens through direct elections, based on the pluralistic system of political organization. The executive power rests with the Council of Ministers, whose rights and responsibilities respond to a large degree to the legislative body. The position of the judicial power fully affirms its independence of the executive and legislative powers.

CONSTITUTIONAL HISTORY

The first historical sources on Bosnia and Herzegovina originate from the 10th century. The period from 1180 to 1553 C.E. is considered to be the period of develop-

ment and strengthening of the medieval Bosnian state. Thereafter, until 1878, Bosnia and Herzegovina was under Turkish rule. That year, it became part of the Austro-Hungarian Monarchy as a "specific area" (*corpus separatum*). At the end of World War I (1914–18), Bosnia and Herzegovina became a part of the Kingdom of Serbs, Croats, and Slovenes (later the Kingdom of Yugoslavia). After World War II (1939–45), it became one of the six federal units of socialist Yugoslavia. It remained in that status until the dissolution of Yugoslavia and recognition of its independence in 1992.

A significant historical characteristic of Bosnia and Herzegovina is its territorial continuity—its borders have not changed significantly since the 17th century. They have been internationally confirmed on more than a few occasions (Karlovac Peace of 1699, Berlin Congress of 1878, [Saint Vitus Day] Constitution of 1921, and international recognition of the Federative People's Republic of Yugoslavia after the end of World War II).

In 1867, during the last years of the Turkish rule, a constitutional law was enacted for the Bosnian Vilayet (district), but it was never in fact applied. In 1910, a new Territorial Statute for Bosnia and Herzegovina was declared as the basic legal document for this "special area" within Austria-Hungary. Within the federative Yugoslavia created after World War II, federal units were formed with mutual equality and certain elements of statehood. On the basis of that, in 1946, a new Constitution of the People's Republic of Bosnia and Herzegovina was enacted, defining it as a "people's republic having the form of republican government." From that time until independence, the constitutional framework of Bosnia and Herzegovina gradually strengthened and fleshed out, especially after the beginning of the 1970s, when the new concept of federalism and statehood of the republics was emerging.

Bosnia and Herzegovina gained independence in 1992.

FORM AND IMPACT OF THE CONSTITUTION

Bosnia and Herzegovina has a written constitution in the form of one document. It is a short constitution with a preamble and 12 articles. Because of the complexity of the legal framework in Bosnia and Herzegovina, the two entities and 10 cantons also have their own written constitutions. In addition, the District Brcko has a statute that, in the hierarchy, falls between the constitutions of the two entities and those of the cantons. However, all of these constitutions, as well as all laws, must be in accordance with the Constitution of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina protects constitutionality, and its decisions are final and binding.

According to the Constitution of Bosnia and Herzegovina, the basic principles of international law are an integral part of the legal framework of the country. All civil enforcement agencies that apply legal regulations are required to operate in accordance with internationally recognized standards and with respect to the internationally recognized human rights and fundamental freedoms. Special emphasis is given to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which have priority over all laws.

BASIC ORGANIZATIONAL STRUCTURE

Bosnia and Herzegovina is a complex state composed of two entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska), each covering about half the state territory. The Constitution of Bosnia and Herzegovina divides jurisdiction between the state and the two entities and defines the status of the entities. The jurisdiction of the entities is greater in scope than the jurisdiction of the institutions of Bosnia and Herzegovina.

There are 10 cantons in the Federation of Bosnia and Herzegovina. They differ in size, number of inhabitants, and economic strength but enjoy equal constitutional treatment and legal powers. Taking into consideration their exclusive legal powers and the legal powers they share with the entities, the cantons participate significantly in the overall performance of state authority.

Brcko District has a status of a special territory, directly linked to the institutions of Bosnia and Herzegovina. The city of Mostar also enjoys special legal treatment. Although it was established in principle that the city of Mostar should have the legal powers of a municipality, it significantly differs from other municipalities on the organizational level.

LEADING CONSTITUTIONAL PRINCIPLES

Considering the legal and constitutional framework, the state beyond doubt is a federation, although the constitution does not state that explicitly. One of its entities is itself called a federation, although it does not fulfill even the most basic legal requirements of such a complex form of governmental structure. The name was given prior to the peace agreement that established the constitutional structure. Bosnia and Herzegovina is a republic (although that is not explicitly stated in the constitution), with a parliamentary system.

The preamble of the constitution proclaims the following principles: respect for human dignity, liberty, and equality; dedication to peace, justice, tolerance, and reconciliation; commitment to sovereignty, territorial integrity, and political independence of the state; protection of private property and promotion of a market economy; full respect for international humanitarian law; and con-

viction that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society. The rule of law and the principle of separation of powers, resting on the free will of the people expressed by democratic elections, are of key importance for the realization of these principles.

CONSTITUTIONAL BODIES

The Constitution of Bosnia and Herzegovina foresees the following governing bodies: Parliamentary Assembly, presidency, Council of Ministers, Constitutional Court, and Central Bank.

The Parliamentary Assembly

The Parliamentary Assembly is a representative body having constitutional and legislative powers. Its composition and decision-making process express the principle of national sovereignty, equality of all three constituent peoples (Bosniacs, Serbs, and Croats), and the complex structure of the state. The Parliamentary Assembly has two chambers: the House of Peoples and the House of Representatives. The House of Peoples has 15 members—five Bosniacs and five Croats (elected in the Council of Peoples of the Federation's Parliament and only from the territory of that entity) and five Serbs (selected by the National Assembly of the Republika Srpska and only from the territory of that entity). The House of Representatives has 42 members who are elected directly by the voters. Two-thirds of the mandates are elected from the territory of the federation and one-third from the territory of the Republika Srpska.

The Parliamentary Assembly has legislative and budgetary powers. It also has the power to decide on constitutional matters, to participate in decision making with respect to foreign policy, and to control the Council of Ministers. It has authority over matters needed to complete its duties or matters for which it has agreement of the two entities.

The decision-making process of the Parliamentary Assembly is very complex. Nine members of the House of Peoples compose a quorum, provided that at least three Bosniac, three Croat, and three Serb members are present. A majority of all members elected to the House of Representatives also constitute a quorum. All decisions in both chambers are brought about by the majority of those present and voting, provided that the majority includes at least one-third of the votes from the territory of each entity.

The Lawmaking Process

The constitution prescribes that all bills require the approval of both chambers by a majority of those present and voting in each. The delegates and members are mandated to try to win approval from at least one-third of the votes of delegates or members from each entity. If this is not achieved, the chair and deputy chairs meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions are made by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the delegates or members elected from either entity.

A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb delegates selected in the assembly. Such a proposed decision requires for approval in the House of Peoples a majority of the Bosniac, Croat, and Serb delegates present and voting.

When a majority of the Bosniac, Croat, or Serb delegates objects to the declaration of such a decision as destructive for the vital interest of one of the three constituent peoples, the chair of the House of Peoples convenes a Joint Commission comprising three delegates, one each selected by the Bosniac, Croat, or Serb delegates, to resolve the issue. If the commission fails to do so within five days, the matter is referred to the Constitutional Court, which reviews it for procedural regularity in an expedited process.

Decisions of the Parliamentary Assembly do not take effect before publication. Both chambers publish a complete record of their deliberations and in general deliberate publicly.

The Presidency

The presidency of Bosnia and Herzegovina is a collective chief of state; it carries executive powers within the framework of the jurisdiction of the institutions of Bosnia and Herzegovina. Its members are directly elected for a term of four years with the possibility of reelection for an additional consecutive term. The presidency consists of three members: one Bosniac, one Croat, and one Serb. The presidency has the function of expressing and securing the interests and the equality of all three constituent peoples. Each voter votes for one seat in the presidency; members of the Bosniac and Croat peoples are elected from the territory of the Federation of Bosnia and Herzegovina, and the Serb member is directly elected from the territory of the Republika Srpska. The members of the presidency appoint the chairperson among themselves, and this function rotates at prescribed intervals.

The presidency is responsible for conducting foreign policy; appointing ambassadors and other international representatives of Bosnia and Herzegovina; representing Bosnia and Herzegovina locally and internationally; negotiating, executing, or opposing international agreements; and, with the consent of the Parliamentary Assembly, ratifying such agreements. The presidency executes the decisions of the assembly and proposes the annual budget to the assembly, upon recommendation of the Council of Ministers. Each member of the presidency, ex officio, is also a civilian commander of the armed forces.

The constitution explicitly provides that the presidency must try to adopt its decisions by consensus, but it also provides for the possibility that decisions can be adopted by two members of the presidency when all efforts to reach consensus have failed. In that case, a dissenting member of the presidency may declare that decision destructive of a vital interest of the entity from which this member was elected. Such a decision is then referred to the National Assembly of the Republika Srpska or to the Bosniac or the Croat delegates of the House of Peoples of the federation, depending on which member made the declaration. If the declaration of opposition is confirmed by a two-thirds majority in the respective body, the challenged presidency's decision will not take effect.

The Council of Ministers

The Council of Ministers is an executive body having the function of an administration. Its mandate is four years. The president nominates the chair of the Council of Ministers, who takes office upon the approval of the House of Representatives of the Parliamentary Assembly. The elected chair is granted power to nominate ministers. The chair and the ministers assume power together upon approval of the House of Representatives. During the nomination process, special attention is given to representation from the entities, and no more than two-thirds of all ministers can be appointed from the territory of the federation. Also, a minister and his or her deputy cannot be from the same constituent people.

The Council of Ministers is responsible for conducting politics and policies within the competency of the institutions of Bosnia and Herzegovina.

The Constitutional Court

The Constitutional Court of Bosnia and Herzegovina has nine members—four elected by the Parliament of the Federation of Bosnia and Herzegovina, two elected by the National Assembly of the Republika Srpska, and three internationals elected through a process determined by the Parliamentary Assembly. The Constitutional Court has jurisdiction over the constitutionality of the entities' constitutions and laws. It can also decide on any dispute that arises between the institutions of Bosnia and Herzegovina and the entities or between entities and can determine the constitutionality of any decision of the entities to set up relations with neighboring states. In addition, the Constitutional Court has appellate jurisdiction over constitutional issues arising from a judgment of any court. All decisions are issued by the majority of the court's members.

In Bosnia and Herzegovina, there are also Constitutional Courts on the level of the entity. The jurisdiction of the Constitutional Court of the Federation of Bosnia and Herzegovina is to determine the constitutionality of the cantonal constitutions and the laws and regulations of the entity and the cantons. It also decides matters with respect to issues arising between bodies of the entity and matters between these bodies and the canton, city, or municipality, and it secures legal protection for local self-government.

The Constitutional Court of the Republika Srpska has jurisdiction to decide constitutional matters of that entity, including jurisdictional conflicts among various state bodies. It also rules on whether the general documents of political parties conform to the entity's constitution and laws.

Juridical power in Bosnia and Herzegovina is predominantly within the jurisdictional domain of the entities, each entity having its own Constitutional Court. However, since 2003, there is also a Court of Bosnia and Herzegovina, the jurisdiction of which is becoming increasingly more significant, specifically in criminal cases. The general characteristic of the judicial power is its complete separation from legislative and executive powers. All questions relating to the independence of the judiciary are within the jurisdiction of the courts and Prosecutor's Council of Bosnia and Herzegovina. This applies to the election of judges, their compensation, and disciplinary matters. Judges serve until the age of 70.

The Central Bank

The Central Bank has exclusive authority for issuing of currency and for monetary policy throughout Bosnia and Herzegovina. It is run by a governing board consisting of five members nominated by the presidency of Bosnia and Herzegovina for a period of six years. The board members elect the governor of the Central Bank from among themselves.

THE ELECTION PROCESS

The Constitution of Bosnia and Herzegovina pays special attention to voting rights and specifies in detail the way central state bodies are elected. The legitimacy and the legality of these bodies are based on the basic and equal right to vote, expressed by direct and secret voting in free, fair, and democratic elections. All citizens of Bosnia and Herzegovina who are at least 18 years of age have the right to vote. However, taking into consideration the extreme consequences of the war in Bosnia and Herzegovina, the constitution explicitly provides that no one serving a sentence handed down by the International Tribunal for the Former Yugoslavia and no one indicted by the tribunal who has failed to appear before it can be a candidate or hold any public office in the territory of Bosnia and Herzegovina.

POLITICAL PARTIES

Bosnia and Herzegovina has a pluralistic political system, based on the basic human freedom of each person to asso-

ciate freely with others. Political parties are a primary factor of public life and a key subject of the election system.

CITIZENSHIP

There are two types of citizenship, one of Bosnia and Herzegovina and once of each entity. All citizens of either entity are thereby citizens of Bosnia and Herzegovina. The constitution provides that no person can be deprived of citizenship arbitrarily so as to leave him or her stateless. Citizens of Bosnia and Herzegovina may hold the citizenship of another country, provided that there is a bilateral agreement on that issue. A citizen of Bosnia and Herzegovina abroad enjoys the protection of Bosnia and Herzegovina.

FUNDAMENTAL RIGHTS

The Constitution of Bosnia and Herzegovina enumerates 13 human rights and basic freedoms (Article II) and 16 international legal documents on human rights applicable in this state. Among the latter is the European Convention for the Protection of Human Rights and Fundamental Freedoms (and its Protocols), which applies directly and has legal priority over all other laws. Taken as a whole, these include civil, political, economic, social, and cultural rights.

Proclaiming that Bosnia and Herzegovina and both entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms, the constitution emphasizes the responsibility of all courts, agencies, government institutions, and instrumentalities operated by or within the entities to apply and conform with the human rights and fundamental freedoms referred to in the constitution. Discrimination on any basis is specifically forbidden. No amendment to the constitution may eliminate or diminish any of the rights and freedoms listed in Article II of the constitution or alter existing provisions.

ECONOMY

The preamble of the constitution states among its principles the desire to promote general welfare and economic growth through the protection of private property and the promotion of a market economy. The right to property is explicitly guaranteed. On the basis of this principle, all people retain freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. According to the constitution, the International Pact on Economic, Social, and Cultural Rights counts among the documents that are included within the legal system of Bosnia and Herzegovina. This treaty not only requires application and respect by all of those in power but also serves as an inspiration for constitutional decisions.

RELIGIOUS COMMUNITIES

The constitution lists freedom of thought, conscience, and religion as basic freedoms. The freedom to express one's religion publicly or privately in accordance with the free will of the believer is guaranteed; no one may force anyone to reveal or alter religious beliefs. Public expression of religion can only be limited where prescribed by law and in accordance with international standards, if that is necessary in the interest of public security, public morals, or the protection of the rights and freedoms of others.

All religious communities are equal in rights and obligations. They have full freedom of religious activity, provided they do not spread intolerance and prejudice against other religious communities and citizens and that their activities are not contrary to the constitutional system.

Religious communities are separate from the state. The state cannot establish a state religion or a state religious community of any kind.

MILITARY DEFENSE AND STATE OF EMERGENCY

As a result of the peace agreement, there are armed forces on the entities' level; they are obligated to function in accordance with the principles in the constitution of Bosnia and Herzegovina. There is an obligation to serve in the military, but a person can raise conscientious objections and be excused, provided the person completes an alternative service of a clearly civil nature.

All armed forces must act consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina. Neither entity can threaten or use force against the other entity. The armed forces of one entity can under no circumstances enter into or stay within the territory of the other entity, without the consent of its government and presidency of Bosnia and Herzegovina. Each member of the presidency, by virtue of the office, has civilian command authority over its armed forces.

There is a standing committee with responsibility to coordinate the activities of the armed forces in Bosnia and Herzegovina. It includes the members of the presidency of Bosnia and Herzegovina, who in turn choose the members.

The Constitution of Bosnia and Herzegovina does not address potential states of emergency. Such provisions can be found in the constitutions of the entities.

AMENDMENTS TO THE CONSTITUTION

As far as amendments go, the Constitution of Bosnia and Herzegovina belongs to the category of strict constitutions.

An amendment requires approval by both chambers of the Parliamentary Assembly of Bosnia and Herzegovina, including a two-thirds majority of those present and voting in the House of Representatives. In the House of Peoples, it can be adopted by the majority of the members present and voting, but there must be a quorum of at least nine members—three Bosniacs, three Croats, and three Serbs. However, should it be argued that the amendment affects the "vital interests" of one of the constituent peoples, then it must be approved by majorities of the Bosniac, Serb, and Croat members present and voting.

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Neđjo Milićević

BOTSWANA

At-a-Glance

OFFICIAL NAME
Republic of Botswana

CAPITAL
Gaborone

POPULATION
1,639,833 (July 2006 est.)

SIZE
224,607 sq. mi. (581,730 sq. km)

LANGUAGES
Setswana (national), English (official)

RELIGION
Over 60% Christian (main denominations Roman Catholic, Anglican, Zion, Lutheran, and Methodist)

NATIONAL OR ETHNIC COMPOSITION
The Tswana people (Bakwena, Bangwato, and Bangwaketse) traditionally half or more of the country's population; small Asian and European population

DATE OF INDEPENDENCE OR CREATION
September 30, 1966

TYPE OF GOVERNMENT
Multiparty parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament with a House of Chiefs

DATE OF CONSTITUTION
September 30, 1966

DATE OF LAST AMENDMENT
August 8, 2005

Botswana is a multiparty democracy. The 1966 constitution of Botswana provides for a republican form of government headed by a president, with three main organs of government, namely, the legislature, the executive, and the judiciary. The legislature, which comprises the National Assembly and the president, acting in consultation on tribal matters with the House of Chiefs, is the supreme legislative authority in Botswana. The executive branch consists of the cabinet, headed by the president. It is responsible for initiating and directing national policy; controlling government ministries and departments, which are headed by ministers and are staffed by civil servants; and overseeing parastatal corporations that provide certain national services. The judiciary administers and interprets the law of the land and is independent of both the executive and the legislature.

Religious freedom is guaranteed by the constitution, and state and religion are separated. The economic system may be described as a social market economy with strong encouragement of private enterprise through tax benefits. The military is subject to the civil government in law and in fact.

CONSTITUTIONAL HISTORY

In March 1885, Botswana was declared a British Protectorate by royal decree. Extensive territories belonging to Botswana's southern chiefdoms were incorporated into the then-British colony of South Africa under the name British Bechuanaland.

During the colonial period, various attempts were made to incorporate Bechuanaland into Southern Rhodesia and later into the Union of South Africa. The 1908 Act of Union that created the Union of South Africa provided that the union should grow by incorporating other territories, such as Bechuanaland, Lesotho, and Swaziland. However, the provision stated that this could only be done with the consent of the peoples of those territories. Bechuanaland chiefs, particularly Khama II of Bangwato, Bathoen I of Bangwaketse, Sebele I of the Bakwena, and

later nationalist leaders vehemently opposed the idea of incorporation.

In 1961, a new constitution provided for an Advisory Executive Council; a representative Legislative Council of 34 members, 10 of whom were Africans; and an Advisory African Council. A judiciary was established, with a High Court comprising a chief justice and an assistant judge. The high commissioner and the resident commissioner were required to consult the Executive Council, although they were not bound by the council's decisions. Laws were made by the Legislative Council. The resident commissioner, however, reserved the right to enact or enforce any bill or motion not passed by the Legislative Council if he or she considered it necessary in the interest of public order, public faith, or good government. The African Council was to act as an electoral college, electing local candidates to the Legislative Council and advising the resident commissioner on tribal matters.

During 1963 and 1964, a series of constitutional discussions took place to determine proposals for internal self-government based on universal adult suffrage and a ministerial form of government. Early in 1964, the first census was conducted as a basis for delimitation of constituencies. By the end of the year, voters had been registered in all 31 of the new constituencies. In 1965, the country's capital was transferred from Mafeking, South Africa, to Gaborone in Bechuanaland. The first general elections were held in March 1965, and the Bechuanaland Democratic Party (now Botswana Democratic Party), led by Seretse Khama, won a landslide victory, taking 28 of the 31 contested seats. On September 30, 1966, after some 80 years of colonial rule, the Bechuanaland Protectorate became the independent Republic of Botswana.

FORM AND IMPACT OF THE CONSTITUTION

Botswana has a written constitution that takes precedence over all other national laws. Customary international law automatically forms part of domestic law that is subject to statutory modification or abrogation. As for municipal law, treaties and conventions form part of domestic law only if incorporated through national legislation.

BASIC ORGANIZATIONAL STRUCTURE

Botswana is a unitary state. For electoral purposes, it is divided into constituencies, each of which sends one member to the National Assembly. To ensure equitable representation, the Judicial Service Commission is required at intervals of not less than five years and not more than 10 years to appoint a Delimitation Commission to determine whether changes are needed. There are 406 district councils with elected councilors, but they have no fiscal autonomy and depend on the central government for revenue.

LEADING CONSTITUTIONAL PRINCIPLES

The Botswana constitution provides for a republican parliamentary form of government, headed by a president, with three main organs of government, namely, the executive, the legislature, and the judiciary. There is no preamble to the constitution with guiding principles. However, since independence, Botswana has been guided by four national principles: democracy, development, self-reliance, and unity. These principles are derived from the traditional culture of the Tswana people and, taken together, are designed to promote social harmony.

There is a strong respect for the rule of law, and government generally respects the human rights of its citizens. There is generally no governmental interference in the work of the independent judiciary. Fundamental rights, such as life, liberty, security of the person, and freedom of conscience, expression, assembly, and association, are guaranteed by the constitution and are uniformly upheld.

CONSTITUTIONAL BODIES

The most important bodies provided by the constitution are the executive, parliament (the legislature), the House of Chiefs, the judiciary, the Judicial Service Commission, and the Public Service Commission.

The Executive

The executive consists of the state president and cabinet ministers. The state president is the personification of the state. Legally, the president is head of the executive, commander in chief of the armed forces, and an ex-officio member of the legislature. The president has the power to dissolve parliament; select or dismiss the vice president, ministers, and assistant ministers; and exercise the prerogative of mercy. In international affairs, the president has the power to declare war, sign peace treaties, and recognize foreign states and governments. The president holds office for a period of 10 years.

The president normally acts on the advice of the cabinet, which is selected by the president from members of parliament. The cabinet at present consists of 14 ministers and three assistant ministers, all of whom run ministries and departments of government. Cabinet ministers, as members of parliament, participate in parliamentary debates, but they are normally bound by the ethic of collective responsibility. Ministers are responsible to the National Assembly, but the president may appoint or dismiss ministers without consulting the National Assembly or cabinet.

Parliament

Parliament is the supreme legislative authority in Botswana, but laws passed by parliament are subject to review by the judiciary to ascertain their constitutional validity. Parliament consists of the president and the Na-

tional Assembly, and where tribal and customary matters are involved, it is obliged to act in consultation with the House of Chiefs. The president is a member of the National Assembly and has the power to address, summon, or dissolve it at any time. The president addresses the National Assembly at the opening of a new parliament every five years or whenever there is an important national issue. The president also addresses the last session of parliament after dissolving it to call a general election.

The main functions of parliament are to pass laws regulating the life of the nation, to scrutinize government policy and administration, and to monitor government expenditure. The National Assembly is a representative body elected by universal adult suffrage every five years. There are currently 57 seats in the National Assembly, and the quorum for meetings is one-third of members.

The House of Chiefs

Membership of the House of Chiefs consists of not fewer than 33 or more than 35 members, which shall be constituted as follows: (1) one person each for the time being performing the functions of a chief from 12 designated areas of the country, which may be fewer than 12 but not fewer than 10; (2) five persons appointed by the president; and (3) such number of persons, not being more than 20, as may be selected under the provisions of Section 78 of the constitution. They cannot engage actively in politics while serving in the house, but active participation in politics prior to being a member of the house shall not bar any person from being such a member.

The house sits whenever the executive government or National Assembly has referred a bill to it, whenever it has important business to transact, or at least once a year.

The Lawmaking Process

A bill presented to and approved by parliament is forwarded to the president for signature. The House of Chiefs does not have legislative or veto power. However, a draft of any National Assembly bill of tribal concern must first be referred to the House of Chiefs for advisory opinion.

The Judiciary

The judiciary is independent of the executive and parliament. The highest court in Botswana is the Court of Appeal, which consists of a president and such number of justices as may be prescribed by parliament; in addition, the chief justice and justices of the High Court (which is lower in the hierarchy than the Court of Appeal) also serve on the Court of Appeal. The court has primarily an appellate jurisdiction on all matters, civil, criminal, or constitutional. Many of its decisions have had significant legal and political impact. For example, its decision that certain sections of the Citizenship Act discriminated against women led to the amendment of the law to allow citizenship to be obtained through either the father or the mother of a child.

Other courts, such as the High Court, Magistrates Courts, and Customary Courts, deal with various matters before they reach the Court of Appeal.

Judicial Service Commission

The Judicial Service Commission advises the state president in the appointment of judicial officers. It is composed of the chief justice as chairperson, the chair of the Public Service Commission or the chair's nominee, a nominee from the Law Society, a nominee of the attorney general, and a nominee from the Court of Appeal.

Public Service Commission

The Public Service Commission is responsible for the appointment of persons to designated public offices. It is composed of a chairperson and not fewer than two or more than four other members. The commission is not subject to the direction or control of any other person or authority in the exercise of its functions under the constitution, though it must follow procedures established by law.

THE ELECTION PROCESS

All people of Botswana who have attained the age of 18 years are entitled to vote in elections, provided they have not been certified as insane or of unsound mind, are not under a death sentence, have not been declared insolvent in any part of the commonwealth, or are not under a sentence of imprisonment exceeding six months. The elections are conducted under the auspices of an Independent Electoral Commission, the chairperson of which is a High Court judge.

POLITICAL PARTIES

Botswana is a multiparty democracy. As of July 1998, there were 13 political parties, but some of them have since merged. The Botswana Democratic Party, the current ruling party, has dominated the political scene since independence.

CITIZENSHIP

Under the Citizenship Act of 1998, Botswana citizenship is primarily acquired by birth. A person born in Botswana shall be regarded as a citizen of Botswana if at the time of his or her birth his or her father or mother was a citizen of Botswana. A person born outside Botswana shall be a citizen by descent if at the time of his or her birth his or her father or mother was a citizen of Botswana. Citizenship can also be acquired by registration, for example, if a person is adopted, or by naturalization. Any person who is a citizen of Botswana and also a citizen of another country loses Botswana citizenship at the age of 21 years, unless such a person has renounced the other citizenship.

FUNDAMENTAL RIGHTS

Chapter II of the Botswana constitution gives protection to the fundamental rights and freedoms of the individual. Section 3 of that chapter, for example, provides that every person in Botswana (regardless of his or her race, place of origin, political opinions, color, creed, or sex) has the right to all of the following rights and freedoms: life, liberty, and security of person; protection of the law; protection of the privacy of home and other property, and from deprivation of property without compensation; freedom of conscience, of expression, of assembly, and association.

The constitution elaborates on these rights and the circumstances under which they can be lawfully abrogated. Some of the elaborations include protection from discrimination, protection from unlawful arrest or detention, right to a fair hearing in any court of law, and freedom from the imposition of torture or inhuman or degrading punishment.

Impact and Function of Fundamental Rights

The human rights record of Botswana is very good. In 2003, for instance, there were no reports of arbitrary or unlawful deprivation of life committed by the government or its agents and no reports of politically motivated disappearances. The courts vigorously uphold the guaranteed freedoms, and where these are violated, they declare such actions unconstitutional and apply the appropriate remedy.

Limitations to Fundamental Rights

There are two cardinal areas of limitations on fundamental rights.

Bill of Rights provisions are subject to such limitations as will ensure that their enjoyment does not prejudice the rights and freedoms of others or the public interest. The constitution does not define clearly what constitutes public interest. In a number of cases, the government makes that determination; an individual who is aggrieved by such a decision may challenge it in court.

Second, any law made during a declared emergency cannot be held to be inconsistent with or in contravention of the provisions of the constitution dealing with personal liberties. This limitation arises, for example, at times of war or natural disaster such as earthquake, flood, or outbreak of serious infectious disease.

ECONOMY

The Botswana constitution does not prescribe any type of economic system. However, there are provisions in the constitution that may influence the type of economic system that is pursued, such as protection of private property, prohibitions on the deprivation of property without compensation, and freedom of association. Accordingly, since Botswana's independence, the government has pursued a market-oriented economic policy with strong encouragement for private enterprise through tax incentives.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed under freedom of conscience, assembly, and association. Botswana is a secular state, and as such there is no established state church. However, all religious denominations are registrable under the Societies Act.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Botswana defense force is a creature of statute and is charged with the defense of Botswana and with such other duties as may from time to time be determined by the president. Membership in the defense force is voluntary, and there is no conscription. The defense force is subject to civil government. The president is the commander in chief and appoints the force commander. The president may at any time order the whole or part of the force to be employed outside Botswana. The president has the constitutional power to declare a state of emergency during which the president can deploy the force within Botswana, as the president sees fit.

AMENDMENTS TO THE CONSTITUTION

The constitution may be amended by parliament, in some cases subject to the approval of the electorate.

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Emmanuel Kwabena Quansah

BRAZIL

At-a-Glance

OFFICIAL NAME
Federal Republic of Brazil

CAPITAL
Brasília

POPULATION
179,284,871 (2004)

SIZE
3,287,357 sq. mi. (8,514,215 sq. km)

LANGUAGES
Portuguese

RELIGIONS
Catholic 73%, Protestant 15%, Spiritism/Kardecism 1.3%, Afro-Brazilian Umbanda and Candomblé 0.31%, Buddhism 0.12%, unaffiliated or other 9.2%

NATIONAL OR ETHNIC COMPOSITION
White 53%, Mulatto 38%, black 6.2%, Asian 0.44%, Native Indian 0.43%, undeclared 0.71%

DATE OF INDEPENDENCE OR CREATION
September 7, 1822

TYPE OF GOVERNMENT
Presidential

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral congress

DATE OF CONSTITUTION
October 5, 1988

DATE OF LAST AMENDMENT
March 3, 2006

Brazil has a democratic and presidential system of government based on the rule of law, with a clear division of executive, legislative, and judicial powers. Organized as a federation, Brazil is made up of a central government and 27 federal states including the federal district. The federal constitution guarantees many human and social rights. Most of them have a purely political or programmatic character with only limited legal impact. However, the so-called public freedoms, such as the freedom of speech, can at any time be protected against state action by a judicial writ.

The president is the directly elected head of state and government. The president can participate in the lawmaking process, as every law requires presidential assent. The members of the National Congress are also elected directly. A pluralistic system of political parties is guaranteed.

Religious freedom is guaranteed, and the state and the religious communities are strictly separate. The economic system can be described as a market economy. There is a constitutional principle of the social function of property, which introduces a social element into the interpretation of civil law. However, this has not been sufficient to achieve the social constitutional goal of developing a free and equal society based on solidarity. The military is subject to the civil government. Brazil undertakes to respect and promote several principles of public international law, such as world peace, self-determination of peoples, and repudiation of terrorism and racism.

CONSTITUTIONAL HISTORY

Brazil was proclaimed an independent political entity by Crown Prince Dom Pedro I on September 7, 1822, after being a Portuguese colony since its discovery in the year 1500. The decisive fact in the process of independence was the arrival, in 1808, of the Portuguese royal family, who were escaping from the invasion of Portugal by Napoléon. The government was transferred to the city of Rio de Janeiro, which became the capital of the empire.

The first type of government was, therefore, a hereditary monarchy but also a constitutional and representative one, according to Article 3 of the first Brazilian constitution

established by Dom Pedro in 1824. One of the most important provisions in that constitution was, in Article 3, the definition of Roman Catholicism as the official religion of the empire. Any other religion was tolerated only as a "domestic cult, or private in places with that destination, without any external configuration of a temple." The constitution granted "moderator" power upon the emperor, who had final say on all conflicts involving the exercise of the other three powers, the legislative, executive, and judicial.

The monarchy survived for 77 years, falling largely as a result of the collapse of the slave-based economy after the abolition of slavery in 1888. Republican ideals, imported by young members of the Brazilian elite who had studied in Europe, seeped into the Brazilian political scene at the end of the 1880s, leading to the proclamation of the Federal Republic on November 15, 1889. The first republican constitution was enacted in 1891. It consolidated the separation of powers and harmony between them, extinguished the moderator power, and catalogued a series of fundamental rights for Brazilian citizens, defined as anyone born on Brazilian territory. The constitution called for equal protection of the law, although beggars and illiterates were excluded from suffrage. Finally, it must be noted that the choice of a federative form of state and a presidential regime occurred under the influence of the model of the United States of America. Even the name Republic of the United States of Brazil reveals the source of inspiration for the revolutionary republicans.

The First or Old Republic, the period from 1889 to 1930, ended with the "hegemony crisis." The state of São Paulo, representing the coffee monoculture, and the cattle power state of Minas Gerais had until then shared a monopoly of presidential power. A new populist, authoritarian president now emerged out of Rio Grande do Sul. The Getúlio Vargas era (1930–45) had begun. In an attempted constitutionalist revolution in 1932, the State of São Paulo lost a struggle against practically all the other federal states, which remained loyal to Getúlio Vargas's central government. In 1934, the new Constitution of the Republic of the United States of Brazil was promulgated; it consolidated the 1891 constitution's liberal democratic achievements while attending to the particularities of the political situation after the revolution in 1932.

In 1937, at a time when fascism and Nazism were triumphant in continental Europe, Getúlio Vargas imposed the "New State" Constitution, revoking the democratic document of 1934. Basic public liberties, such as freedom of the press and freedom of speech, existed now entirely at the discretion of the state. A far-reaching mechanism of state repression of all democratic manifestations was created. In 1938, for example, a department of information and press was created with constitutional support. It was responsible for widespread censorship and the persecution of opponents of the new totalitarian regime.

Concomitantly with the defeat of fascism in Europe, democracy was restored in Brazil. Bereft of political support and having completely changed from support of fascism-Nazism to collaboration with the Allied countries in the persecution of war criminals, Vargas adapted himself to the new era of democratic reconstruction and strategically gave up power. Direct elections were held, and a new Brazilian constitution was promulgated on September 18, 1946.

The new constitution did not follow the classic liberal model. On the contrary, it guaranteed, besides classic fundamental rights, many others rights and specific duties. This was a constitution with a strong social nature establishing programmatic norms, as had occurred two decades before in the German Weimar Republic (1918–33).

This new (fifth) constitutional period also had a relatively short life and was marked with enormous initial (1945–54) and final (1961–64) instabilities. Getúlio Vargas was again, in 1951, the president of the republic but this time elected in direct elections. However, when his new totalitarian plans were frustrated, after he again claimed popular support to dissolve parliament, he committed suicide in 1954.

Brazil enjoyed a period of stability and progress under Juscelino Kubitscheck (1956–60). The period ended with another populist president with authoritarian aims, Jânio da Silva Quadros, who resigned the presidency in 1961 because of "hidden forces," as he called them. Since his replacement, the demagoguic socialist vice president João Goulart, belonged to a different party, serious political instability resulted, aggravated by an intensification of the cold war. On March 31, 1964, parts of the Brazilian military performed a coup d'état, which they themselves called a revolution, relying on substantial but not open support from the United States of America.

The military imposed the 1967 constitution. It changed the country's name to the Federal Republic of Brazil, thus demonstrating the nationalist orientation of the military, which was increasingly opposed to the growing U.S. influence in Latin America. The 1967 constitution provided for the so-called institutional acts that curbed individual rights and the rule of law. This reached its peak with Institutional Act No. 5 in 1969, which dissolved parliament. The military remained in power until the voluntary handover during the 1980s.

The 1980s were characterized by the return to democracy, aided by movements such as the *diretas já* (direct elections now) campaign. Political amnesty was granted to exiles, enabling their return to Brazil. However, the *diretas já* campaign was frustrated by parliamentary representatives who represented the old regime. Direct elections to the presidency did not come about until 1989, although the governors of the federal states were directly elected in 1985. A new constitution, created at a National Constitutional Convention consisting of representatives from a broad cross section of Brazilian society, was promulgated on October 5, 1988. It consolidated this second era of redemocratization.

FORM AND IMPACT OF THE CONSTITUTION

Brazil has a written constitution, codified in a single document, that takes precedence over all other national law.

International law must be in accordance with the constitution to be applicable within Brazil. The constitution is the basis of a Brazilian democratic and constitutional state devoted to the rule of law.

The text of the constitution is a political program that synthesizes frequently antagonistic ideas. It has the nature of a commitment to all sections of society, as did the constitution of the German Weimar Republic. It represents a symbolic power of transformation of the state and society rather than a really normative power.

BASIC ORGANIZATIONAL STRUCTURE

Brazil is a federation made up of 27 federal states, including a federal capital district of Brasilia. Each of the states has a constitution modeled in part on the federal document but with an identity of its own. The states differ considerably in geographic area, population size, and economic strength, but they have equal legislative, administrative, and judicial powers.

The explicit federal nature of the constitution has not defeated a strong tendency toward centralization. The distribution of legislative powers between the union and the states confirms the reality of a weak federalism. Articles 8 to 42 reserve few exclusive powers to the states. The union does have exclusive legislative powers (such as in criminal and procedural law), while the states have merely residual powers.

The municipalities also have relative autonomy, although they are not considered federation entities. In addition to autonomous public administrations (executive power), they have municipal chambers that are responsible for local law. They do not, however, have judicial powers. Article 30 allows the municipalities to "institute and collect taxes within their jurisdiction, as well as to apply their revenues . . . within the periods established by law." They also have powers to protect the local historic heritage. Matters that were traditionally part of the states' competence, such as education and, above all, public security, have also been assumed by the municipalities.

LEADING CONSTITUTIONAL PRINCIPLES

Besides the principle of federalism in Article 1 (also protected by Article 60), the separation of powers guaranteed in Article 2 is among the structural principles of the constitution; it is excluded from the possibility of amendment in Article 60. Article 1 lists the foundations of the federal republic to be sovereignty, citizenship, the dignity of the individual, the social value of work and of free enterprise, and political pluralism.

Of these, the principle of political pluralism has perhaps the broadest expression in practice. Since 1988, political parties have proliferated. With no legal minimal number of votes required, the new parties have won seats in national, state, and local legislatures. New laws have made access more difficult for new parties, which must collect a sufficient number of signatures in order to register. However, once registered, every political party has an equal right to participate in legislative elections.

Article 4 establishes the principles that govern Brazil's international relations: national independence, primacy of human rights, self-determination of peoples, nonintervention, equality among states, defense of peace, peaceful solution of conflicts, repudiation of terrorism and racism, cooperation among people for the progress of humankind, and granting of political asylum.

The repudiation of terror has an important influence on Brazil's legal system. In Title II, Chapter I, the constitution holds that "the law shall consider the practice of torture [or] terrorism . . . to be crimes not entitled to bail and to mercy or amnesty, and the principals, the accessories and those who, although able to avoid them, abstain from doing so, shall be held liable." This duty to protect the state against abuses is unique in Brazilian constitutional history. Regarding racism, Article 5 establishes that "the practice of racism is a crime not entitled to bail or to the statute of limitations, and subject to imprisonment, according to the law."

Regional integration is included as a programmatic norm in Article 4: "The Federal Republic of Brazil shall seek economic, political, social, and cultural integration of the peoples of Latin America, in order to form a Latin American community of nations." Such integration has been pursued, especially since the Treaty of Asunción, incorporated by Decree 350 of November 21, 1991, and by the development of MERCOSUR, the common market of Brazil, Paraguay, Argentina, and Uruguay.

CONSTITUTIONAL BODIES

The chief constitutional bodies are the president of the republic, who is simultaneously head of state and the administration, the National Congress, which is composed of the Chamber of Deputies and the Federal Senate, and the judiciary, including the Supreme Federal Court, which is responsible for safeguarding the constitution.

The President (Head of State and the Administration)

The Brazilian constitution has adopted the presidential system of government, whereby the president is both head of state and head of the administration. The president of the republic is also head of the federal public administration.

The president as head of state performs the typical functions of internal and foreign representation of the republic, such as the conclusion of international treaties and acts. The president is directly elected by the people for a fixed period of four years and can be reelected only once. The election is by universal suffrage and direct and secret ballot.

The 1988 Constitutional Convention provided an option for voters to determine the form and system of government by a plebiscite. Such a vote took place on April 21, 1993; it confirmed the Constitutional Convention's choice of a presidential republic.

The election takes place in two rounds so that the elected president attains an absolute majority of valid votes (not counting abstentions or invalid ballots). The second round is dropped if one candidate wins a majority in the first ballot; if not, the two candidates who receive the highest number of votes in the first round compete in the second. Voting is mandatory to ensure even greater legitimacy of the elected president. In case of impediment or a vacancy, the presidency is exercised successively by the vice president, the president of the Chamber of Deputies, the president of the Federal Senate and, finally, the chief justice of the Supreme Federal Court.

The president of the republic may be removed from office through impeachment and conviction, a mechanism imported from U.S. constitutional law. It is very effective and necessary in Brazil, which can still be considered an immature democracy, as the period of military dictatorship is fairly recent and constitutional history has oscillated between authoritarian periods and democratization or redemocratization.

The first president elected after the 1988 constitution, Fernando Collor de Mello, was the subject of the first impeachment procedure in Brazilian constitutional history. He was removed from office in 1992 after the decision of the National Congress. Under immense pressure from demonstrations with millions of people in all major urban centers, the National Congress exercised its radical constitutional power, a fact that made Brazilian citizens proud.

In cases of misuse of office, Articles 51 I, 52 I, and 85 provide that the competent body to initiate the legal proceedings and actually to try the president is the Federal Senate, with the chief justice of the Supreme Federal Court acting as its president. In the case of a common criminal offense, the competent body to affect the legal proceeding and trial is the Supreme Federal Court (Article 102 I). Should the president not take up the office, it can be declared vacant according to Article 78. This also happens if the president leaves the country, without authorization from the National Congress, for a period of more than 15 days. Finally, the president may resign without approval from the National Congress.

As head of the administration, the president defines government policies and appoints and dismisses the ministers of state (Article 84 I). The ministers' function is to assist the president in the higher management of the federal administration (Articles 76 and 84). They manage their areas within the federal administration and countersign the acts signed by the president in their areas (Article 87). The creation and structuring of ministries are provided by law (Article 88).

As head of the administration, the president of the republic has a special role in the lawmaking process. He or she can initiate legislation and must approve laws passed by the National Congress.

Finally, the presidency of the republic is the highest body of the direct federal public administration, which is constituted basically by the presidency and the ministries. Besides the ministries, there are bureaus, such as the secretariat of political affairs, the general secretariat, the secretariat of governmental communication, and the office of institutional security. The presidency of the republic is also constituted by other bodies that directly assist the president, namely, the Council of the Republic, the national defense council, the advocacy-general of the union, the special secretariat for urban development, and the office of the president of the republic.

The Congresso Nacional (National Congress)

The Brazilian legislative is genuinely bicameral; that is, there is no hierarchy of the two houses. The National Congress is made up of the Chamber of Deputies and the Federal Senate. The Chamber of Deputies represents the people, whereas the members of the Federal Senate represent their respective federal entities. Nevertheless, the constitution attributes a certain superiority to the Chamber of Deputies, which has the competence to start the lawmaking process in those cases in which the initiative is from bodies outside the legislative, such as the president of republic, the Supreme Federal Court, the Superior Court of Justice, or the citizens via a "popular initiative" (Articles 61, 64).

The National Congress exercises the legislative function of the union. It also controls state accounts, finances, and the budget (Articles 70). It also has some judicial functions, such as creating temporary committees and parliamentary inquiry committees (Article 58), which are very common in the Brazilian political scene.

The Câmara dos Deputados (Chamber of Deputies)

The Chamber of Deputies is formed by representatives of the people, elected by the proportional system in each state (Article 46). The legislative term of each deputy is four years, and multiple reelections are allowed.

A supplementary law has established the minimal number of eight and the maximal number of 70 deputies for each state. As a result, states such as São Paulo, which has more than 35 million inhabitants, are underrepresented compared to states such as Roraima, which has fewer than 1 million inhabitants. In order to be elected, a deputy in populous states such as São Paulo, Minas Gerais, Paraná, Bahia, or Pernambuco needs many more votes than a deputy in Roraima.

The Chamber of Deputies has the power to authorize legal proceedings against the president, vice president, or ministers of state by a two-thirds vote of its members. It also has the power to require the presentation of accounts by the president (Article 51).

The Senado Federal (Senate)

The Senate represents the federal states. Every state elects three senators, with two substitutes for each one, by a majority of voters in that state. The term of office is eight years. One-third and two-thirds of the representation of each state shall be renewed each four years, alternately.

The Senate has an extensive catalogue of exclusive powers established by Article 52. Among them there are to try the president and vice president of the republic for the crime of malversation (corruption) and to state the application of a law declared unconstitutional by final decision of the Federal Supreme Court.

The Lawmaking Process

The lawmaking process in Brazil is very complex. Normative acts can include amendments to the constitution, supplementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees, and resolutions. Some of them do not even belong to the lawmaking process in its narrow sense, such as the provisional measure, which is within the exclusive competence of the president of the republic.

There are a common procedure for making ordinary laws, a brief procedure for ordinary laws with emergency character, and special procedures for amendments to the constitution, supplementary laws, and other normative acts listed in Article 59. Amendments require three-fifths of the members of parliament, whereas supplementary laws need an absolute majority.

The common procedure can be divided into three phases:

Initiative or presentation of the bill: The initiative may arise from bodies outside the legislature or either house of congress, in which case, the discussions begin, and the first vote is taken in that house.

Parliamentary vote: As soon as the bill is received by either or both houses, discussions and voting begin. Afterward, the bill is sent to the other house, which can approve it, reject it, or approve it with amendments. In the first case, the bill advances to the next phase, executive or presidential voting. In case of the rejection, the bill is dismissed. In case of the approval with amendments, they are to be voted once more by the house where the bill was first proposed. In this voting, the house may reject the amendments, and, in such case, the bill continues without the amendments of the reviewing house. The vote in both houses of parliament is carried out by simple majority.

Executive vote: The president of the republic may sanction or veto the bill as a whole or in part, but he or she must explain a veto. The president can veto the bill either as unconstitutional or as contrary to the national interest.

The veto can be rejected by the absolute majority of both houses. Once the bill has been sanctioned, the president of the republic promulgates the law and orders its publication.

The Judicial Power

The judiciary in Brazil is independent of the executive and legislative powers. Article 92 provides for a Federal Supreme Court, a Superior Court of Justice, federal regional courts and federal judges, labor courts and labor judges, electoral courts and electoral judges, military courts and military judges, and courts and judges of the states and of the federal district. This adds up to two superior courts, federal judicial bodies of the first instance and of appeal; three special judicial systems with their own superior courts, regional, and first instance courts; and finally the states' judiciaries organized in courts of appeal and judges of first instance.

Ordinary state and federal judges are admitted to the bench by means of a public examination, provided they have a law degree. The judges of the superior courts, known as ministers, are nominated pursuant to often complex quota rules, but they too must have law degrees.

The Federal Supreme Court is composed of 11 justices, chosen from among citizens over 35 years and under 65 years of age, with extensive legal knowledge and unblemished reputation. They are appointed by the president of the republic with the approval of the absolute majority of the federal Senate. The federal Supreme Court decides on the constitutionality of laws and on criminal offenses committed by superior bodies of the other powers, such as the president of the republic or ministers of state.

THE ELECTION PROCESS

The sovereignty of the people is exercised by universal and equal suffrage in a direct and secret ballot. It is mandatory for every literate Brazilian citizen over 18 and less than 70 years old to vote. Voting is optional for 16- and 17-year-old citizens, illiterate citizens, and citizens over 70 years old.

Direct elections are carried out every four years for the presidency of the republic, the state administrations, the Senate, the Chamber of Deputies, and the state Legislative Assemblies. Municipal elections and election for city councils also take place every four years, but not at the same time as the national and state elections.

Every literate Brazilian citizen who enjoys the full exercise of his or her political rights can stand for elections. However, in individual cases, these political rights can be cancelled by the electoral courts for a given period. Some offices have a minimal age requirement, such as 35 years for president of the republic.

Other forms of political participation are the plebiscite, the referendum, and the initiative of the people.

POLITICAL PARTIES

Brazil has a pluralistic system of political parties. Article 17 guarantees the freedom to create, consolidate, merge, and

dissolve political parties as the final guarantee of the broad list of fundamental rights and guarantees. There is no explicit provision to prevent a political party from pursuing purposes that are harmful to the democratic regime.

The political parties have the nature of private legal entities. After acquiring corporate status under civil law, they must register their by-laws with the superior electoral court. They are granted wide autonomy to define their structure, organization, and functioning.

The political parties are entitled to free-of-charge access to radio and television in the periods before elections. The duration of their electoral advertisements depends upon their number of representatives in both chambers of the National Congress.

CITIZENSHIP

Brazilian citizenship is primarily acquired by birth in Brazilian territory. The principle of *ius soli* is applied. Also citizens are those born abroad of a Brazilian parent who is serving the Federal Republic of Brazil or is registered with a proper Brazilian authority. Those who live in Brazil before coming of age can choose Brazilian nationality at any time after having come of age.

Foreigners may naturalize, after they reside for over 15 uninterrupted years in Brazil, unless they are from a country where the official language is Portuguese. In that case, only one year of residence is necessary.

The law may not establish any distinction between born and naturalized Brazilians, except in the cases set forth in the Brazilian constitution, such as the reservation of certain public offices to those born Brazilian, for example, the president and vice president of the republic.

FUNDAMENTAL RIGHTS

Fundamental rights are guaranteed in the Brazilian constitution in the second title, which is divided into five chapters: individual and collective rights and duties, social rights, citizenship, political rights, and rights of political parties.

The constitutional text does not lend itself to easy reading. Article 5 of the first chapter of the second title consists of 77 items that list, on the one hand, classical public freedoms, such as freedom of speech, freedom of conscience and belief, freedom of social communication, the right to exercise one's profession, the right to property, and freedom of access to information. On the other hand, rights to material provision from the state are also established, such as the right of acknowledged poor people to register birth and death without charge. Finally, many procedural rights are included, among them novelties such as data protection and the injunction order, apart from the traditional writs of mandamus and habeas corpus. Even class action is assured as a fundamental right in this chapter.

According to Article 5, all persons are equal before the law without any distinction whatsoever; Brazilians and foreigners resident in Brazil are assured the inviolability of the right to life, liberty, equality, security, and property, among other rights. Nonresident foreigners are excluded from the list of those who are entitled to the rights of classical public freedoms. Then again, Article 6 assures the fundamental social rights in an impersonal manner and thus it can include, in principle, nonresident foreigners.

The second title guarantees as universal human rights the social rights of education, health, work, leisure, security, social security, protection of motherhood and childhood, assistance to the destitute, social rights of urban and rural workers, social rights to professional or union association, the right to strike, participation of workers and employers in collegiate bodies of government agencies, and the right of representation of employees in direct negotiation with employers.

Impact and Functions of Fundamental Rights

The tradition of fundamental rights in Brazil was based on North American influences, but since 1946, it has been guided more and more by the European continental experience. This reflects a desire to consolidate the classical public liberties with new personality rights and to assure the material resources to allow these rights to be exercised.

However, there is no explicit doctrine that allows judges to apply the fundamental rights. In Brazilian doctrine, fundamental rights immediately bind individuals, but the constitutional remedies assure jurisdictional protection only against state actions. Indeed, it is not clear how the immediate binding of individuals would work. Therefore, the principle is reduced to a political-programmatic intent.

Limitations to Fundamental Rights

Some fundamental rights are subject to legal reservation. For example, freedom of profession is conditioned by the compliance with the qualifications established by law. However, many others, such as freedom of speech, are guaranteed without any reservation whatsoever.

ECONOMY

The Brazilian constitution presents a clear program for a social market economy. The whole seventh title is devoted to the economic and financial system. It lays out general principles of economic activity, especially the commitment to the principle of private property and the principle of the social function of private property. Also mentioned are free competition, consumer protection,

protection of the environment, reduction of regional and social differences, and achievement of full employment.

RELIGIOUS COMMUNITIES

Freedom of religion or belief guaranteed as a human right, as are rights for religious communities. There is no established state church. All public authorities must remain strictly neutral in their relations with religious communities. Religions must be treated equally.

The constitution of 1988 also protects places of worship against aggression from individuals. It also provides for religious assistance in civil and military establishments of collective confinement.

The religious communities are organized pursuant to civil law, demonstrating the lack of a complete separation between religion and the state in Brazil. They enjoy tax exemption, which has led to the emergence of religious "empires." Evangelical organizations have acquired important television channels, which will eventually make the political, economic, and constitutional questions of media regulation even more complex. Representatives of the Afro-Brazilian religions feel cut off from access to television, the most overwhelming medium ever in Brazil. Constitutional law obliges the state to democratize the use of television, which is in practice almost entirely in the hands of private initiatives.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are permanent and regular national institutions under the supreme authority of the president. They are mandated to defend the nation, guarantee the constitutional powers, and maintain law and order.

All men above 18 must perform basic military service for 12 months. In addition, there are professional soldiers. Women can volunteer. A conscientious objector can file a petition to be excluded from military service but may not always be permitted to do so. Article 143 states that "it is incumbent upon the armed forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, allege reasons of conscience, which shall be understood as reasons based on religious creed and philosophical or political belief for exemption from essentially military activities." A relevant law exists, but its application is discretionary and hence it is difficult for someone to be dismissed from mandatory military services by reason of religious creed or philosophical belief.

The constitution structures in great detail the "state of defense" and the "state of siege." The president may declare a state of defense to preserve or promptly reestablish, in certain and restricted locations, public order or social peace whenever threatened by serious and imminent institutional instability or when affected by major natural calamities. Before doing so, the president must hear the Council of the Republic and the Council of National Defense. The president may also, after hearing the Council of the Republic and the Council of National Defense, request that the National Congress authorize a state of siege, which entails suspension of even more rights. This is possible in the event of serious disturbance with national effects or if measures taken during the state of defense are evidently ineffective. This also applies to a declaration of a state of war in reaction to foreign armed aggression. Congress needs an absolute majority to declare a state of siege. Either state must be immediately ended when the reasons for them no longer apply.

AMENDMENTS TO THE CONSTITUTION

The constitution has been amended more than 40 times since its enactment in 1988 as a result of the relatively easy procedure involved. Amendments require a qualified majority of only three-fifths in both legislative houses in two readings.

However, no amendment is allowed that tends to abolish the federal form of the state; direct, secret, universal, and periodic elections; the separation of government branches; or individual rights and guarantees.

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Leonardo Martins

BRUNEI

At-a-Glance

OFFICIAL NAME
Negara Brunei Darussalam (The Nation of Brunei, Abode of Peace)

CAPITAL
Bandar Seri Begawan

POPULATION
365,000 (2005 est.)

SIZE
2,227 sq. mi. (5,769 sq. km)

LANGUAGES
Malay (official), English, Chinese

RELIGIONS
Muslim (official) 67%, Buddhist 13%, Christian 10%, indigenous beliefs and other 10%

NATIONAL OR ETHNIC COMPOSITION
Malay 68%, Chinese 15%, other indigenous 6%, other races 11%

DATE OF INDEPENDENCE OR CREATION
January 1, 1984

TYPE OF GOVERNMENT
Malay Islamic monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Appointed 21-person Legislative Council reconstituted on September 25, 2004

DATE OF CONSTITUTION
September 29, 1959

DATE OF LAST AMENDMENT
September 25, 2004

Brunei Darussalam is an independent Muslim Malay sultanate on the island of Borneo. Its ruler is the sultan of Brunei, who also holds the traditional Malay title of Yang di-Pertuan, meaning "king." As sultan, he is seen as God's representative on Earth, making him both head of state and head of the Islamic faith. The constitution of Brunei reflects this by giving to him supreme executive and religious authority. Although not required by the constitution, the current sultan is the nation's prime minister, finance minister, defense minister, and supreme commander of the armed forces. When the ministry of law was abolished in 1999, the sultan assumed responsibility for judicial administration as well. The judges and courts are regarded as operating independently and without state interference.

All legislation is currently enacted by royal proclamation of the sultan. This is because Part VI of the constitution, which provided for legislative powers to be exercised by a partially elected and partially appointed Legislative Council, had been suspended. In September 2004, the sultan reconstituted a modified version of the Legislative Council when he appointed 21 men to serve on it. However, the council has no powers independent of the sultan. Its role is to provide a forum for discussion of government programs and reforms.

The constitution allows the sultan to assume legislative powers when he has declared a state of emergency. In 1962, during a failed rebellion against the government, a state of emergency was declared; it has been regularly renewed every two years since that time. Accordingly, there have been no elections since 1962; therefore, there is little role for political parties to play in the sultanate. The sultan has indicated that there may be elections to the Legislative Council in the future.

Although there is no separation of powers in Brunei, there is a distinction between the state and the monarchy with separate financial regulations applying to each. The sultan is advised by the Council of Cabinet Ministers, all of whom are appointed by him and hold office at his pleasure. The operation of the Cabinet Council and the three

other advisory councils is seen to reflect the traditional Malay processes of advice and consultation.

The constitution provides that Shafeite sect of Islam is the state religion but that other religions can be practiced in peace and harmony. The economic system is dependent on the country's natural oil and gas reserves.

CONSTITUTIONAL HISTORY

The Kingdom of Brunei is an ancient one. Brunei became a sultanate in the 14th century when its king converted to Islam and changed his name to Sultan Muhammad Shah in honor of the Prophet. The present sultan is his 29th descendant. Traditional Brunei Malay and Islamic practices continue to inform the concepts of constitutionalism in the sultanate. The nation's ideology—Melayu Islam Beraja (MIB), meaning Malay Islam Monarchy—is honored, and adherence to it is required. It is claimed that MIB's central tenets can be traced back in an unbroken line for five centuries.

Brunei became a protectorate of Great Britain in 1888 and a residency in 1905. The Residency Agreement acted as a de facto constitution. During the residency, the sultan remained the head of state but was bound to take advice from the British government on all matters not dealing with the Islamic religion. During this time, English common law and courts were introduced, and a civil service replaced the traditional roles of nobles and chiefs.

After a decade of negotiations, the residency ended in 1959, and Brunei gained internal self-rule, with Britain retaining responsibility for defense, foreign affairs, and internal security. Brunei's first written constitution began operation that year. It concentrated power in the hands of the sultan by giving him full executive authority but did provide for consultation with five advisory councils. There have been two major constitutional amendments since 1959. In 1971, the power of Great Britain was reduced to external affairs. In 1984, Brunei Darussalam became fully independent, and a system of ministerial cabinet government was introduced.

FORM AND IMPACT OF THE CONSTITUTION

Brunei has had a written constitution since 1959. It is contained in a single piece of legislation. As the supreme law of the country, it provides the constitutional framework for the nation but does not contain a bill of rights.

BASIC ORGANIZATIONAL STRUCTURE

Brunei is a unitary state with four administrative districts (*daerah*), each of which has a district officer responsible to the prime minister. A district is divided again into subdistricts (*mukim*), each of which is administered by an appointed headman (*penghulu*). The smallest administrative unit is the village (*kampong*). Since 1992, the village headmen (*ketua kampong*) are elected by secret ballot once their candidacy has been approved by government. They hold meetings with the minister of home affairs and meet formally once a month in consultative councils at both the *kampong* and the *mukim* level. In 1996, the first and, to date, the only General Assembly of Mukim and Village Consultative Councils was held. One thousand delegates participated. This was described as "grassroots democracy." The issues discussed were local government matters such as road improvement and maintenance of community halls.

LEADING CONSTITUTIONAL PRINCIPLES

The constitutional principles that govern Brunei are a fusion of traditional Brunei Malay concepts of governance and those derived from the British or Western system.

From traditional Malay concepts are drawn the principles supporting autocratic, divine, and absolute rule by the sultan. This rule is to be based on consultation with respected advisers and supported by a special relationship between ruler and subject. The sultan allows his subjects to have contact with him through meetings in villages, mosques, and workplaces. This is described by the government as living democracy. Democracy, in a Western form of representative government, has never operated in Brunei.

As the sultan is God's representative, the state promotes Islamic values and practices in all aspects of life in the sultanate.

From Britain and the West are derived principles of cabinet government, independence of the judiciary, and implied human rights. These rights must not be inconsistent with the interests and harmony of the state.

CONSTITUTIONAL BODIES

The bodies provided for in the constitution are the sultan (Yang di-Pertuan), the Council of Cabinet Ministers, the Privy Council, the Religious Council, the Council of Succession, and the Legislative Council.

The Sultan and Yang Di-Pertuan

The sultan (Yang di-Pertuan) is the head of state, head of government, and head of the religion of Islam. The position of sultan is hereditary and is for life. The sultan appoints and dismisses all members of the four advisory councils described in the following.

The Council of Cabinet Ministers

The Council of Cabinet Ministers provides advice to the sultan in the exercise of his powers and duties in governing the state. The constitution requires the prime minister to be a Brunei Malay who professes the Muslim religion of the Shafeite sect. Although the first cabinet was dominated by members of the royal family, this practice has not continued.

The Privy Council

The Privy Council advises the sultan on matters relating to amendment or revocation of the constitution, exercise of the royal prerogative of mercy, and conferral of Malay customary honors and titles. Its members must take an oath of secrecy.

The Religious Council

The Religious Council aids and advises the sultan on matters relating to Islam and is the highest authority in Brunei on Islamic law.

The Council of Succession

The Council of Succession determines the succession to the throne if the need arises. A Council of Regency can also be proclaimed when the sultan, at his accession to the throne, is under the age of 18 years.

The Lawmaking Process

Given the continued renewal of the state of emergency, the constitution gives power to the sultan to make any orders he considers desirable in the public interest. All laws are enacted as emergency orders. The legitimacy of the continuation of the state of emergency for more than 40 years has never been judicially considered.

The Judiciary

Details on the operation of the courts and the judiciary are not contained in the constitution but in separate legislation. In practice, the courts are considered to operate independently without executive interference, though the constitution does not provide for an independent judiciary.

There are two legal systems operating in Brunei. The civil system, which is derived from English common law, is administered through a hierarchy of secular common law courts. The final right of appeal from these courts for civil cases only is to the Judicial Committee of the Privy Council in London. Although a common-law country, Brunei does not have trial by jury. It uses the death penalty for serious offenses, such as murder, rape, and drug trafficking, and caning and imprisonment for other criminal offenses. The sultan appoints civil judges on renewable contracts.

The Islamic system has the Syariah Appeal Court as its highest court. It plays a supervisory role over lower Syariah courts. Syariah courts have jurisdiction over Muslims and deal with issues of marriage, divorce, custody, other aspects of family law, deceased's estates, Islamic trusts (*wakaf*), and offenses against Muslim morality and religious practice, such as nonattendance at Friday prayers. Islamic rules of evidence apply in these courts. The sultan appoints Syari'e judges on the advice of the president of the Religious Council.

THE ELECTION PROCESS

The only national election occurred in 1962. Subjects of the sultan who were over the age of 21 had the right to vote and stand for election to the 10 elected seats in the 21-member Legislative Council.

In 1989, the sultan announced he would consider introducing elections and a legislature "when I can see evidence of a genuine interest in politics on the part of the responsible majority of Bruneians." With the revival of the fully appointed Legislative Council in 2004, there have been calls for elected representatives to join the council. No schedule for possible future elections has been made public.

POLITICAL PARTIES

Brunei has one registered political party, the Brunei National Solidarity Party (PPKB). It has fewer than 100 members. To be registered, parties must pledge support to the sultan, the MIB ideology, and the existing system of government. Several political parties have been deregistered by the government since 1962. Members of the civil service and the armed forces are not allowed to join political parties.

CITIZENSHIP

Brunei citizenship is acquired by birth for those of the Malay race. Until 2002, citizenship could only be transmitted through the father, but it now extends to the children of female citizens who are married to foreigners. Otherwise, to attain Brunei citizenship, an individual must pass a test on Brunei Malay custom, culture, and language. Many of Brunei's Chinese are permanent residents who are entitled to live in the country but who do not enjoy the full privileges of citizenship, including the right to own land.

FUNDAMENTAL RIGHTS

The constitution does not specify or guarantee fundamental rights except for religious freedom. The rights that are enjoyed by the people of Brunei are implied rather than provided for expressly.

Impact and Functions of Fundamental Rights

In Brunei, fundamental rights operate with significant limitations. These limitations are seen as necessary to preserve the culture and cohesion of the nation.

Taking freedom of speech and expression as an example, this freedom is limited by censorship laws including the Local Newspapers (Amendment) Order of 2001. This gives the government complete control over the press, as all newspapers must apply to the minister of home affairs for annual publishing permits. The minister has sole discretionary power to grant permits, which is not subject to appeal or judicial review. The government has absolute power to bar the distribution of foreign publications in Brunei. The one local television channel is owned by the government. There are, however, no restrictions on Internet use.

Another example are the limitations on the right to form associations. Nongovernment organizations require government approval, and there are restrictions preventing Muslims from becoming members of service organizations such as Rotary and Lions. Trade unions are lawful, and there are three registered unions, but membership is very low.

ECONOMY

The constitution does not specify an economic system. Brunei's economy is heavily reliant on oil and gas revenues and income from the government's overseas investment. Islamic banking and financing operate in the sultanate. Citizens of Brunei pay no taxes and enjoy a generous welfare system.

RELIGIOUS COMMUNITIES

Islam is the state religion, and the Ministry of Religious Affairs promotes and controls its practice. There are religious police who can investigate any breach of Islamic law. Religious authorities from the ministry regularly conduct searches for alcoholic beverages and for food products that may not conform to *halal,* or lawful Islamic practices on food preparation.

Although other religions can be practiced, there are limitations. Censorship laws restrict information on non-Muslim religions. It is an offense to attempt to convert a Muslim to another religion. In schools, the teaching of any religion other than Islam is prohibited, while the teaching of Islam and MIB is compulsory.

MILITARY DEFENSE AND STATE OF EMERGENCY

The sultan is both minister of defense and supreme commander of the armed forces. There is no military conscription. Men over the age of 18 can volunteer to join the armed services.

Section 83 of the constitution provides that the sultan can declare a state of emergency when it appears to him that "public danger exists." It lasts for two years, but another declaration can then be issued. The sultan may make "any Orders whatsoever which he considers desirable in the public interest," including restrictions on fundamental freedoms and modifications, amendments, or suspensions of any written laws.

AMENDMENTS TO THE CONSTITUTION

The sultan may amend or revoke any of the provisions of the constitution. He is required to consult the Privy Council but is not obliged to act in accordance with that advice.

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Ann Black

BULGARIA

At-a-Glance

OFFICIAL NAME
Republic of Bulgaria

CAPITAL
Sofia

POPULATION
7,801,273 (2005 est.)

SIZE
43,128 sq. mi. (111,700 sq. km)

LANGUAGES
Bulgarian

RELIGIONS
Eastern Orthodox 82.6%, Muslim 12.2%,
Jewish 0.1%, Catholic 1.7%, Protestant and other 3.4%

NATIONAL OR ETHNIC COMPOSITION
Bulgarians 83%, Turks 9.0%, Roma 3%, other 6%

DATE OF INDEPENDENCE OR CREATION
March 3, 1878

TYPE OF GOVERNMENT
Parliamentary republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 12, 1991

DATE OF LAST AMENDMENT
February 18, 2005

Bulgaria is a unitary state based on the rule of law. Fundamental rights are protected by the constitution. Bulgaria is a parliamentary democracy with a strong president. The executive power is primarily vested in the Council of Ministers, consisting of the prime minister and the cabinet ministers. The judiciary includes a Constitutional Court and is independent. Free economic initiative is guaranteed, as is freedom of religion. Eastern Orthodox Christianity is considered by the constitution to be the traditional religion of the Republic of Bulgaria.

CONSTITUTIONAL HISTORY

The Bulgarian state emerged in the second half of the seventh century C.E. In 681, a state treaty was signed between the Byzantine emperor, Constantine IV, and the Bulgarian khan, Asparouch, by which Byzantium recognized the Bulgarian state in the area north of the Balkan Mountains and around the Danube delta. Apart from the proto-Bulgarians, the area was home to the Seven Slav Tribes as well as a Thracian population. Asparouch signed a treaty giving the Slavs a degree of autonomy. Thus, Bulgaria became a recognized state with three main ethnic components—proto-Bulgarians, Slavs, and Thracians.

A hereditary monarch called the khan was the head of the state. The structure of the state mirrored the military organization; territorial units were headed by military leaders called Boils, who helped the khan govern the state in peace and war. The self-governing Slavs were ruled by tribal princes and councils of elders.

In 865, Khan Boris undertook a large-scale reform by imposing Christianity on his whole realm. His successor, Simeon, took the title *czar* from the Byzantine *Caesar,* imposed the language of his Slavic subjects as the official language, and adopted the recently created Cyrillic script. Within a short period, the major Byzantine religious and secular books were translated into this tongue, the first corpus of written literature in any Slavic tongue.

The Bulgarian state existed until 1018 when, during the reign of Emperor Vasilios II, the whole territory was annexed into Byzantium. In 1186, after an uprising, the Bulgarian state was restored under the kings of the Assenovtsi dynasty. The organization, structure, and state

institutions of this second Bulgarian state generally followed the precedent established by its predecessor. In the 14th century, as a result of feudal processes, the country split into several smaller states, including the Tarnovo and Vidin Kingdoms.

In 1393, all these states were conquered by the Ottoman Turks and included in their newly created Ottoman Empire. Bulgaria remained under Ottoman rule for nearly 500 years.

In 1878, after the Russian-Turkish War (1877–78), the Berlin Treaty restored the Bulgarian state in two parts—Principality Bulgaria, still feudatory to the Ottoman Empire, and Eastern Roumelia, an autonomous province of the empire. In 1885, the two territories unilaterally declared their unification under the principality. In 1908, again unilaterally, the Bulgarian prince declared the independence of Bulgaria from the Ottoman Empire.

The history of written Bulgarian constitution began on April 16, 1879, when a Constituent Assembly adopted the Tarnovo constitution, so named for the medieval Bulgarian capital where the assembly met.

The Tarnovo constitution had all the positive characteristics of the liberal constitutions of 19th-century Europe. In compliance with the requirements of the Berlin Treaty, it defined the state as a parliamentary monarchy. A National Assembly held the legislative power; its members were elected by the general and equal vote of the male electorate. The monarch convened and dissolved the National Assembly. The administration was accountable to the head of the state. The supremacy of the constitution and the law was proclaimed, and separation of legislative, executive, and judicial powers was ensured. The political system was based on political pluralism and democracy. The principles of equality before the law, freedom of the individual, and freedom of the press were also proclaimed.

During World War II (1939–45), the country was allied with the Axis powers. After the war, the Soviet Army imposed Communist Party rule in Bulgaria. In 1946, a referendum voted to change the form of state to a republic. On December 4, 1947, a Great National Assembly adopted a new constitution.

The new constitution entirely abandoned the democratic principles of parliamentarism, although it formally endorsed direct elections, equality before the law, the inviolability of the home, and other freedoms. It imposed the communist principle of state regulation of economic life, based on the priority of state ownership. It also adopted a Soviet-style unification of power under the executive, contradictory to the principle of separation of powers.

Shortly after the adoption of the 1947 constitution, a fully Stalinist system was imposed on the state and society, resulting in a discrepancy between the formally declared freedoms and reality. Government was dominated by a parastate system of Communist Party bodies. The text of the 1947 constitution in fact did not correspond to the complete dominance of the Bulgarian Communist Party in the state and in the economic and public life.

The institutionalization of party power was established in the constitution of May 18, 1971. Article 1 stated that "the leading force in society and state is the Bulgarian Communist Party." The dominance of communist ideology was carried through the text. The proclaimed rights and freedoms were left without guarantees for their implementation, and the separation of powers was rejected. The principles of state regulation of all economic life, a planned economy, and state monopolies were upheld.

The collapse of communist power at the end of 1989 created an opportunity to establish a new constitutional order and to restore democratic principles. In January 1990, the National Assembly amended the 1971 constitution, abolishing Article 1 and a number of other provisions of an openly ideological nature. The assembly began preparing an entirely new constitution. On July 12, 1991, the seventh Great National Assembly adopted the new constitution, which is still in effect.

FORM AND IMPACT OF THE CONSTITUTION

The 1991 constitution is a single document. It contains 169 articles, grouped in 10 chapters and nine transitional and concluding provisions.

BASIC ORGANIZATIONAL STRUCTURE

Pursuant to the 1991 constitution, the Republic of Bulgaria is a united (unitary) state with local self-government. The possibility of creating autonomous territorial units is explicitly rejected. The territorial integrity of Bulgaria is inviolable. The structure of local self-government is detailed in a special chapter of the constitution.

LEADING CONSTITUTIONAL PRINCIPLES

Leading constitutional principles are stated in Chapter 1 of the constitution, which avers that Bulgaria is a republic with parliamentary rule, with all power vested in the people. Article 4 proclaims the principle of the supremacy of law. In order to underline the special place of the constitution in the legal system, its direct applicability is declared; the state authorities must apply its provisions with priority over any contradictory laws.

Another main constitutional principle is equality of all before the law. All people are declared to be born equal in dignity and rights; the constitution prohibits any limits on rights or privileges on the grounds of race, nationality,

ethnicity, sex, origin, religion, education, convictions, political affiliation, personal and political situation, or condition of property.

The principle of political pluralism is also affirmed. The principle of the separation of powers into legislative, executive, and judicial branches is clearly defined by the constitution as it delineates the various functions and competencies of the constitutional bodies.

Religious freedom also is a main constitutional principle. Family, motherhood, and children enjoy special protection by the law.

CONSTITUTIONAL BODIES

The main constitutional bodies are the National Assembly as parliament, the president, the Council of Ministers, and the judiciary.

The National Assembly

The National Assembly (parliament) exercises the legislative power. It consists of 240 members elected directly by constituents for a term of four years. The parliament has only one chamber. It is headed by a chairperson elected by the members.

Parliament elects the prime minister and cabinet ministers. It has the power of parliamentary control and may pass a no confidence vote against the prime minister or the entire executive administration.

The parliament may be dissolved ahead of term by the president but only if there is no possibility of assembling a majority to support a new Council of Ministers.

The President

The president is the head of state and represents the state in international relations. The president is also the supreme commander in chief of the armed forces. The president is elected directly by the constituents for a term of five years.

The president personifies the unity of the nation. He or she can be a member of a political party but cannot participate in its leadership.

Although the president has no right of legislative initiative, he or she does have the power to veto laws adopted by the National Assembly or to refer them to the Constitutional Court for a ruling on their constitutionality. The president also publishes the laws in the *Official Journal*.

The president may appoint an interim executive government as an acting administration after having dissolved the parliament.

The Council of Ministers

The Council of Ministers formulates and carries out the domestic and foreign policy of Bulgaria. It is chaired by a prime minister and consists of the prime minister and the cabinet ministers.

The constitution gives the Council of Ministers a broad list of prerogatives in the field of executive power. The Council of Ministers is answerable only to the National Assembly, which can force its resignation by voting no confidence.

The Lawmaking Process

The Council of Ministers and every member of parliament have legislative initiative. Laws are adopted in two rounds of voting by simple majority; in order to become effective, they must be published in the *Official Journal*. The president has the power to return a bill for further debate. The new passage of such a bill requires a majority of more than half of all the members of the National Assembly.

The Judiciary

The Constitutional Court is a novelty for Bulgaria, appearing for the first time in the 1991 constitution. It ensures the supremacy of the constitution—the main element of the legal system. It rules on the constitutionality of laws or individual provisions of laws. When a law or provision is ruled unconstitutional by the court, it ceases to have effect. The Constitutional Court also gives binding interpretations of the text of the constitution.

The Constitutional Court may be called upon by one-fifth of the members of parliament, the president, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, and the Prosecutor in Chief. A citizen cannot directly address the Constitutional Court.

The judicial power is independent and has an independent budget. It includes three branches: courts, prosecution, and investigation.

Judges, prosecutors, and investigators are appointed and dismissed by the Supreme Judicial Council, an independent body. Half of the council members are elected by the National Assembly, and the other half by judges, prosecutors, and inquirers for terms of seven years.

An important achievement of the 1991 constitution was the restoration of judicial control of the executive authorities, which had been revoked after the 1947 constitution. The Supreme Administrative Court has been restored, with its power to decide claims of interested individuals and to revoke illegal executive actions. Administrative acts can be appealed, as can the actions of the Council of Ministers and individual cabinet ministers.

THE ELECTION PROCESS

All elections and national and local referendums are held on the basis of universal, equal, and direct suffrage by secret ballot. Each citizen above the age of 18, with the exception of those placed under judicial indictment or

serving a prison sentence, has the right to vote in elections and referendums.

Any Bulgarian citizen above the age of 21 who does not hold another citizenship is eligible for election to the National Assembly, provided he or she is not under judicial indictment and is not serving a prison sentence.

POLITICAL PARTIES

Bulgaria has a pluralistic system of political parties. Political parties must meet specific requirements: They must not claim that they are a state party or that their ideology is the state ideology. This is a retroactive rejection of the leading role of the Bulgarian Communist Party explicit in the previous constitution. Parties may not be formed on ethnic, racial, or religious grounds, and no party whose purpose is violent political change is allowed.

CITIZENSHIP

A Bulgarian citizen is anyone born of at least one parent holding Bulgarian citizenship or born on the territory of the Republic of Bulgaria and not entitled to any other citizenship. Citizenship can also be acquired by naturalization.

FUNDAMENTAL RIGHTS

The constitution of Bulgaria provides strong protections for fundamental rights. The preamble of the constitution holds liberty, equality, and the rights, dignity, and security of the individual as universal human values of the highest order. In its second chapter, the constitution guarantees the classic fundamental rights, including the right to life, personal freedom, and privacy, and freedom of conscience, of religion, and of dissemination of information. No one may be subjected to torture.

Impact and Functions of Fundamental Rights

In addition to ensuring rights and freedoms that limit government action, the Bulgarian constitution aims to protect certain institutions created by fundamental rights provisions. Thus, matrimony is defined as a free union between a man and a woman.

Fundamental rights also entail duties of the state. Thus, the state has to assist parents in raising their children; citizens have the right to social security, welfare assistance, and medical insurance. Everyone has the right to education.

The constitution also entails explicit duties of the people. Citizens must observe the constitution and the laws; they must defend the country, pay taxes, and assist the state and society in case of natural or other disasters. The study and use of the Bulgarian language are a right and an obligation of every Bulgarian citizen.

Limitations to Fundamental Rights

A number of rights are guaranteed only under conditions established by law, such as parents' rights, the right to assembly, and protection from detainment. Some rights are granted under the condition that they are not practiced to the detriment of natural security, public order, public health and morals, or the rights and freedoms of others; among such rights are freedom of conscience and religion. Similar limits apply to the freedom to disseminate information and the right to choose a place of residence.

ECONOMY

The Bulgarian economy is based on free economic initiative. The right to property and inheritance and the freedom to choose an occupation are protected. Citizens have a right to work. The state has exclusive ownership over certain assets such as underground resources, beaches, waters, forests, and areas of natural importance. The state is obligated to establish and guarantee equal legal conditions for economic activity to all citizens and cooperative entities by preventing any abuse of monopoly status or unfair competition.

RELIGIOUS COMMUNITIES

Among the main constitutional principles is religious freedom. The constitution guarantees both the freedom of religion and the right to freedom of religious communities. Churches are independent and separate from the state, although the Eastern Orthodox religion is declared to be the traditional religion of the Republic of Bulgaria.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the supreme commander in chief of the armed forces. The constitution states that defending the country is a duty and a matter of honor of every Bulgarian citizen. After a proclamation of war, martial law, or a state of emergency, the exercise of individual civil rights may be temporarily curtailed by law, except for certain fundamental rights such as the right to life or the right not to be subjected to torture.

AMENDMENTS TO THE CONSTITUTION

The initiative to amend the constitution belongs to one-quarter of the members of the National Assembly and to the

president. A constitutional amendment requires a majority of three-quarters of all members of the National Assembly, in three separate ballots on three different days. A bill that has obtained less than three-quarters but more than two-thirds of the votes can be reintroduced; it then needs only a majority of two-thirds of the vote of all members.

A new constitution can only be adopted by a specially elected Grand National Assembly of 400 members. The same applies to any amendment of certain basic provisions of the current constitution, such as the form of the state structure or of government or the basic guarantee of fundamental rights. Restrictive procedural rules apply in this case; only the president or a full half of the members of the Grand National Assembly have the right to introduce such an amendment.

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Latchezar Popov
Dimitar Gochev

BURKINA FASO

At-a-Glance

OFFICIAL NAME
Burkina Faso

CAPITAL
Ouagadougou

POPULATION
11,553,000 (2005 est.)

SIZE
106,000 sq. mi. (274,200 sq. km)

LANGUAGES
French (official), Moore, Dioula, others

RELIGIONS
Muslim 50%, Christian 10%, traditional beliefs 40%

NATIONAL OR ETHNIC COMPOSITION
63 ethnic groups among which are Mossi (almost half of the total population), Bobo, Mande, Lobi, Fulani, Gourounsi, and Senufo

DATE OF INDEPENDENCE OR CREATION
August 5, 1960

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 11, 1991

DATE OF LAST AMENDMENT
January 22, 2002

Despite some growth, Burkina Faso is a relatively poor country with a largely illiterate, ethnically integrated population. Suffering from the massive return of migrant workers from neighboring Côte d'Ivoire, it maintains relative social stability in a society largely consisting of self-sufficient farmers.

The constitutional system is patterned after the French model. Democratic transition began in 1991 and is still not fully completed. Human rights are officially guaranteed but not always respected.

CONSTITUTIONAL HISTORY

Mossi kingdoms governed the area of what today is called Burkina Faso between the 11th and the 19th century with remarkable stability and religious and social cohesion. Given the fact that these kingdoms did not participate much in trans-Saharan commerce, it was neither touched by the slave trade nor the spread of Islam. The region was surrounded by more powerful empires such as the one located in Mali.

When the French gained control over the region in the late 19th century against the competing British, they had to deal with the local ruler, the *mogho naba,* a king-magician. The French occupied the territory as of 1897. It became an autonomous colony under the name of Upper Volta as part of France's large possessions in western, sub-Saharan Africa. The French were able to build their colonial administration upon the existing Mossi structures and governed indirectly.

Burkina Faso did not see much development apart from a train line to the coast. Many of its people worked in cotton plantations in what today is Côte d'Ivoire or were used as soldiers in the two world wars (1914–18 and 1939–45).

The decolonization movement was built by these soldiers, Western-educated elites, and the traditional Mossi rulers. Burkina Faso was granted independence in 1960 along with other units of the French federation of colonies

in this region. It became an independent country under the name of Upper Volta on August 5, 1960.

The first postindependence government quickly turned authoritarian. The country's subsequent history was largely a series of military coups.

The current president, Blaise Compaore, entered the political scene in 1983 when he helped free the rebel leader and erstwhile prime minister, Thomas Sankara, from prison. Sankara introduced left-wing revolutionary policies, fought against corruption and abuse of government funds, and renamed the country Burkina Faso, literally meaning "country of honorable people." Despite his popularity, he was assassinated in 1987, and Blaise Compaore, number two in his regime, became head of state.

Compaore began reforming his party and opening up the country to multiparty democracy. The opposition participated to a degree in preparing a new constitution for a Fourth Republic; it entered into force on June 11, 1991. The opposition boycotted the first presidential elections in December that year but participated in parliamentary elections the following year. Compaore and his ruling party won both elections.

FORM AND IMPACT OF THE CONSTITUTION

Burkina Faso has developed some constitutional habits in the ensuing years. The political process respects the institutions created by the constitution. Democratic competition for parliamentary elections is open and fair. However, it is not yet clear whether a transition to a democratic presidency is possible. In 2000, the constitution was amended to limit the president to two five-year terms.

Human rights are in principle respected. Severe violations do still take place, however. The judiciary appears to be functioning in principle, although judicial independence is limited in political cases.

BASIC ORGANIZATIONAL STRUCTURE

Burkina Faso is a unitary state. It is a presidential democracy based on the French model. The constitution provides for decentralization into substate entities, in particular, municipalities.

LEADING CONSTITUTIONAL PRINCIPLES

Modeled after the French example, Burkina Faso is a secular, democratic, unitary republic. It is founded on the principles of democracy, the rule of law, and justice.

Its type of government is a presidential republic with separation of powers. The position of the president of the republic is strong. Unlike in the French model, the parliament (National Assembly) is unicameral.

The constitution complements fundamental rights by affirming civic duties.

The constitution provides for the transfer of sovereign powers to multinational African organizations.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president; the executive administration; the National Assembly; the judiciary, including the High Court of Justice; the Constitutional Council; and the Social and Economic Council.

The President

The president is the most powerful figure in constitutional life in Burkina Faso. As head of state, the president is regarded as the guardian of the constitution and of the integrity, continuity, and sovereignty of the nation. He or she incarnates and assures national unity.

The president is directly elected for five years, with one reelection allowed. Candidates must be of Burkinabe nationality, Burkinabe descent, and at least 35 years of age. If no presidential candidate obtains more than 50 percent of the votes, the two best-placed candidates run in a second round, when a simple majority suffices. The president may not hold any other office.

The prime minister may substitute for the president in case of temporary incapacity. In case of vacancy or definite incapacity, the president is replaced by the president of the National Assembly.

The president appoints the prime minister and the executive administration and can demand resignation of the prime minister at any time. The president chairs the Council of Ministers. The president also appoints high officials in the civil administration and in the military.

The president promulgates laws passed by the National Assembly and can also send a law back for a second reading before promulgation. The constitution gives the president the authority to dissolve the National Assembly after consultation with the prime minister and the president of the National Assembly.

The Executive Administration

The executive administration is composed of the prime minister and the cabinet ministers. It is appointed by the president. It is responsible before the assembly. The executive government meets in the council of ministers, chaired by the president. The prime minister and the members of the executive administration may attend plenary and committee sessions of the National Assembly. Membership in the Council of Ministers is incompatible with holding any other office in public and private in-

stitutions. The executive government disposes of a broad regulatory power.

The National Assembly

Deputies are elected by universal suffrage for a five-year term with the possibility of reelection. The size of the assembly is determined by law (currently 111 members). Parliamentary activity is limited to two biannual sessions of 90 days maximum. The constitution provides for parliamentary immunity.

The National Assembly disposes of the lawmaking power. The division between parliamentary lawmaking power and governmental regulatory power is determined by a catalogue in the constitution.

The assembly enjoys the typical parliamentary means of controlling the administration. It can call a motion of censure at the demand of one-third of its members and requires a favorable vote of the majority of its members.

The Lawmaking Process

The executive administration regularly proposes laws. Draft laws may also be initiated by a popular petition signed by 15,000 voters.

Laws are voted by simple majority in the National Assembly. Organic laws on the function and the functioning of the institutions of government need the approval of the Constitutional Council before their entry into force.

The Judiciary

The judiciary is formally independent as a body, and the independence of individual judges is also constitutionally protected. The judiciary is responsible for guaranteeing respect for fundamental rights. It has ruled against the government in cases of flagrant human rights violations but not often enough to satisfy many critics.

There are separate branches for ordinary and administrative cases. A Cour de Cassation and a Conseil d'Etat (State Council) are at the apex of the two branches. A Cour de Comptes controls public finances.

The president of the republic is the guarantor of the independence of the judiciary. The president chairs the High Council of the Judiciary, which is in charge of all career matters within the judiciary.

The High Court of Justice

The High Court of Justice hears charges of high treason against the president of the republic and members of the executive government. It is made up by deputies from the National Assembly. The charges must first be approved by four-fifths of the members of the National Assembly in the case of the president and by two-thirds in the case of members of the executive government.

The Constitutional Council

A Constitutional Council reviews the constitutionality of laws and international treaties. It is composed of nine members and a president, who serve for seven years with the possibility of one renewal. The president of the republic appoints three members on his or her own advice and three more on the advice of the minister of justice; the president of the National Assembly appoints the final three members.

The council reviews the constitutionality of laws before their promulgation at the request of the president of the republic, the prime minister, the president of the National Assembly, or one-fifth of the members of the National Assembly. The council also decides disputes among the different institutions of the republic, as well as election disputes. The Constitutional Council also judges on the definitive incapacity of the president of the republic. It can outlaw political parties if they violate the constitutional prohibition of tribalist, regionalist, religious, or racist parties.

The Economic and Social Committee

The Economic and Social Committee is made up of representatives of societal associations. It is supposed to be consulted in all economic, social, and budgetary issues.

Its president is chosen by the president of the republic. The other 90 members are chosen by decree of the president. An organic law defines 31 groups of organizations from which the president has to choose. Among those are organizations representing different economic sectors, labor unions, artists organizations, organizations from the press and communications sector, women's organizations, but also representatives of traditional and customary authorities. Religious groups are not represented. Members need to show "good morals."

THE ELECTION PROCESS

Every Burkinabe citizen who are at least 18 years old may participate in elections. Foreigners may participate in local elections after 10 years of lawful residence, if they engage in legal occupations and have fulfilled their financial responsibilities. Elections are universal, direct, equal, and secret. Referenda can be called by the president of the republic on any draft law related to the national interest.

An Independent National Elections Commission watches over the elections to ensure that proper procedures are followed. It is composed of five members chosen by the government parties, five by opposition parties, and five by civil society associations—three of them religious communities. The commission's president must be one of the civil society members. Another body, the National Observatory of Elections, actually supervises each particular election. It is composed by one member of each party participating in the election, members from religious

communities, traditional authorities, human rights organizations, labor unions, feminist organizations, and other nongovernmental organizations.

POLITICAL PARTIES

Burkina Faso has a multiparty system. The law provides for public funding of political campaigns. The right of a party to be in the opposition is explicitly recognized by the law.

The constitution bars political parties that are tribalist, regionalist, religious, or racist. Parties may be dissolved if they threaten to undermine public order, public peace, or moral, or if they field an illicit militia. Dissolution is decided by the executive administration meeting in the Council of Ministers and may be controlled by the Conseil d'Etat, the supreme administrative court.

There is an effective opposition. The presidential party currently has only 57 of the 111 seats in the National Assembly, with the remaining seats divided up between 13 parties.

CITIZENSHIP

Citizenship is acquired by descent from a Burkinabe father or mother, regardless of the country of birth. Naturalization is possible for those over 18 who have lived in the country for 10 years. A foreigner may register for citizenship six months after marriage to a Burkinabe citizen. Citizenship can be revoked if a crime against the institutions of the government has been committed.

FUNDAMENTAL RIGHTS

The constitution includes a catalogue of rights and civil duties. Fundamental rights include those of the first, second, and third generations (civil liberties, social rights, and cultural and environmental rights).

Impact and Functions of Fundamental Rights

The general human rights record is fair. National security laws permit surveillance and arrest without warrants. Police routinely ignore prescribed limits on detention, search, and seizure. Security forces commit abuses with impunity, including torture and occasional extrajudicial killing.

In 2002, more than 100 persons were found shot handcuffed within a period of three months. The administration explained this as part of an effort to crack down on banditry.

Human rights organizations and labor unions are an important element of civil society. They try to pressure the government to respect fundamental freedoms, but they are subject to occasional threats from government and nongovernment forces.

Women's rights are poorly enforced. Female genital mutilation is illegal but frequently practiced. There have been reports of recent crackdowns on the practice.

In 1998, a murder of an independent journalist allegedly involved people from the president's entourage. The judicial proceedings against the killing itself were ineffective for political reasons. However, since then, the government appears to have improved respect for freedom of the press. There is some self-censorship. Independent newspapers, radio stations, and one TV station exist.

The death penalty, without being formally abolished, is not applied. Freedom of assembly is constitutionally protected and generally respected, with required permits usually issued routinely. However, political demonstrations are sometimes violently suppressed or banned altogether.

Limitations of Fundamental Rights

Fundamental rights are guaranteed usually within the limits provided by parliamentary law.

ECONOMY

The constitution does not favor any economic system over another, although it takes into account nationalized "strategic" industries. Private property is protected, and the freedom to join labor unions is recognized.

RELIGIOUS COMMUNITIES

Burkina Faso is a secular republic. Freedom of religion is assured. There are no reports of interreligious tensions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the commander in chief of the armed forces. The military is subject to civil rule. Declarations of war and the sending of troops abroad require parliamentary approval.

In a state of emergency, the president takes necessary measures after deliberation in the Council of Ministers. The president may not dissolve the National Assembly in a state of emergency. Prolongation of the state of emergency exceeding 15 days requires parliamentary approval.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be initiated by either the president, a majority of members of parliament,

or a popular petition signed by at least 30,000 voters. The draft amendment is debated first in the National Assembly. Unless three-quarters of the members vote in favor, the draft needs approval in a popular referendum. The republican form of government, the multiparty regime, and the integrity of the state are not subject to amendment.

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Malte Beyer

BURUNDI

At-a-Glance

OFFICIAL NAME
Republic of Burundi

CAPITAL
Bujumbura

POPULATION
6,231,221 (July 2004 est.)

SIZE
1,074 sq. mi. (27,830 sq. km)

LANGUAGES
Kirundi (national), French (official), Swahili

RELIGIONS
Roman Catholic 62%, other Christian (Protestant) 5%, Muslim 10%, traditional beliefs 23%

NATIONAL OR ETHNIC COMPOSITION
Hutu (Bantu) 85%, Tutsi (Hamitic) 14%, Twa (Pygmy) 1%

DATE OF INDEPENDENCE OR CREATION
July 1, 1962

TYPE OF GOVERNMENT
Semipresidential regime

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
Interim posttransition constitution promulgated by the president on October 20, 2004; entered in force on November 1, 2004

DATE OF LAST AMENDMENT
No amendment

Burundi is an independent, democratic, and unitary republic that is respectful of its ethnic diversity. The constitution establishes a semipresidential government based on the separation of the executive, legislative, and judicial powers.

After decades of military regimes, in 1993, Melchior Ndadaye became Burundi's first democratically elected president. Unfortunately, this president from the Hutu majority was assassinated in a bloody coup d'état in October, after only four months in power. Burundi then returned to Tutsi-dominated military rule and faced an intense ethnic conflict between Hutu and Tutsi factions, in which hundreds of thousands of Tutsi were killed. In 1998, Burundi troops intervened in the conflict in the Democratic Republic of Congo allegedly to secure the border and destroy the rebel bases operating from that country. On August 28, 2000, the government and the rebels signed the Arusha Accord for Peace and Reconciliation in Burundi, which paved the way for the cessation of hostilities and the start of power sharing in a government of national unity. A new constitution was passed on October 28, 2001, and a transitional government was inaugurated on November 1, 2001, despite the opposition of one of the four rebel groups.

After the Arusha agreement, Major Pierre Buyoya, a former president from the minority Tutsi who had returned to power by yet another coup d'état on July 25, 1996, remained in office as president for the first 18 months of the transition. On April 30, 2003, Domitien Ndayizeye, a Hutu leader, replaced him. On October 20, 2004, the president promulgated a new constitution adopted by parliament in September and October 2004. This constitution, which provides for elections to usher into a new constitutional order, entered into force on November 1, 2004.

CONSTITUTIONAL HISTORY

Urundi existed as an independent kingdom in the 18th century, ruled by the Tutsi minority. It merged with Rwanda in 1884 and became a German colony before passing to Belgium in 1919, after the defeat of Germany

during World War I (1914–18). Rwanda-Urundi became a United Nations (UN) trust territory in 1946 and was placed under Belgian administration. Urundi split from Rwanda in 1959. The monarchy was suppressed, and later the Republic of Burundi proclaimed independence from Belgium on July 1, 1962. The 2004 constitution provides that the monarchy may be restored by referendum.

Since independence, Burundi has gone through a vicious circle of military coups d'état and ethnic conflicts between the majority Hutu and the minority Tutsi. Many constitutions that were passed were never enforced. The history of constitutionalism and democracy in the country as yet has been that of failure. The most recent constitution is the transitional constitution of October 28, 2001, which was amended several times prior to its replacement by the interim posttransition constitution inaugurated on November 1, 2004. On its approval by referendum on February 28, 2005, the interim constitution has become the final constitution of Burundi and paved the way for the first posttransition democratic elections in 2005 after a succession of Tutsi-dominated military regimes.

The Republic of Burundi is a member state of the United Nations, the African Union, and several subregional or/and other international organizations.

FORM AND IMPACT OF THE CONSTITUTION

The Constitution of Burundi is the supreme law of the republic. It is written and entrenched and prevails over any other law; any constitutional amendment requires particularly high majorities in both the National Assembly and the Senate. Any law, act, or conduct inconsistent with it is invalid.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Burundi is a unitary, decentralized state divided into 16 provinces, municipalities, zones, "hills," and other subdivisions as may be determined by law.

LEADING CONSTITUTIONAL PRINCIPLES

The core principle of the republic is government of the people by the people and for the people. Sovereignty is vested in the people, who assume it directly through referendum or indirectly through election of their representatives. Burundi is a pluralistic, unitary, social, democratic, and secular state that is respectful of human rights, constitutionalism, and the rule of law.

Ethnic, religious, and cultural minorities are also protected and have a say in the government. The defense and security corps and the judicial system must protect all Burundians, including the ethnic minorities. National unity and reconciliation are also leading principles of the republic. They are to be restored, preserved, and consolidated.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president, the administration, parliament, and the judiciary.

The President

The president is elected by universal adult suffrage for a five-year term, renewable once only. Exceptionally, the first posttransition president shall be elected by a two-thirds majority of the National Assembly and the Senate sitting as a congress. This provision may be changed when the people decide by referendum. The president is sworn in before parliament and undertakes, among other duties, to combat any ideology of genocide and exclusion, to promote individual and collective human rights, and to safeguard the integrity and independence of the republic. She or he is the head of state and national administration, as well as the symbol of national unity. The president must ensure respect of the constitution; she or he is responsible for the enforcement of national legislation and for the regular functioning of public institutions.

Two vice presidents assist the president. The president appoints the highest civilian and military officers in the republic. Anyone who was president during the transition cannot run for office during the first presidential elections. The bid by President Buyoya and President Ndayizeye to have the relevant constitutional provision amended for them to stand for the presidency has been unsuccessful. However, the debate is not over, and the president may still request the people to decide on this issue in the constitutional referendum.

The Executive Administration

The executive administration consists of the president, two vice presidents, ministers, and vice ministers. It determines and conducts the policy of the nation. The president is the head of government. The vice presidents, who assist the president, are appointed by him or her from parliament and after approval by the National Assembly and the Senate. They must be from different ethnic and political groups. The president appoints the ministers after consulting the vice presidents. The executive administration comprises a maximum of 60 percent Hutu and 40 percent Tutsi ministers and vice ministers. At least 30 percent of its members should be women. The members of the administration are accountable to the president. With the exception of the president elected during the first presidential elections, the president may dissolve parliament. In turn, she or he may be impeached by parliament for high treason. This is a semipresidential system of government reminiscent of that of France.

Parliament

The legislative power is vested in parliament, which also controls the executive authority. Parliament is bicameral, consisting of the National Assembly and the Senate.

The National Assembly

The National Assembly consists of at least 100 deputies; 60 percent of its members must be Hutu and 40 percent Tutsi. Women should constitute 30 percent of the membership, and at least three members should be from the Twa ethnic minority. The members of parliament represent the nation as a whole and are elected by universal direct suffrage for a five-year term. Imperative mandate is prohibited. Their mandate may end with death, resignation, or incompatibility or when the member is sentenced for a criminal offense.

The Senate

The Senate consists of two senators from each province, three from the Twa ethnic minority, and all former heads of state. Of its members 30 percent should be women. In addition to its legislative power, the Senate mediates political conflicts and acts as the "adviser" to the nation.

The Lawmaking Process

Parliament is the main legislative authority in the republic. However, the president and the administration also participate in the lawmaking process. They, along with members of both the National Assembly and the Senate, are entitled to introduce legislation. The president may legislate by decree law with the authorization of parliament or when the latter is on recess. The National Assembly and the Senate must adopt bills with uniform terms. Otherwise, a joint commission is set up to propose a single text to be adopted by the two houses. If the joint commission fails to adopt a single text, the National Assembly has the final say.

The Judiciary

Justice is administered in the name of the people of Burundi. The constitution provides for the independence of the judiciary vis-à-vis the executive and the legislature. The judicial power is mandated to guarantee individual freedoms and fundamental human rights. It is vested in the Supreme Court of Justice, the Constitutional Court, the High Court of Justice, and other courts or tribunals, whether civil or military. Judges are subject to the constitution and the laws that regulate the judiciary.

The Supreme Court of Justice is the highest court in the republic. The Constitutional Court has jurisdiction, among other courts, to decide on the constitutionality of laws and acts having the force of law and to deal with disputes related to legislative and presidential elections. The High Court of Justice, which consists of the Supreme Court of Justice and the Constitutional Court, is competent to judge the highest authorities in the republic, specifically the president, the vice presidents, the president of the National Assembly, and the president of the Senate.

THE ELECTION PROCESS

The constitution provides for universal, equal, secret, regular, free, fair, and direct or indirect suffrage under the authority of an independent and impartial electoral commission. All Burundians over the age of 18, regardless of gender, enjoy all civil and political rights. They are entitled to stand for election and vote in elections.

POLITICAL PARTIES

A multiparty system is guaranteed. Political parties may be created freely according to the law. They are subject to the principles of pluralist democracy, national unity, and sovereignty. Minority parties and ethnic groups are protected and participate in the government. Members of the defense and security corps cannot belong to any party. Article 84 provides for public funding of the parties. There is an explicit role for the opposition.

CITIZENSHIP

Law determines the recognition, acquisition, loss, and resumption of Burundi citizenship. Children born of marriages contracted by Burundians, whether male or female, are equally entitled to citizenship.

FUNDAMENTAL RIGHTS

The constitution refers to the Universal Declaration of Human Rights of 1948, the two International Covenants on Human Rights of 1966, the African Charter on Human and Peoples' Rights of 1981, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. Article 19 provides that these international instruments are part and parcel of the constitution.

The Preamble also refers to the Charter of the United Nations and to the Constitutive Act of the African Union. Inspired by the African Charter, the Burundi bill of rights (Title II) provides for fundamental human rights and duties for both the individual and the citizen. Fundamental rights enshrined in this bill of rights include individual and collective rights and freedoms and civil, political, social, and cultural rights. The constitution also provides for duties, including the duty to defend the independence and territorial integrity of Burundi and to contribute to the preservation of democracy and social justice.

Impact and Functions of Fundamental Rights

The bill of rights is the cornerstone of the constitution, which is the supreme law of the republic and should be enforced by the executive, the legislature, and the judiciary. It binds all individuals and organs of the state. The judiciary is the watchdog of fundamental rights. However, institutions such as the National Council for National Unity and Reconciliation and the National Observatory (Commission) for the Prevention and Eradication of Genocide, War Crimes and Crimes against Humanity also have a role to play in the protection and the promotion of human rights in Burundi.

Limitations to Fundamental Rights

Fundamental rights are subject to limitation or derogation. Article 47 is the general limitation clause. It provides that any limitation of a fundamental human right must be governed by law. It must be justified by the need to protect public interest or others' fundamental rights and must be proportionate to its aim. On the other hand, fundamental rights may be suspended in some circumstances, which include a state of war or emergency.

ECONOMY

The constitution protects social and economic rights such as the right to work, protection against unemployment, equitable and satisfactory remuneration, education, secure health, and nondiscrimination against all, including women and the members of ethnic, cultural, and religious minorities. The Burundi economic system can be described as a social market economy, combining aspects of social responsibility with market economy.

RELIGIOUS COMMUNITIES

The Republic of Burundi is a secular state respectful of its ethnic and religious diversity. The constitution prohibits any discrimination based on religion and guarantees the right to freedom of religion. The protection and inclusion of all ethnic, cultural, and religious minorities are among the principles of the republic. Accordingly, there is no state religion. The main religions are Roman Catholic, Protestant, Muslim, and indigenous African.

MILITARY DEFENSE AND STATE OF EMERGENCY

The defense and security corps consists of the national defense force, national police, and national intelligence service. It is mandated to defend the territorial integrity of Burundi; participate in its economic, social, and cultural development; protect persons and their properties; and promote peace, democracy, and national reconciliation. It is bound by the constitution and is subject to the rule of law. It must work in a transparent manner and develop a culture that is not discriminatory, ethnicist, or sexist. Its composition must reflect the desire of all the Burundians to live in peace together and build a democratic and economically prosperous nation. To prevent the recurrence of acts of genocide and coups d'état and to secure balanced representation, no more than 50 percent of the members of the defense and security corps can be from a single ethnic group.

The president is the commander in chief of the defense and security corps. After consulting the executive government, the National Security Council, and the leadership of both the National Assembly and the Senate, the president may declare war or a state of emergency and take necessary measures to restore order or the territorial integrity of the republic. The constitution prohibits any recruitment or participation of child soldiers in wars or armed conflicts.

AMENDMENTS TO THE CONSTITUTION

The introduction of constitutional amendments is concurrently the prerogative of the president, after consulting the administration, and of both the National Assembly and the Senate, which must decide by an absolute majority of members. The president may also submit a constitutional amendment to a referendum. Article 299 of the constitution prohibits any constitutional amendment undermining national unity and reconciliation, territorial integrity, or the democratic and secular character of the republic.

A four-fifths majority in the National Assembly and another two-thirds majority in the Senate are required for a constitutional amendment to be passed by parliament.

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André Mbata B. Mangu

CAMBODIA

At-a-Glance

OFFICIAL NAME
Kingdom of Cambodia

CAPITAL
Phnom Penh

POPULATION
13,881,427 (July 2006 est.)

SIZE
69,898 sq. mi. (181,035 sq. km)

LANGUAGES
Khmer

RELIGIONS
Theravada Buddhist 95%, other 5%

NATIONAL OR ETHNIC COMPOSITION
Khmer 90%, Vietnamese 5%, Chinese 1%, other 4%

DATE OF INDEPENDENCE OR CREATION
November 9, 1953 (from France)

TYPE OF GOVERNMENT
Parliamentary monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
September 24, 1993

DATE OF LAST AMENDMENT
March 4, 1999, additional law to the constitution
July 8, 2004

Cambodia is a parliamentary monarchy with a modern constitution that encompasses democracy, the rule of law, separation of powers, and human rights. A unitary state, the country is structured in 24 provinces and more than 1,600 communes. After the country was ravaged by external and internal warfare, cruel dictatorship, and socialist stagnation, its current constitutional structure was, with the help of the United Nations, implemented in 1993. The impact of the constitution, rule of law, and effective protection of human rights are still to be enhanced, but the end of warfare and ideological confrontation has paved the road for democratic development.

The establishment of a Constitutional Council, a Senate, and a National Audit Authority and the introduction of communal self-government on a democratic basis are some of the institutional steps taken in recent years. The situation is still very dynamic, democracy is volatile, and the rule of law is still more program than reality. However, the progress made in little more than a decade should not be undervalued.

CONSTITUTIONAL HISTORY

Cambodia's proud history is symbolized by the famous ruins of Angkor, which may be the largest historic temple site worldwide; a picture of the main temple at Angkor Wat decorates Cambodia's flag today. Early state building in the area is reported for Funan and later Chenla, but the historical evidence on the size, durability, and state quality of these political systems is sparse. From the eighth to the 13th century C.E., the Khmer Kingdom of Angkor dominated much of the region of Southeast Asia. Social and legal systems were strongly influenced by Indian culture. The structure of the political and constitutional system of this medieval empire has not been verified in every detail, but it essentially was constructed as an absolute monarchy in a highly stratified society, with the king holding political, legislative, and judicial control. However, provincial authorities had some degree of authority in practice, and the theoretical idea of peaceful succession to the throne stands in sharp contrast to a tradition of violent struggle after the death of most kings. In the

centuries after the great Angkorian period, the country was under pressure from Siam (Thailand) in the west and Vietnam in the east. Some analysts suggest that the kingdom was at risk of vanishing by the middle of the 19th century when European colonialism changed the course of events.

In 1863, Cambodia was formally under the protection of France, which had recently established its colonial rule in Vietnam. As a "protectorate," Cambodia initially retained more autonomy than neighboring Vietnam. The monarchic principle was not formally violated, and the king stayed in office. Over time, France increasingly interfered in the internal administration. Under threat of removal in 1884, the king accepted substantial reforms, including the abolition of slavery and the installation of French residents in the provincial capitals. A consultative council created in 1913 was in fact an instrument to control the king. French influence on the legal system became especially apparent from the beginning of the 20th century when civil law and criminal law were partly reformed along French lines. However, throughout the colonial period, life in the countryside was only sporadically affected. Perhaps most significant and a basis for major conflicts was the heavy rural tax burden, used for the development of the capital and other prestige projects.

In 1941, the French installed 10-year-old Prince Norodom Sihanouk as king, expecting him to be a compliant puppet. Instead, the young king was an ambitious and charismatic leader. Sihanouk soon defined the sovereignty of Cambodia as a primary policy goal. A short period of independence in the turbulent final phase of World War II (1939–45) was not fully successful; French power was reestablished amid assurances of gradual decolonialization.

In 1947, the first constitution was adopted, following the model of parliamentary monarchy. Pressure from Sihanouk significantly democratized the constitution-making process and the text of the constitution itself. Independence was achieved in 1953. Sihanouk resigned as king in 1955 to lead the country in other formal positions as prime minister and later as head of state within a political system commonly characterized as "guided democracy." Although at first the country developed significantly, Sihanouk eventually failed in his attempt to keep Cambodia out of the Indochinese war. After he allowed North Vietnam to use land and facilities in Cambodia in their war against South Vietnam and the American forces, the United States started attacking eastern parts of Cambodia. In 1970, Sihanouk was ousted from power by a United States–backed regime change led by General Lon Nol.

The Cambodian parliament formally depostest Sihanouk. Monarchy was abolished, and in 1972, a new constitution, which generally followed the model of a presidential democracy, was adopted. The document never really became effective in most of the country as the central government was no longer in control. An intensifying civil war, as well as the war in neighboring Vietnam, set the country on the road to anarchy.

The Communist Khmer Rouge, under their infamous leader Saloth Sar (Pol Pot), in April 1975, seized power in the capital, which along with all other cities was immediately evacuated. The Khmer Rouge installed a literally lawless state called Democratic Kampuchea. Formally, a rudimentary socialist constitution was adopted in 1976, containing only 21 comparatively short articles, but neither the legislature nor the courts provided for in this constitution ever materialized. The constitution itself remained the only law the Khmer Rouge ever formally enacted.

Cambodia was practically transformed into a labor camp; within less than four years, between 1.5 and 2 million people were killed or died of exhaustion, hunger, and disease. When the victims of the preceding civil war are taken into account, Cambodia probably lost about a third of its population during the 1970s. Bringing at least the most responsible surviving leaders of this system to justice is an endeavor that Cambodia finally decided to undertake in cooperation with the United Nations in 2004.

The Vietnamese invasion ended the Khmer Rouge's rule in early 1979. This invasion, which originally was condemned by the Western countries as a breach of international law (and the ousted Khmer Rouge were allowed to represent Cambodia in the United Nations for another decade), at least stopped the "autogenocide" and led life in Cambodia back in the direction of civilization. Politically, the unparalleled, extreme version of "Stone Age communism" of the Khmer Rouge was replaced by a form of government more typical in the contemporaneous Eastern Bloc. The country was again renamed, as the People's Republic of Kampuchea. A new constitutional system shaped along the lines of the Soviet-Vietnamese model was formally adopted in 1981.

After political change in the Soviet Union also led to a pullout of the remaining Vietnamese troops from Cambodia, the transformative process toward democracy and a market economy intensified. In order to end the ongoing civil war with the Khmer Rouge, who were still fighting the government from strongholds in some parts of the country, a multiparty international treaty (Paris Agreements) was brokered in 1991. It was the basis for the United Nations Transitional Authority in Cambodia (UNTAC), which can probably be qualified as the most ambitious democratization project the United Nations had undertaken to that time. The Khmer Rouge soon renewed their guerrilla war, which continued for several more years. However, UNTAC was successful in ensuring basically free and democratic elections of a constitutional assembly. Elections were held and the constitution was adopted in 1993. Despite some justified claims of secrecy in the process, its outcome is a substantially democratic constitution, which regardless of some technical shortcomings has essentially been the basis for the democratic process in Cambodia since then.

Constitutional developments since 1993 may be summarized as a difficult conversion to the routines of democracy and the rule of law. The guerrilla war ended

finally with the death of Pol Pot in 1998. Elections were held largely on time in 1998 and 2003. Substantial improvements in the institutional system have been made in recent years. However, a militant overthrow of the government in 1997 and a year-long political deadlock in the aftermath of the 2003 elections are reminders of the volatility of Cambodian democracy. On the other hand, the succession of the king, a challenge that was long feared to have the potential to produce a major crisis, took place in a surprisingly smooth and noncontroversial manner in October 2004.

FORM AND IMPACT OF THE CONSTITUTION

The 1993 Cambodian constitution originally comprised a single written document that encompassed all the typical features of a modern liberal democracy, including a catalogue of human rights. The constitution is, expressly, the supreme law of the land. There are institutional safeguards to guarantee the constitutionality of new laws, and there are rules for amending the constitution, as well as material limits to constitutional amendments. However, because there are still in force many older laws that do not comply with the constitution, and because the courts are not yet effective in systematically enforcing the supremacy of the constitution, the constitution has not yet had a comprehensive impact on the legal system. However, the recently established Constitutional Council has significant powers to enforce the constitution. Furthermore, a codification of major areas of law currently under way may also strengthen the impact of the constitution by replacing many older laws.

A political deadlock after parliamentary elections in 2003 was solved by the adoption the following year of an additional law to the constitution, outside the regular amendment process. The law did win the majorities necessary for an amendment of the constitution, and the Constitutional Council has decided to accept the law on a par with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

At least since the time of French rule, Cambodia has been a unitary state. The current constitution does not address the question of administrative structure in detail but stipulates that the country be divided into provinces and municipalities, each of which is divided into districts (*khan*) and communes (*sangkat*). Details are to be worked out in organic laws. On the provincial and municipal levels, the country is structured into 24 entities with appointed governors as heads of administration. The communal level has been democratized recently with elected communal councils, which have been in charge of local affairs since 2002. Ongoing deconcentration of the formerly centralized structures is a major goal of the current attempts at administrative reform.

LEADING CONSTITUTIONAL PRINCIPLES

The core values of the constitution are pluralistic and liberal democracy, constitutional monarchy, fundamental rights, separation of powers, peace, and the maintenance of the independence and sovereignty of Cambodia. Article 153, limiting amendments of the constitution, seems most appropriate as a description of core values: "liberal and pluralistic democracy and the regime of constitutional monarchy."

One important aspect of Cambodian constitutionalism is the commitment to international values. The constitution itself is a product of an internationally arranged and organized process: The Paris Agreements provided precise guidelines on the content of the constitution. The state's commitment to peace is specified in the constitution extensively, as is the obligation to recognize and respect international human rights (Article 31). The precise status of international law (including human rights) is, however, as in many constitutions, not precisely regulated; this may be one of the important challenges for the Constitutional Council.

CONSTITUTIONAL BODIES

The king, the prime minister and his Council of Ministers, the National Assembly and Senate, the Judiciary, and the Constitutional Council are the central constitutional bodies.

The King

The king is the formal head of state. Whereas Cambodian kings were historically absolute, since the constitution of 1947, the institution has been largely ceremonial. According to the 1993 constitution, the king shall "reign, but not govern." However, the constitution still provides a number of important functions for the king, such as the right to appoint some members to the Constitutional Council and the Senate. As in many countries, the influence of the head of state on politics does not necessarily depend on formal powers but is largely dependent on the personality and style of the officeholder. King Norodom Sihanouk's influence has been commonly acknowledged. His successor, King Norodom Sihamoni, who had not been involved in Cambodian politics before his coronation in October 2004, will have to redefine the role on his own.

The text of the constitution does not expressly provide for the resignation of the king, assuming a lifelong

mandate. However, King Norodom Sihanouk declared his resignation on October 7, 2004. On his advice, a Royal Council, as established by the constitution, appointed his son, Norodom Sihamoni, as successor a few days later. Coronation ceremonies took place October 28–30, 2004. Constitutionally, the abolition of the monarchy is explicitly forbidden.

Prime Minister and Council of Ministers

The administration is institutionalized in the Council of Ministers, headed by a prime minister. The current prime minister, Hun Sen, has been leading the country since 1984, with an interval as a "second prime minister" after losing an election in 1993. He is generally considered the undisputed "strongman" of current Cambodian politics. Institutionally, the strength of the office is not immediately evident in the constitution, which gives it the ordinary powers of a chief minister in a parliamentary democracy. However, his power is buttressed by the 1994 Law on the Organization and Functioning of the Council of Ministers. According to this law, the prime minister not only "manages and gives out commands on all activities of the executive in all fields" (Article 9) but is also responsible for the appointment and dismissal of many high-ranking officers in the administration and military.

The Council of Ministers, as assembled by a representative of the winning party (typically the candidate for prime minister), needs a vote of confidence of two-thirds of the National Assembly. This consensus-oriented majority, probably unique within the family of democratic constitutions, makes forming an administration difficult. Cabinet members are constitutionally responsible not only to the prime minister but also to the National Assembly, with the latter having a right to dismiss a cabinet minister (Article 98 of the constitution). The Council of Ministers is currently very large, encompassing one prime minister, seven deputy prime ministers, 15 senior ministers, 28 ministers, 135 secretaries of state, and at least 146 under-secretaries of state.

The Council of Ministers is collectively responsible to the National Assembly. Its workings are regulated by a special law. A special Council of Jurists, established by governmental decree, provides legal expertise to the Council of Ministers and regularly checks its draft legislation.

The National Assembly

The National Assembly is the central legislative organ of the state. Its members (currently 123) are elected by general, direct, free, equal, and secret ballot. Candidates must be nominated by registered political parties. Members of the National Assembly enjoy privileges such as explicit freedom of mandate that includes the ability to prohibit any imperative mandate (Article 77). The member can be removed in case of departure or expulsion from his or her party.

The National Assembly has the usual powers of a legislative organ, including the power to set the state budget. To facilitate practical work, the parliament establishes nine specialized permanent commissions. Members of the oppositional Sam Rainsy Party have been excluded from these commissions since 2004, exclusion that has been criticized as unconstitutional. The constitutional provisions on supervising the administration have not yet been very effective. So far there are no special committees with investigative authority.

The Senate

The Senate was established by constitutional amendment in 1998. The number of senators must not exceed more than half of the members of the National Assembly; it is currently 61. In the first period, the senators were appointed by the king, mostly on the advice of the political parties according to their proportional strength in the National Assembly elections. For future periods, the constitution provides that most of the senators have to be elected.

The powers of the Senate are still fairly limited at this time. Its right to revise laws adopted by the National Assembly is limited by a rigid time frame for the reviewing process. A general Senate responsibility to facilitate relations between the Council of Ministers and the National Assembly is stipulated in the constitution, but the terms are vague and without much practical relevance. However, with a National Assembly much absorbed by party politics, potential for a stronger Senate exists.

The Lawmaking Process

Laws are typically drafted in a ministry, but they can also be introduced in the National Assembly or the Senate. A legal check of ministerial drafts is undertaken by the Council of Jurists. The Council of Ministers finally decides whether a draft is to be sent to the National Assembly. After approval by the National Assembly, the Senate has to review the law, but its objections can be overturned by the assembly. Before the law can be promulgated by a royal decree, there is, in some enumerated cases, a compulsory check for constitutionality by the Constitutional Council. In other cases, the Constitutional Council can be asked by various other bodies to perform that check.

The Judiciary

The formal legal and judicial system of Cambodia is based on the continental European tradition, with some remaining influences of the former socialist system. The "civil law" orientation will be strengthened when a current project to adopt civil and criminal codes is completed. Modernization and reform of the legal and judicial system are currently a political priority in Cambodia. As nearly all qualified lawyers lost their life during the Khmer Rouge

regime, and an independent judiciary was not policy in the years of socialist rule, this reform is still a major challenge. Steps have been taken to enhance the quality and neutrality of the work of judges, but salaries are still low and a significant percentage of judges have not had substantial legal training. Overcoming a culture of impunity, which has characterized the legal system for a long time, is as important as ensuring the independence of the judiciary.

The Cambodian court system consists of three tiers: municipal and provincial courts as well as a military court, appellate courts, and finally the Supreme Court. Specialized administrative and commercial courts have not been established yet but are under discussion.

The Constitutional Council

The Constitutional Council, established after significant delays in 1998, is a hybrid institution. It is in part an element of the lawmaking process, but it also fulfils the functions of a real constitutional court. On the request of other bodies including courts, it checks the constitutionality of laws and administrative acts and resolves election disputes. Citizens do not have direct recourse for human rights complaints, but various organs and courts can forward questions to the council.

THE ELECTION PROCESS

All Cambodians from the age of 18 years old have the right to vote in national elections; the right to run in elections is limited to citizens of at least 25 for national elections and 40 for future Senate elections. The National Assembly is elected by free, universal, direct, equal, and secret ballot for a period of five years. According to the election law, candidates are preselected by lists of registered political parties. The system of elections for the Senate has not yet been decided on in detail. Elections to the National Assembly in 1993, 1998, and 2003 took place under massive international scrutiny.

POLITICAL PARTIES

Political parties have had a very strong impact on Cambodian politics and society. The constitution does not define their status, but in 1997 a special law on political parties was enacted. Party membership is necessary to become a lawmaker or government member and to obtain a wide array of positions in the civil service.

The major parties, for the time being, are the former socialist state party the Cambodian Peoples' Party (CCP), the strongest force; the royalist party the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC); and the Sam Rainsy Party (SRP), which is led by and named after an expelled former FUNCINPEC minister. Since democratization in 1993, the country has been governed by a CPP-FUNCINPEC coalition. The Democratic Kampuchea Party, which was the political arm of the Khmer Rouge, was outlawed in 1994.

CITIZENSHIP

The Cambodian constitution frequently talks of Khmer Citizens but does not specify the conditions of citizenship. Khmer citizens cannot be deprived of their nationality and are provided diplomatic protection when residing abroad.

The law on nationality (1996) is, in principle, comparatively generous. Citizenship is acquired either by being a (legitimate or nonlegitimate) child of a Cambodian father or mother or by being born in Cambodia. On request, citizenship is granted after being married and living together with a Cambodian husband or wife for three years or after living in Cambodia for at least seven years under the provisions of the immigration law. In recent times, citizenship has occasionally been offered in gratitude to foreigners who publicly had been sympathetic to Cambodia, most notably to the U.S. movie star Angelina Jolie. Cambodian law does not object to dual citizenship, and, in fact, many members of the country's elite have a second citizenship in France or elsewhere.

FUNDAMENTAL RIGHTS

Fundamental rights are a central element of the constitution. They are embraced in the preamble and stipulated in detail in an entire chapter. This chapter opens with Article 31, which pays explicit respect to the major international human rights treaties to which Cambodia is a party. The precise relevance of these treaties is unclear, beyond an implied obligation to interpret the basic rights of the Cambodian constitution in their light.

The catalogue of rights follows traditional paths with some modern tendencies. The freedom of life explicitly includes the abolition of the death penalty; an attempt of parliament to reintroduce the death penalty for the former leaders of the Khmer Rouge was declared void by the Constitutional Council. The human rights catalogue contains traditional liberal rights, emphasizes equality of men and women, and requires protection from exploitation. There is also an array of "third-generation" rights, including health care and education, which will be difficult to embody in this still very poor country.

Obligations of parents to their children, and vice versa, and citizens' obligations to the state complement the fundamental rights.

Impact and Functions of Fundamental Rights

Fundamental rights are supposed to be a concrete legal standard for all legislation and administrative action, but

reality only reflects this in part. Although the courts have authority over administrative decisions, for example, in practice there have been almost no cases in which the constitutionality or legality of such acts has been questioned. For example, demonstrations have been forbidden in Phnom Penh for long periods, though the constitution and a preconstitutional law on demonstrations explicitly guarantee the right to demonstrate. For the time being, it can be said that the direct impact of basic rights lies more in the field of lawmaking than in effective judicial control.

Cambodia is a party to numerous international human rights treaties. It ratified the International Covenant on Civil and Political Rights in 1992 but has until now not signed the first optional protocol to this treaty, which would allow direct individual communications with the Human Rights Committee in Geneva.

Limitations to Fundamental Rights

The constitution envisions law that would define the precise scope of freedoms and by implication their limits. The general understanding accords with the "Asian" approach, which emphasizes not only rights but also duties, and which traditionally accepts as legitimate limitations on rights in the public interest.

Concerns have been raised that the constitution provides most of the basic rights only to "Khmer Citizens" and explicitly bars foreigners from owning land in Cambodia, Article 44. This nonprotection of foreigners may not be in full conformity with international standards; it could also serve as a justification for discrimination against Cambodian citizens not of Khmer ethnicity. However, the constitution explicitly embraces international instruments prohibiting ethnic discrimination and speaks out against such discrimination (Article 31).

From the practical point of view, the human rights situation in Cambodia is checkered. Whereas religious freedom is widely respected and the media and nongovernmental organizations can express critical views, the freedom of peaceful assembly (demonstration) has been completely disregarded by authorities in recent times. Human rights conditions in Cambodia is regularly monitored by international institutions as well as international and national nongovernmental organizations.

ECONOMY

The current constitution contains a whole chapter on economy. Whereas earlier constitutions were strictly socialist, the current one provides for a "market economy system" (Article 56). Private property, freedom of profession, and freedom of trade unions including the right to strike are protected by the constitution. A law on the economic system, as required by the constitution, has not been adopted so far.

In practice, the Cambodian economy has developed below expectations in recent years. Agriculture is dominated by rice production and logging (often illegal), the industrial sector by garment production, and the service industry by tourism. Widespread corruption and an inefficient bureaucracy are major obstacles to development, as the country is considered to be a comparatively expensive and difficult place to start an officially registered business. The need for reform is acknowledged by the government and is especially urgent since Cambodia jointed the World Trade Organization in October 2004.

RELIGIOUS COMMUNITIES

According to the constitution, Buddhism is the state religion, but religious freedom is constitutionally guaranteed and practiced. Some Buddhist institutions are supported by the state, and Buddhist leaders are members of the body that decides on the royal succession.

MILITARY DEFENSE AND STATE OF EMERGENCY

Considering Cambodia's recent violent history, it is remarkable that the constitution does not provide many guidelines in this field. A state of emergency can be declared by the king after agreement with the prime minister and the chairs of the National Assembly and the Senate; details are not enumerated. Declaration of war is the prerogative of the king after approval of the National Assembly and the Senate. The king is also the formal commander in chief of the military forces. Khmer citizens have the duty to defend their homeland, but compulsory service has not been practiced in recent years.

The country's commitment to peace is emphasized in the constitution. The preamble foresees Cambodia as a restored "Island of Peace." Articles 53 and 54 prohibit wars of aggression and ban the manufacture, use, and storage of nuclear, chemical, and biological weapons.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution require a two-thirds majority vote in the National Assembly. Any amendment affecting the system of liberal and pluralistic democracy and constitutional monarchy is prohibited. As mentioned, in 2004 an "additional law" was promulgated, effectively amending the constitution without following the rules and legalizing similar procedures for the future. Constitutional amendment procedures should be readjusted if effective constitutionalism is to prevail.

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Jörg Menzel

CAMEROON

At-a-Glance

OFFICIAL NAME
Republic of Cameroon

CAPITAL
Yaoundé

POPULATION
16,063,678 (July 2004 est.)

SIZE
183,568 sq. mi. (475,440 sq. km)

LANGUAGES
English and French (both official), 230 indigenous languages

RELIGIONS
Indigenous beliefs 40%, Christian 40%, Muslim 20%

NATIONAL OR ETHNIC COMPOSITION
Cameroon Highlanders 31%, Equatorial Bantu 19%, Kirdi 11%, Fulani 10%, Northwestern Bantu 8%, Eastern Nigritic 7%, other African 13%, non-African 1%

DATE OF INDEPENDENCE OR CREATION
January 1, 1960; union with southern British Cameroons, October 1, 1961

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
June 2, 1972

DATE OF LAST AMENDMENT
January 18, 1996

Cameroon is a constitutional democracy based on the rule of law. Clear separation of powers exists among the executive, legislative, and judicial organs of state. Cameroon is a unitary state administratively divided into 10 provinces. The constitution of Cameroon contains a preamble bill of rights, guaranteeing an elaborate list of rights, and incorporating the Universal Declaration of Human Rights, the Charter of the United Nations, and the African Charter on Human and Peoples' Rights. The constitution has, however, failed to take full effect; some of its bodies have not been set up and administrative changes not been implemented. This includes the Constitutional Council, whose main function is to interpret the constitution. Human rights violations, especially on an individual basis, are not effectively remedied on the basis of the constitution. The judiciary is neither strong nor independent.

The president of the republic is head of the administration. The president does not depend on the parliament as the constitution gives the office significant power. Multiparty elections have only been held since 1992; they have been plagued by irregularities and unfavorably evaluated by independent observers. The political opposition is weak and fragmented.

Religious freedom is guaranteed in the constitution, and church and state are separate. Economically, Cameroon is a market economy. It is politically and economically stable. The military is subject to the civil government in law and in fact.

CONSTITUTIONAL HISTORY

Germany annexed the territory it called Kamerun in 1884. On February 20, 1916, during World War I (1914–18), German troops in the colony surrendered to Britain and France, which split the territory between them. In 1919, the lands were placed under the mandate system of the League of Nations, and in 1945, they became United Nations trust territories. French Cameroun was administered

as part of French Equatorial Africa and gained independence on January 1, 1960. British Cameroons consisted of two noncontiguous territories administered as part of Nigeria. The United Nations offered these territories the option of joining either the Federal Republic of Nigeria or the existing Republic of Cameroon.

Northern Cameroons voted to join Nigeria, Southern Cameroons voted to join Cameroon, and on October 1, 1961, the Federal Republic of Cameroon emerged—the previously independent Cameroon became the Federated State of East Cameroon, while Southern Cameroons became the Federated State of West Cameroon.

The federal constitution provided for two federated states, each with a legislature, a court system, and a prime minister. It also provided for federal structures including one state president, a federal legislative body, and a federal court of justice. Article 47(1) expressly prohibited any amendments to the constitution that would run contrary to the nature and purpose of the federation.

On February 11, 1972, 11 days after it was first announced, a referendum produced a suspect 99.9 percent result in favor of ending the federation. Contrary to the constitution, President Ahidjo dissolved the federation by presidential decree and instituted a unitary state; he assumed powers to rule by ordinances and decrees for one year.

The constitution of the new United Republic of Cameroon dissolved all federal structures, including the unique House of Chiefs. Power became heavily centralized with the president, and the one-party state was further consolidated. On February 4, 1984, Paul Biya, who succeeded the founding president Ahidjo in both the ruling party and as head of state, abolished the united republic by decree and restored the original name of Republic of Cameroon.

Cameroon is a member of the Economic and Monetary Community of Central African States (CEMAC).

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Cameroon is written and codified in a single document. In principle, it takes precedence over all other national law. International law must be in accordance with the constitution to be negotiated and ratified by the president of the republic, subject to the authorization of parliament when the law falls within the area of competence of the legislative power.

BASIC ORGANIZATIONAL STRUCTURE

Cameroon is a unitary state divided into 10 provinces, each of which is further parceled into divisions, subdivisions, and districts. There are two English-speaking and eight French-speaking provinces, all of which differ in geographic area, population, and economic strength. All have identical government powers.

Provinces do not have legislative powers. The administrative hierarchy descends from the provincial governor through the senior divisional officer and the divisional officer. Common law is practiced in English-speaking provinces and civil law in French-speaking provinces. The practice of the former is influenced by the latter. Some areas of law have been unified, such as the penal code in criminal law, but the harmonization process is complete, leaving other areas such as criminal procedure divided.

LEADING CONSTITUTIONAL PRINCIPLES

Cameroon's system of government is a constitutional democracy. The constitution separates the executive, legislative, and judicial powers. In practice, the executive is very strong and influences the legislative and judicial branches of government. The judiciary is independent only in principle.

Cameroon is a decentralized unitary state based on the principles of democracy and the rule of law. Political participation is exercised indirectly through the president of the republic and the parliament or by referendum. Cameroon is a secular state, which guarantees freedom of religion.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the president of the republic; the administration; the parliament, which comprises the National Assembly and the Senate; the Constitutional Council; the Court of Impeachment; the Economic and Social Council; and the judiciary.

The President of the Republic

The president of the republic is the head of state. The president has the power to appoint and dismiss the prime minister, who is the head of the administration, and other members of the administration after consultation with the prime minister.

The president of the republic is elected by direct universal suffrage for a seven-year term and can be reelected once. The president defines government policy.

The Administration

The administration implements policy as defined by the president. It is composed of the prime minister at its head and other members of the administration, who are all appointed and dismissed by the president.

The National Assembly

The National Assembly is the lower of the two houses of parliament. Its 180 members represent the entire nation and are elected by direct, secret, universal suffrage for five years. The primary functions of the National Assembly are to adopt the state budget and to pass laws.

The Senate

The Senate is the upper house of parliament and represents regional and local authorities. Each region is represented by 10 senators, seven of whom are elected by indirect universal suffrage on a regional basis. The other three are appointed by the president of the republic. Their term of office is five years. The Senate was created in the constitutional amendment of 1996 but has not yet been established.

The Lawmaking Process

Bills are drafted either by the president of the republic or by members of parliament (private members' bills). Bills are passed by parliament, which may empower the president of the republic to legislate by way of ordinance for a limited period and for given purposes. Ordinances enter into force on the date of their publication.

Laws are passed by a simple majority of the members of the National Assembly. A bill passed by the National Assembly is immediately forwarded to the president of the Senate by the president of the National Assembly. Within 10 days of receiving the bill, the president of the Senate submits it to the Senate for consideration. A bill declared urgent by the government must be submitted within five days. The Senate may pass or amend the bill.

As the Senate is not yet established, the final bill adopted by the National Assembly is forwarded to the president of the republic for enactment. The president enacts laws passed by parliament within 15 days of their being forwarded to the president, unless he or she requests a second reading or refers the matter to the Constitutional Council (which is also still to be established). If the deadline passes without presidential action, the president of the National Assembly may himself or herself enact the law. Laws are published in the *Official Gazette* of the republic in English and French.

The Constitutional Council

The Constitutional Council is the body with full jurisdiction in all matters pertaining to the interpretation and application of the constitution. Among other powers, it gives final rulings on the constitutionality of laws and the conflict of powers and regulates the functioning of institutions provided for under the constitution.

The Constitutional Council is made up of 11 members appointed by the president of the republic. Three, including the president of the council, are designated by the president of the republic; three by the president of the National Assembly; three by the president of the Senate; and two by the Higher Judicial Council. They serve for a nonrenewable term of nine years. The Constitutional Council has yet to be established.

The Court of Impeachment

The Court of Impeachment tries the president of the republic for high treason and the prime minister and members of the administration for conspiracy against the security of the state. Its jurisdiction is limited to acts committed in the exercise of their official functions.

The Economic and Social Council

The Economic and Social Council's membership and structure are specified by law. It is meant to combine representatives from associations working in the field of the economy and society.

The Judiciary

The judiciary is independent of the executive and the legislature. The highest court is the Supreme Court of Cameroon, consisting of three benches. The judicial bench mainly rules on appeals arising from judgments rendered in lower courts. The administrative bench rules mainly on disputes of an administrative nature between the state and other public authorities, disputes arising from regional and council elections, as well as appeals from lower courts in administrative cases. The audit bench rules on matters involving public accounts and on appeals arising from lower audit courts.

Until the Constitutional Council is established, its role is performed by the Supreme Court, which has a specially constituted bench for this purpose.

THE ELECTION PROCESS

All Cameroonians over the age of 20 have the right to vote. The vote is equal and secret. Candidates for president must be at least 35 years old; candidates for the Senate must be at least 40 years old. Political parties and groups are required to assist the electorate in making voting decisions.

POLITICAL PARTIES

Cameroon has been a multiparty democracy since 1990. There are approximately 140 political parties, the creation and dissolution of which are subject to decisions of the Ministry of Territorial Administration.

CITIZENSHIP

Cameroonian citizenship is acquired by birth, descent, marriage, or naturalization. A child acquires Cameroonian

citizenship if both parents are Cameroonian, irrespective of where the child is born. However, birth within the territory of Cameroon does not automatically confer citizenship, except with regard to a child born of unknown or stateless parents or a child born in Cameroon of foreign parents, at least one of whom was also born in Cameroon.

Cameroonian citizenship by descent is acquired by a child born in wedlock whose father is a citizen of Cameroon, regardless of the country of birth; a child born out of wedlock to a Cameroonian father and foreign mother, if paternity can be established; and a child born out of wedlock to a Cameroonian mother and an unknown or stateless father.

Furthermore, the law permits a foreign woman who marries a citizen of Cameroon to acquire Cameroonian citizenship. Citizenship may also be acquired upon the fulfillment of certain requirements pertaining to residency, age, health, and morality.

The law does not recognize dual citizenship, with the exception of a child born abroad of Cameroonian parents, who may retain the citizenship of the country of birth. However, upon reaching the age of 21, the child must choose Cameroonian citizenship explicitly or lose it.

Citizenship can be lost voluntarily or involuntarily. Voluntary abjuration of Cameroonian citizenship is permitted, upon presentation of proof of new citizenship. Citizenship can be lost involuntarily if a person is employed in the service of a foreign government or voluntarily acquires foreign citizenship. With regard to the latter, the law does not require a Cameroonian woman who marries a foreign citizen to renounce Cameroonian citizenship.

FUNDAMENTAL RIGHTS

The preamble of the constitution strongly asserts fundamental human rights. As well as underscoring adherence to the rights enshrined in the Universal Declaration of Human Rights, the United Nations Charter, and the African Charter on Human and Peoples' Rights, the preamble highlights a number of specific rights for special mention.

The principle of equal rights and obligations under the law forms the basis of the preamble bill of rights. Along with basic rights such as privacy, fair trial, and religious freedom, the constitution mentions the right to development, protection of minorities, and the right to a healthy environment.

In the absence of the Constitutional Council, the enforceability and justiciability of these rights remain untested. Speculation, however, about the status of the bill of rights vis-à-vis the constitution seems to be conclusively settled by Article 65, which states that "the preamble shall be part and parcel of this constitution."

Impact and Functions of Fundamental Rights

In Cameroon, the protection of human rights has not always been a cornerstone of legal thinking. It is only in the last decade that the issue has come to the fore with the creation of the National Commission on Human Rights and Freedoms, the establishment of many nongovernmental organizations for human rights, and the entry into force of the revised constitution in 1996 with its bill of rights. Human rights are now a part of all major political and legal discourse. It is anticipated that once the Constitutional Council is established, rights violations and laws that are incompatible with the ambitious bill of rights will be challenged in court and the constitutional protection of human rights given full effect.

Limitations to Fundamental Rights

Human rights in Cameroon are subject to limitations. Some laws in fact contradict the constitutional protection of human rights. The principle of equality, for example, can be challenged on the basis that sodomy is a crime under the penal code. Also, the constitution provides for only a gradual establishment of new institutions including the Constitutional Council, which in effect delays the full enjoyment of all the rights provided in the constitution.

ECONOMY

The constitution does not provide for a specific economic system. It cites the right of ownership, the right and obligation to work, and the freedom of communication, expression, association, assembly, and trade unionism. Cameroon has a free-market economy.

RELIGIOUS COMMUNITIES

Although Cameroon is a secular state, the constitution guarantees freedom of religion and worship. It further guarantees the neutrality of the state with respect to all religions. Presumably, religions must be treated equally. Both Christian and Muslim holy days are public holidays in Cameroon. In the past, however, Jehovah's Witnesses have seen their basic rights violated as a result of their inability to pay allegiance to the state in contravention of the constitution, which entreats all citizens to contribute to the defense of the fatherland.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president, as commander in chief of the armed forces, ensures the internal and external security of the state. The instrument is the national army, which works with the police and the *gendarmerie* to maintain law and order in peacetime. The president may declare a state of emergency and rule by decree. More seriously, the president may also declare a state of siege if national integrity, sovereignty, or national institutions are threatened. The constitution

empowers the president to take any measures deemed necessary to eliminate the threat.

In Cameroon, there is no military service or indeed any kind of national service. All soldiers are professional and serve in the army for life. There are women soldiers. The military is subject to civil government.

AMENDMENTS TO THE CONSTITUTION

Only the president or two-thirds of either house of parliament may propose an amendment to the constitution. To amend the constitution, two-thirds of the members of both houses of parliament must vote in favor of the change. The president also has the right to submit any proposed amendment to a referendum, whereby it can be adopted by a simple majority of the votes cast.

Certain fundamental provisions are not subject to change at all. Article 64 says: “No procedure for the amendment of the constitution affecting the republican form, unity or territorial integrity of the state and of the democratic principles which govern the republic shall be accepted.”

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Norman Taku

CANADA

At-a-Glance

OFFICIAL NAME
Canada

CAPITAL
Ottawa

POPULATION
32,805,041 (July 2005 est.)

SIZE
3,855,103 sq. mi. (9,984,670 sq. km)

LANGUAGES
English and French (official languages)

RELIGIONS
Roman Catholic 42.6%, Protestant (including United Church 9.5%, Anglican 6.8%, Baptist 2.4%, Lutheran 2%) 23.3%, other Christian 4.4%, Muslim 1.9%, other and unspecified 11.8%, none 16% (2001 census)

NATIONAL OR ETHNIC COMPOSITION
British 28%, French 23%, other European 15%, Amerindian 2%; other, mostly Asian, African, Arab, 6%; mixed background 26%

DATE OF INDEPENDENCE OR CREATION
July 1, 1867

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
July 1, 1867 (Constitution Act, 1867); April 17, 1982 (Constitution Act, 1982)

DATE OF LAST AMENDMENT
December 6, 2001

Canada is a federal state, a constitutional monarchy, and a parliamentary democracy based on the British constitutional model whereby executive and legislative powers are concentrated rather than clearly separated. There are strong constitutional guarantees for the independence of the judiciary. Canada consists of 10 provinces, three territories, and a federal government. Only since 1982 has the Canadian constitution included a Charter of Rights and Freedoms that guarantees individual and group rights. The constitution is the supreme law of Canada, and any law that is inconsistent with its provisions can be declared of no force or effect by ordinary Canadian courts, including, in the last instance, the Supreme Court of Canada.

In her capacity as Canadian head of state, the British queen is represented by the governor-general on the federal level and the lieutenant governors on the provincial level. However, the functions of the monarch and her representatives are entirely formal and representative. The central political figures are the Canadian prime minister as head of the federal executive government and the provincial premiers as heads of the respective provincial executive governments. The prime minister and provincial premiers can only govern as long as they enjoy the confidence of their respective elected legislative assembly as the representative body of the people. Free, equal, general, and direct elections of the members of the federal House of Commons and provincial legislative assemblies are held approximately every four years.

Religious freedom is guaranteed by the constitution, and the state must remain neutral in religious matters. The constitution does not define the economic system, but the rights and freedoms it guarantees contribute indirectly to the functioning of a market economy.

CONSTITUTIONAL HISTORY

The Canadian federation was created by the British Parliament in 1867 by uniting three North American English colonies that had attained a state of partial internal autonomy: the United Province of Canada (created in 1840 by the fusion of two older provinces: Lower Canada [Quebec] and Upper Canada [Ontario]), New Brunswick, and Nova Scotia. Such a union was considered necessary by the colonies in order to ward off the perceived threat of a military invasion by the United States (Great Britain had helped the Confederate States during the American Civil War) and to respond to important economic problems. A few years earlier, the United States had denounced the Reciprocity Treaty (a free-trade agreement), which had been in force with the Canadian colonies for 12 years. Access by Canadian products to the American market thus became restricted. As a consequence, the Canadian colonies were faced with the necessity to create an economic union among themselves.

Another reason was the need to find a solution to the uneasy relations between the French-speaking Catholic majority of the eastern part of the province of Canada (the former Lower Canada) and the English-speaking Protestant majority of the western part (the former Upper Canada). The entire province had belonged to the colony of New France until the British conquest in 1759. After the conquest, the British had tried to assimilate the French-speaking population in different ways, in particular by uniting Lower and Upper Canada in 1840 in the hope that in a single political entity the French-speaking Canadians would inevitably be assimilated into an English-speaking majority. However, this policy was unsuccessful, and in 1867, United Canada was again divided into two separate provinces, Ontario and Quebec. At that time, French speakers formed the overwhelming majority in Quebec (as they still do) and one-third of the whole population of Canada (this proportion has presently dropped to approximately 24 percent; close to 90 percent of all Canada's francophones now reside in the Province of Quebec).

In 1867, representatives for Canada-West (the future Ontario) favored a unitary state, which would have been controlled by an English-speaking majority. However, representatives for Canada-East (which was to become Quebec) insisted that the future Canadian polity must be a federal union in which francophones would form the majority in at least one of the constituent states and in this way retain the control over their destiny in certain areas considered critical for their particular identity (characterized by the French language, the Catholic religion, and the civil law tradition). The representatives for New Brunswick and Nova Scotia, fearing domination by the more densely populated Upper Canada, also favored a federal union. In the end, a compromise was reached, as the 1867 constitution established a very centralized federation. Many of the centralizing features of the 1867 constitution have since been neutralized, either by political convention or by judicial interpretation of the relevant provisions.

The 1867 constitution was enacted by the imperial parliament as the British North America Act, 1867 (its present title is the Constitution Act, 1867). Out of three preexisting colonies, the constitution created four provinces, Ontario, Quebec, New Brunswick, and Nova Scotia. Six other provinces and three territories were created at later points in time: British Columbia (admitted in 1871), Prince Edward Island (admitted in 1873), Manitoba (created in 1870), Alberta and Saskatchewan (created in 1905), and Newfoundland (admitted in 1949). The three territories are the Northwest Territories (created in 1870), the Yukon (created in 1898), and the Nunavut (created in 1999).

The framers of 1867 wanted the constitution to be similar in principle to that of the United Kingdom. Therefore, no bill of rights was included since such an element of constitutionalism was incompatible with the most important principle of the English constitution, the sovereignty of Parliament. However, certain minimal religious and linguistic minority rights were entrenched. Furthermore, the constitution lacked a complete amending formula because Canada continued to be a British colony, and the British Parliament retained the power to amend the most important parts of the constitution.

During the 60 years that followed its creation, in parallel with the other British "dominions," Canada followed a gradual evolution toward internal, then external autonomy within the British Commonwealth. The culmination was the Statute of Westminster, 1931, adopted by the British Parliament in order to remove the last fetters on the sovereignty of the dominions. However, because the Canadian federal government and the provinces proved unable to agree on a domestic amending formula, the legislative authority of the British Parliament over the Canadian constitution had to be preserved; it could continue to amend the Canadian constitution at the request of Canadian authorities (and only then).

For 50 years, Canadians tried unsuccessfully to "repatriate" the constitution (by taking home the amending formula). As time passed, other contentious issues were added to the debate over the amending formula, making the process ever more difficult. In particular, the francophone majority in the province of Quebec began, from the 1960s on, to claim new legislative powers that it considered necessary for its development as a distinct national group within Canada, as well as a form of constitutional recognition of Quebec's distinct character. It was not long before a segment of Quebec's francophone nationalists turned to more radical demands and formed a political party whose agenda included Quebec's independence from Canada. The Parti Québécois (PQ) won its first election in 1976 and in 1980 held a referendum on "sovereignty-association" (political sovereignty accompanied by an economic union with Canada). However, 60 percent of the voters rejected this option.

Taking advantage of the weakened condition of the Quebec government, the federal government, formed

at that time by the Liberal Party, reached an agreement with the nine English-speaking provinces over a constitutional package containing a domestic amending formula, a charter of rights and freedoms, and recognition of the rights of Canada's aboriginal peoples. This package was sent to Westminster and enacted by the British Parliament as the Constitution Act, 1982, in spite of the Quebec government's refusal to assent. A few months later, the Canadian Supreme Court ruled that adopting these far-reaching modifications of the constitution without Quebec's support did not offend any constitutional rule.

In the years after the adoption of the Constitution Act, 1982, a new political situation appeared that seemed more conducive to reconciliation between Quebec and the Rest of Canada (ROC as it has come to be called). A new federal government formed by the Conservative Party rose to power in Ottawa, as well a new government in Quebec formed by the Liberal Party that was opposed to sovereignty for Quebec. After intense negotiations, the federal and 10 provincial governments reached agreement in 1987 on a series of constitutional amendments intended to satisfy Quebec's demands and to convince it to ratify formally the 1982 constitution. However, three years later, the agreement (called the Meech Lake Accord) failed to be ratified by two of the 10 provincial legislatures, frustrating the unanimous consent required under the amending formula. Two years later, another attempt at constitutional reform (the Charlottetown Agreement), aimed this time at satisfying some of English Canada's constitutional concerns as well as Quebec's, also failed. It was decisively rejected in a referendum in Quebec as well as in a majority of the other nine provinces.

Thus, inside a five-year period, two attempts to improve the relations between Quebec and the rest of Canada ultimately failed. This failure contributed to the Liberal Party's defeat and the return to power of the Parti Québécois in the 1994 election. The PQ government subsequently held a second referendum on sovereignty-association in October 1995, which this time yielded very close results: 49.44 percent for sovereignty-association and 50.56 percent against it (with a difference of only approximately 50,000 votes). After the 1995 referendum, the Canadian federal government asked the Supreme Court of Canada for an advisory opinion on the power of a Canadian province to secede. In its 1998 opinion, the court ruled that secession could not be achieved unilaterally but would have to conform to the constitutional amending formula. However, the court also proclaimed the democratic legitimacy of a secession initiative that would be approved by a clear majority vote in Quebec on a clear question and added that such a result would trigger a constitutional obligation of the federal government and the other Canadian provinces to enter into negotiations with the secessionist province.

Finally, in 2003, the Parti Québécois lost the elections and a new provincial government was formed by the Liberal Party. The new government was opposed to secession, and this particular issue has been put to rest for the near future. However, opinion polls show that support for "sovereignty-association" remains stable in public opinion at a 40-to-44 percent level. Therefore, it would be premature to assume that the issue has been resolved or overcome.

FORM AND IMPACT OF THE CONSTITUTION

As is the constitution of the United Kingdom, Canada's constitution is partially written and partially unwritten. The written portion is contained in a number of Canadian and British statutes and orders-in-councils that make up the "Constitution of Canada" in the formal sense. The two most important written instruments are the Constitution Act, 1867, and the Constitution Act, 1982. The older act contains provisions setting out the constitutional organs invested with the executive, legislative, and judicial power at the federal and provincial levels, as well as the distribution of powers between the two levels of government. The newer act consists of the Canadian Charter of Rights and Freedoms, the amending formula, and provisions recognizing aboriginal rights. Most—but not all—of the provisions contained in the formal written constitution can only be amended by recourse to a special amending formula, which requires the approval of the federal authorities and all, or a certain number of, provinces. These "entrenched" provisions have constitutional supremacy and render any inconsistent law of no force or effect. Judicial review of constitutionality, as in the United States, is under the jurisdiction of the ordinary courts rather than the sole jurisdiction of a special constitutional court.

The unwritten portions of the constitution are contained in common law rules and the conventions of the constitution. Constitutional conventions are rules of conduct that are considered binding by political actors but will not be judicially sanctioned by the courts. They typically appear and evolve through precedent and practice, accompanied by a sense of political obligation on behalf of the political actors. Conventions can complement but also contradict the law of the constitution. In Canada, as in the United Kingdom, some of the most fundamental constitutional rules, such as those making up the system of "responsible government," are conventions rather than legal rules. Generally speaking, the role of conventions is to adapt the law of the constitution, some of which has become seriously outdated, to prevailing constitutional values and principles. Thus, the written Canadian constitution still endows the unelected representatives of the monarch with important legal powers, which according to the conventions of the constitution can only be exercised in accordance with the advice of the cabinet and/or the prime minister (or the provincial premier).

The provincial constitutions are also made up of written and unwritten rules. The conventions making up the system of responsible government apply similarly at the provincial level. The written and entrenched portions of

the provincial constitutions have no separate existence and are contained in certain provisions of the formal "Constitution of Canada." For instance, the provincial constitutions of the four original provinces form Part V of the Constitution Act, 1867; the constitutions of the provinces created or admitted later are found in the instruments creating or admitting them into Canada.

International treaty law can only be applied by the Canadian courts after transformation into domestic law and thus never has preeminence over domestic Canadian law. International customary law can be applied without transformation but only insofar as it does not contradict domestic law. However, Canadian courts, as far as possible, apply and interpret Canadian law in a way that is compatible with Canada's international legal obligations.

BASIC ORGANIZATIONAL STRUCTURE

Canada is a federation made up of 10 provinces and three territories. In contrast with the provinces, whose autonomy and powers are entrenched in the constitution, the territories are still under federal legislative jurisdiction and enjoy only a nonconstitutional autonomy delegated by the federal parliament. The provinces differ considerably in geographic area, population size, and economic importance. The two geographically central provinces—Quebec and Ontario—together contain over three-fifths of Canada's population. Ontario is the most populous and wealthy province, with almost 30 percent of the population and the largest industrial base. Broadly speaking, each province has the same legislative, administrative, and judicial powers under the constitution. However, certain constitutional provisions apply only to some provinces, thus introducing a measure of asymmetry. For instance, French and English are the official languages at the federal level, but a similar situation exists only in three of the 10 provinces (Quebec, Manitoba, and New Brunswick). Another asymmetry originates from the fact that Quebec is the only province with a guaranteed representation in the Supreme Court of Canada; three of its nine members must be appointed from the Quebec superior courts or bench.

The great majority of legislative powers are exclusively assigned by the 1867 constitution either to the federal parliament or to the provincial legislatures. However, over time, the judicial interpretation of the provisions addressing the division of powers has blurred the lines. This tends to favor overlapping or concurrent jurisdiction in many areas and requires a high degree of cooperation and coordination between the central government and the Canadian provinces, in order to coordinate policies.

With regard to the division of powers, the framers of the 1867 constitution clearly wanted to establish a high degree of centralism. In contrast with those in many other federations, the residual powers were given to the federal parliament, as well as powers over criminal law and banking, penitentiaries, marriage and divorce, and other areas. The Canadian Parliament was also endowed with all the legislative powers needed to regulate the economy. In particular, the federal commerce power was expressed in an expansive way. Parliament also received all the important taxing and borrowing powers, as well as the power necessary to carry out Canada's treaty obligations even if the matter was otherwise within provincial jurisdiction. Finally, in the opening words of Section 91 of the Constitution Act, 1867, Ottawa was given a general lawmaking authority enabling the national parliament "to make laws for the peace, order and good government of Canada." Indeed, the balance was heavily weighted in favor of the national government.

However, Canada soon evolved toward a much more decentralized condition; one of the main reasons was that the final interpreter of the Canadian constitution was, until 1949, the Judicial Committee of the Privy Council, a court composed of mainly British judges that acted as final court of appeal for countries of the British Empire, and later of the Commonwealth. The Judicial Committee proved very sensitive to provincial rights. Over more than 80 years during which it acted as the court of last resort for Canada, its decisions had the effect of significantly increasing the constitutional position of the provinces. This was done first by removing their subordinate status and elevating them to coordinate status with the central government, and second by giving a restrictive construction to many of the main federal powers. In particular, they limited the federal commerce power and the "peace, order and good government" power and separated the treaty *implementation* power between the Canadian Parliament and the provincial legislatures according to their respective jurisdictions (however, the power to *enter into* treaties is always exercised by the Canadian government, irrespective of the subject matter). They also gave a generous interpretation to the most important provincial power, the power over "property and civil rights," that is, over all private legal relations. In this way, the committee interpreted the highly centralized federal structure set out in the constitution in a decentralizing way, thus frustrating in good part the intentions of the framers.

In 1949, the federal Parliament abolished all appeals to the Judicial Committee. The Supreme Court of Canada, which was now free of the committee's authority, did not reject its precedents wholesale. However, it has progressively expanded federal legislative jurisdiction. In particular, the court has expanded the federal commerce power, the criminal law power, and the "peace, order and good government" power, which gave Ottawa authority over matters of "national dimension." In major decisions, the court ruled that the federal Parliament has the necessary authority to enact legislation designed to sustain and to promote the proper functioning of the Canadian economic union as well as to implement the Canada-U.S. Agreement and North American Free Trade Agreement

(NAFTA). The Supreme Court's vision of federalism appears to be based on considerations of economic efficiency. In the long run, such a vision favors centralization rather than provincial autonomy.

English Canada has generally accepted the Supreme Court's rulings as striking an acceptable balance between the central government and the provinces as the country evolves. By contrast, in Quebec, many people fear that the expansion of federal powers, if continued in the future along the same lines, will endanger Quebec's provincial autonomy. Quebeckers see provincial autonomy as a means to preserve their distinct identity and self-government; hence, they want to protect it against any federal encroachment. English Canadians, on the other hand, conceive of federalism more as a system of dividing powers in the most efficient way between two levels of government; if they can be convinced that administrative or economic efficiency, or national harmonization, requires greater centralization, they often (but not always) accept a weakening of their provincial governments' powers.

However, judicial interpretation of the division of powers is no longer the most important factor in the evolution of Canadian federalism. The balance between centralization and decentralization is increasingly determined by the financial relations between the two levels of government.

The framers of the Constitution Act, 1867, entrusted the federal authorities with the most important jurisdictions and thus assigned them most of the financial resources. They gave the provinces much less financial scope, just enough to meet what was considered to be their lesser responsibilities. However, over the years, an imbalance emerged between the provinces' responsibilities and their financial resources. First, the decisions of the Judicial Committee broadened the jurisdictions of the provinces and narrowed those of the federal government with respect to economics, trade, and social policy. Second, the changed social and economic conditions that appeared in the 1930s rendered provincial responsibilities such as education, health, and welfare much more expensive than they had been. This created a vertical financial imbalance that favors the federal government, which has more power to raise and spend funds. By offering to provide all or part of the funding, and by attaching conditions to the receipt of such money, the federal government has been able to intervene in areas that are constitutionally under exclusive provincial jurisdiction. An estimated 35 percent of all federal spending occurs in these areas.

As in most federations, Canada since 1957 has had a comprehensive system of revenue sharing and fiscal equalization between the richer and poorer regions to ensure that all citizens, wherever they reside, receive comparable services without being subject to excessively different tax rates. The Canadian system is based on federal transfers to the poorer provinces. Currently, eight provinces qualify for equalization—all but Ontario and Alberta.

Except in one instance, the legislative authority of each level of government parallels its executive or administrative authority. However, criminal law is within the exclusive legislative competence of the federal Parliament but is administered by provincial attorneys general and provincial courts.

There is no constitutional basis for municipal or local government autonomy. Municipal entities are regulated by provincial legislation and can be created, abolished, or reorganized at will by the provincial legislatures.

LEADING CONSTITUTIONAL PRINCIPLES

Canada's system of government is a parliamentary democracy based on the British model. There is no strong division of executive and legislative powers. On the contrary, the executive and the legislature are fused; all cabinet members must be members of the elected legislative assembly. In contrast, there exist strong constitutional guarantees of judicial independence.

Canada is a democracy, a federation, and a constitutional monarchy and is based on the rule of law, the independence of the judiciary, and respect for minority rights. The same principles also apply to the provincial political system. Most of these fundamental principles are not expressed in provisions of the constitution but are considered by the courts an implicit part of the constitutional structure.

Canada is a representative democracy. Direct democracy has limited application on the federal as well as on the provincial level. Referenda are held only on the initiative of the federal or provincial government (there is no popular initiative) and are generally only consultative; the result is not usually legally binding on the government and the legislature. The formula for constitutional amendment does not require a referendum, but neither does it prohibit direct consultation of the people. In 1992, a far-reaching constitutional reform project (the Charlottetown Agreement) was submitted to a referendum and rejected. Some scholars are of the opinion that this precedent has formed a constitutional convention requiring the same procedure in the future for any major constitutional reform.

The preamble of the Constitution Act, 1867, proclaims the federal character of Canada and declares that the constitution is to be similar in principle to that of the United Kingdom. This phraseology has been utilized to justify the courts' invocation of implicit constitutional principles when they find it necessary to interpret the written text or fill its gaps. The very brief preamble of the Constitution Act, 1982, proclaims that Canada is founded upon principles that recognize the supremacy of God and the rule of law. The courts have ruled that the reference to God must be given no significance in relation to freedom of conscience and religion guaranteed in the Canadian Charter of Rights and Freedoms.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the representatives of the monarch, who were formally invested with the executive power at the federal and provincial levels, and the federal and provincial legislative bodies. However, the formal constitution does not provide for the role of the prime minister (or provincial premiers) or of the cabinet, whose existence and functions depend on unwritten conventions and ordinary legislation. The Supreme Court was created by an ordinary statute adopted by the federal Parliament. Because of the lack of clarity of some provisions in the Constitution Act, 1982, constitutional experts currently disagree on whether this statute has or not been entrenched by implication in the formal constitution in 1982.

The Queen, the Governor-General, and the Lieutenants Governors

The queen is the formal head of state of Canada. Since 1930, the English monarch acts in Canadian matters on the advice of the Canadian federal cabinet, as Canada is an independent country. The powers attributed to the queen are exercised by the governor-general in federal matters and by the lieutenant governors in provincial matters. The governor-general appoints and dismisses the prime minister and other members of the cabinet. He or she summons, adjourns, and dissolves Parliament and gives royal assent to legislation but, by convention, cannot refuse it. The same functions pertain to the lieutenant governors in the provinces. In addition, the governor-general appoints senators and judges of superior provincial courts. The powers of the governor-general and lieutenant governors must be exercised in accordance with constitutional conventions and, in many cases, on the personal advice of the prime minister of Canada (or provincial premier), who is the de facto dominant figure in federal or provincial politics.

The governor-general is appointed and can be removed by the English monarch on advice by the Canadian prime minister. The lieutenant governors are appointed and can be removed by the governor-general. However, the courts have ruled that no subordination of the lieutenant governor to the governor-general exists; both are equally representatives of the Crown.

It is now a constitutional custom to appoint alternatively a French-speaking and an English-speaking governor-general.

The Federal and Provincial Governments

The governor-general at the federal level or the lieutenant governor at the provincial level appoints the prime minister (or provincial premier) and other members of the cabinet according to the conventions of the constitution. They must appoint, as head of the executive government, a person who enjoys the support of a majority of elected members in the federal House of Commons or provincial legislative assembly. Other members of the cabinet are appointed and dismissed on the advice of the prime minister or provincial premier. In most instances, the "first-past-the-post" (or "winner-takes-all") electoral system ensures that a single political party wins an absolute majority. The conventions of the constitution also provide for collective political responsibility of the federal or provincial cabinet before the House of Commons or the provincial legislative assembly. The cabinet must resign or call an election when it can no longer command the support of a majority of elected members.

To become a member of the federal or provincial cabinet, a person must be a member of the House of Commons or of the provincial legislative assembly. The prime minister or provincial premier can also designate a nonelected person but must secure in reasonable time a by-election to give him or her an opportunity to become elected. In case of defeat, the nonelected minister must resign from the cabinet. Exceptionally, senators (who are not elected) can be chosen as ministers in order to ensure cabinet representation for provinces or regions in which the governing party does not have enough elected members.

In Canada, because of the electoral system, a majority administration is the most common outcome. Because a majority administration, combined with a high level of party discipline, can usually dominate the legislature, the executive is in a commanding position, and the role of the federal Parliament and provincial legislatures is somewhat weakened. The situation is significantly different in cases of minority administrations.

The Federal Parliament and Provincial Legislatures

The federal Parliament formally consists of the queen, an upper house called the Senate, and the House of Commons. The members of Parliament and of the provincial legislatures are elected in general, direct, free, equal, and secret elections.

Today, the provincial legislatures are all unicameral and consist of the lieutenant governor and a legislative assembly. Although some provinces initially had bicameral legislatures, all have abolished their upper chamber. To become law, a bill must be adopted by both houses of Parliament (or by the legislative assembly at the provincial level) and receive royal assent, which, by convention of the constitution, cannot be refused.

The members of Parliament and of the provincial legislatures are legally free to vote according to their conscience or to what they perceive to be the wishes of their constituency. However, the level of party discipline is high and members usually follow voting instructions from their party leadership, except in cases in which the government allows a free vote.

The federal House of Commons is composed of 308 members. The maximal duration of a legislature, on the federal as well as on the provincial level, is five years. However, the House of Commons or the provincial legislative assembly can be dissolved during this period by the governor-general or the lieutenant governor on the advice of the prime minister or the provincial premier.

The Senate

Senate reform has been the subject of a great deal of debate and a large number of proposals in the last 30 years. The less populous provinces, particularly in western Canada, have viewed the Senate as an instrument to win more influence in the national political decision-making process. They elect too few members of the House of Commons to wield much influence, compared to the two most populous provinces, Quebec and Ontario. Therefore, they want a Senate modeled on the Australian and American model, with each province represented by an equal number of directly elected senators. This new Senate would have a democratic legitimacy equivalent to that of the House of Commons and thus would be able to exercise comparable powers.

At present, the 105 seats in the Senate are distributed in the following way: Ontario and Quebec, 24 each; New Brunswick and Nova Scotia, 10 each; Prince Edward Island, four; British Columbia, Alberta, Saskatchewan, Manitoba, and Newfoundland, six each; and Yukon, Nunavut, and the Northwest Territories, one each. The four western provinces, with almost 30 percent of the country's population, have only 23 percent of the seats in the Senate. However, equalization of Senate representation for all provinces would also lead to undemocratic results. The six smallest provinces (the four Atlantic provinces, Manitoba, and Saskatchewan) would together hold 60 percent of the Senate seats, while representing only 17 percent of the Canadian population.

At present, senators are appointed by the Canadian prime minister. Appointments are almost always made on the basis of political patronage. Thus, senators represent neither the people nor the governments of the provinces. This lack of legitimacy means that the Senate cannot really exercise the powers with which it is formally endowed and which are almost identical to those of the House of Commons, in legislative matters. In most circumstances, the Senate cannot block or even unduly delay the adoption of bills passed by the House of Commons. Senate reform must thus aim at reestablishing congruence between senators' formal powers and their political capacity to exercise them.

Direct popular election of senators appears to have widespread support. This solution does, however, have serious drawbacks within the context of a Westminster-style parliamentary system that includes responsible government and party discipline. A popularly elected Senate may either be too similar to the House of Commons, which would make it redundant or too different, which could result in a confrontation between the two houses and their mutual neutralization. Either way, the danger would be that party discipline would lead the senators to align along party lines rather than in defense of the interests of the provinces or regions.

The Lawmaking Process

With the exception of revenue bills, laws can be introduced either in the House of Commons or in the Senate, but the overwhelming majority of bills proposed by a member of the cabinet are introduced in the house. The Constitution Act, 1867, requires that revenue bills, which raise taxes or appropriate the receipts, originate in the House of Commons at the recommendation of the governor-general (or of the lieutenant governor in the case of provincial bills). After a constitutional convention, the monarch's representative, at both levels of government, only recommends a revenue bill proposed by a member of the cabinet. This rule severely restricts the capacity of ordinary members of Parliament or of a provincial legislature to propose consequential legislation. More generally, the federal or provincial government controls the agenda of parliamentary business and usually restricts the time dedicated to private members' bills. Thus, the cabinet tends to control the preparation and initiation of legislation strictly.

After a bill has been adopted by the house in which it was introduced, it is sent to the other house and must be adopted on identical terms. The Senate can propose amendments to a bill passed by the House of Commons. However, if the house insists on its adoption without the proposed modifications, the Senate can in practice make no further obstruction. The rare occasions in which the Senate can still exercise a real veto are those instances when the government presents a very controversial proposal late in the legislative term that is not part of the electoral program. In such a case, the Senate can get away with refusing its assent in order to give to the citizens the opportunity to weigh in on the proposal during the election.

After adoption by both houses of Parliament or by the provincial legislative assembly, a bill must also receive royal assent to become an act and go into force. However, the monarch's representative's refusal to assent would be incompatible with the conventions of the constitution.

The Judiciary

Canada's judicial system follows the British model in which ordinary judicial courts have jurisdiction over civil and criminal law, regardless of whether the case is litigated between private parties or between a private party and the state. The first two tiers of courts (courts of first instance and courts of appeal) are under provincial legislative jurisdiction and apply provincial as well as much of federal law. The Supreme Court of Canada, which sits at the apex of the system, is under federal legislative jurisdiction. It acts as a general court of appeal, with jurisdiction over all Canadian law, federal and provincial.

However, purely federal courts with a jurisdiction limited to certain parts of federal law also exist. They are created and endowed with their responsibilities by the federal Parliament. When adopting a particular law, the federal Parliament can choose explicitly to hand jurisdiction over to the provincial courts or to a particular federal court. The most important of the purely federal courts is the Federal Court, which has two divisions, one of first instance and one of appeal. The Federal Court holds exclusive jurisdiction (or in certain cases concurrent jurisdiction with provincial courts) over cases involving "the Crown in right of Canada" (i.e., the federal government). This exclusive jurisdiction also covers certain federal issues such as admiralty, copyright, trademarks, patents, citizenship, and other matters regulated by the federal Parliament. Other purely federal courts include the Canadian Tax Court and military tribunals.

Justices of the Supreme Court of Canada, judges of the purely federal courts, and judges of superior provincial courts are appointed by the federal cabinet. Judges of inferior provincial courts are appointed by the provincial cabinet.

Several provisions of the formal constitution, as well as an implicit principle identified by the courts, guarantee judicial independence and impartiality. These constitutional rules put the courts in a position to define for themselves the conditions that the executive and legislative branches must respect in relation to judicial independence. Such conditions include protection against arbitrary removal, financial security, immunity of judges for actions taken while performing their duties, and institutional autonomy.

Judicial review of constitutionality is part of the jurisdiction of ordinary courts. Before any judicial court, federal or provincial, a litigant can question the constitutionality of any law (statutory or common law) used against him or her by another private party or by the attorney general acting on behalf of the federal or the provincial government. The court must then examine the question and, if it finds the law unconstitutional, declare it not applicable or invalid (the inferior courts can only declare the law inapplicable to the actual case or controversy; the superior courts can invalidate it with general effect). Furthermore, preemptive challenges to the constitutionality of a statute are allowed even before it is applied to a particular person. Finally, absent any legal dispute, the federal government can request an advisory opinion from the Supreme Court on any constitutional question. A provincial government can make the same request to the provincial court of appeal. The provincial courts and the Supreme Court can control the constitutionality of federal and provincial laws, while the purely federal courts can only examine federal laws.

The highest court in Canada is the Supreme Court, composed of nine judges including the chief justice. Under the Supreme Court Act, three of the nine judges must be appointed from the courts of Quebec in order to ensure that there are enough judges educated in the civil law of Quebec to sit on an appeal from Quebec concerning civil law questions (elsewhere in Canada, private law is governed by the common law). By usage, the six other members of the court are appointed by following a regional distribution within English Canada (three judges for Ontario, one for British Columbia, one that rotates among the three Prairie provinces, and one for the four Atlantic provinces). Supreme Court judges are appointed by the federal cabinet. Until recently, there was no requirement of consultation with the provincial governments or of examination of the candidates by members of Parliament. In August 2005, a new appointment process was launched. Provincial ministers of justice, along with leading members of the legal community, will be consulted by the federal minister in order to identify a small number of candidates who will be assessed by an advisory committee consisting of members of the House of Commons, a retired judge, representatives of the provincial ministers of justice, the law societies, and the general public. The committee's role is to appraise the candidates and establish a short list of three names, from which the prime minister makes the final choice.

Except in certain criminal cases, appeals to the Supreme Court exist not of right but by leave; the court must authorize the appeal. Accordingly the court has the liberty to choose those cases it wants to hear and that present a sufficiently important legal interest. The court hears fewer than 100 cases every year, of which approximately 25 percent involve constitutional aspects.

THE ELECTION PROCESS

All Canadian citizens above the age of 18 have both the right to be a candidate in a federal or provincial election and the right to vote in the election. These rights are guaranteed by the Canadian Charter of Rights and Freedoms; any limitations must be reasonable (for example, persons found guilty of electoral fraud can be temporarily deprived of the right to vote or to be elected).

Parliamentary Elections

Members of Parliament and of the legislative assemblies in most provinces are elected through the "first-past-the-post" (or "winner-takes-all") plurality system. Canada is divided into single-member constituencies. Within each, the candidate who receives most votes wins, even if he or she does not obtain an absolute majority. A well-known characteristic of this system is that it results in significant distortions between the votes received by the respective parties and the number of seats they obtain in the legislature. For example, in the federal election of 2000, the governing Liberal Party won 53.5 percent of the seats in the House of Commons with only 40.8 percent of the popular vote.

In the Canadian context, the plurality system also exacerbates electoral regionalism. This electoral system favors political parties with strong regional appeal and

disadvantages nationally oriented parties whose support is more evenly spread across the country.

As a consequence, it becomes more difficult to form a federal cabinet representative of all regions, as the governing party may have few or no elected members from some provinces. As a consequence, government policies are often attacked as being unfavorable to unrepresented provinces or regions. Electoral regionalism contributes to the phenomenon of "western alienation," originating in the poor representation of western Canada in the central institutions.

Most provinces also use the "first-past-the-post" electoral system, with some or all of the same consequences and problems. Currently, several provinces have initiated reforms to include some element of proportional representation.

POLITICAL PARTIES

Canada has a pluralistic system of political parties at the federal and provincial levels. The formal Canadian constitution contains no provision concerning political parties. Their existence and role appear only in conventions of the constitution and ordinary federal and provincial legislation.

CITIZENSHIP

The Canadian constitution contains no specific rules on citizenship other than the provision endowing the federal Parliament with legislative jurisdiction over the subject. Of course, federal laws on citizenship must conform to the Canadian Charter of Rights and Freedoms and in particular to Section 15, prohibiting discrimination.

Canadian citizenship is primarily acquired by birth from one Canadian parent (*ius sanguinis*), whether in Canada or abroad, or by birth on Canadian soil (*ius soli*). Citizenship can also be acquired by naturalization three years after a person has been legally admitted as an immigrant. Dual or plural citizenship is allowed under Canadian law.

FUNDAMENTAL RIGHTS

The main constitutional instrument guaranteeing rights and freedoms is the Canadian Charter of Rights and Freedoms, which forms Part I of the Constitution Act, 1982. Certain linguistic and religious minority rights are also included in the Constitution Act, 1867. In addition, all provincial legislatures and the federal Parliament have adopted, in their respective fields of jurisdiction, human rights legislation that possesses a "quasi constitutional" character, giving it a limited kind of primacy over ordinary corresponding provincial or federal legislation.

The Canadian Charter of Rights and Freedoms guarantees the traditional set of human rights and freedoms but does not include economic, social, or cultural rights, such as the right to work or the right to an education. The only provincial Human Rights Act in which such rights can be found is Quebec's Charter of Human Rights and Freedoms.

The Canadian Charter guarantees the following:

- Fundamental freedoms—freedom of conscience and religion; of thought, belief, opinion, and expression, including freedom of the press and other media of communication; freedom of peaceful assembly and freedom of association (Sect. 2)
- Democratic rights—the right to vote and to be a candidate for election (Sect. 3–5)
- Mobility rights—the right to enter, remain in, and leave Canada; the right to move to and to take up residence in any province and to pursue a livelihood in any province (Sect. 6)
- The right to life, liberty, and security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice (Sect. 7)
- Legal rights—pertaining to search and seizure, arrest, detention and imprisonment, proceedings in criminal and penal matters, and punishment (Sect. 8–14)
- Equality rights and the prohibition of discrimination, in particular discrimination based on race, national, or ethnic origin, color, religion, sex, age, or mental or physical disability (Sect. 15)
- Linguistic rights, relating to the use of the English and French languages (Sect. 16–23)

Most rights contained in the Canadian Charter are guaranteed to every person within Canadian territorial jurisdiction, irrespective of citizenship. Only democratic rights, mobility rights, and minority language educational rights (the right to have one's children receive their education in the French or English minority language in public schools) are limited to Canadian citizens. Mobility rights inside Canada also apply to permanent residents.

Impact and Functions of Fundamental Rights

Most rights and freedoms guaranteed in the Canadian Charter have a predominantly defensive function against interference by state authorities. The only right that contains an acknowledged positive dimension enabling individuals to claim a specific benefit from public authorities is the right, guaranteed only to Canadian citizens, to have their children receive primary and secondary school instruction in the English or French minority language in facilities provided through public funds.

Under certain conditions, equality rights can be interpreted in such a manner as to oblige the state to make certain benefits available. For example, the Supreme Court

of Canada has held that the hearing-impaired are unreasonably discriminated against on the basis of a disability unless they receive the aid of a sign language interpreter (paid out of public funds). Section 27 declares that the charter "shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

Section 15(2) of the Canadian Charter provides for affirmative action programs with the goal of "the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, color, religion, sex, age or mental or physical disability."

The effectiveness of rights and freedoms is ensured by judicial control of parliamentary legislation and regulations adopted by administrative authorities, which can be struck down or reconstructed by courts if inconsistent with the charter, and by Section 24(1) of the charter, which grants victims of any infringement deriving from state action other than legislation the right to obtain the remedies considered as "appropriate and just in the circumstances" by a court of justice.

All levels of government—federal, provincial, territorial, and municipal—are bound to respect the rights and freedoms guaranteed in the charter in every aspect of their activity. The charter does not, however, bind private persons; it applies only "vertically" (to relations between the state and individuals or private corporate entities) but not "horizontally" (to purely private relations). Nevertheless, if a private individual or corporation fulfills a state function or exercises coercive power delegated by the state, the charter will apply to actions performed within that function or power. In a purely private dispute, any litigant can question the constitutionality of any law relied on by another party.

Unlike the Canadian charter, the provincial and federal Human Rights Acts apply not only "vertically" (to state action) but also "horizontally" (to purely private relations). The great majority of provincial and federal human rights legislation concerns the prohibition of unreasonable discrimination in labor relations and the provision of goods and services to the public. However, Quebec's Charter of Human Rights and Freedoms goes much further by also guaranteeing the traditional array of fundamental rights and freedoms, as well as certain economic, social, and cultural rights.

The Canadian constitution also guarantees certain rights relating to the use of the French and English languages. Some of these guarantees appear in the Canadian Charter and others in the Constitution Act, 1867. Language rights relating to the use of French and English in parliamentary debates and documents, legislation, regulations, and the justice system apply only at the federal level and in three provinces—Quebec, Manitoba, and New Brunswick. Language rights of the same sort, however, are guaranteed by ordinary legislation in Ontario. Section 23 of the Canadian Charter, which applies to all provinces, also guarantees the right of members of francophone minorities outside Quebec and of the anglophone minority of Quebec to have their children receive primary and secondary school instruction in the minority language in facilities provided out of public funds, where the number of such children warrants.

Limitations to Fundamental Rights

Section 1 of the Canadian Charter of Rights and Freedoms authorizes only such "reasonable limits" to rights and freedoms as are "prescribed by law" and "can be demonstrably justified in a free and democratic society."

The limitations must be authorized in or under a statute, regulation, or common-law rule made public in advance and capable of being understood by those to whom the legal commandment is addressed. Rules limiting rights and freedoms must be sufficiently "intelligible" (clear and precise). Otherwise, the requirements of legal certainty and predictability would not be respected.

The requirement that limitations be reasonable and justifiable in a free and democratic society has been interpreted by Canadian courts to mean, first, that the legislative objective underlying a limitation must be "pressing and substantial" and, second, that the means chosen to implement that objective must meet a three-tiered proportionality test. To begin, the measures must be carefully designed to achieve the objective in question and rationally connected to that objective. In addition, the means should impair the right in question as little as possible. Finally, there must be proportionality between the effects of the limiting measure and the objective—the more severe the deleterious effects of a measure, the more important the objective must be.

The most unorthodox feature of the Canadian Charter of Rights and Freedoms is Section 33, which permits the federal Parliament and a provincial legislature to override most of the charter's rights and freedoms through ordinary legislation by simply declaring in any act or statute that it "shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of this charter." The only rights and freedoms that cannot be overridden are democratic rights, mobility rights, and the rights relating to the use of the English and French languages.

Once a statute contains a "notwithstanding clause," it may no longer be judicially reviewed under the provisions of the charter that are overridden. Such a clause has a five-year time limit, but it can be renewed. The charter's drafters apparently wanted to reconcile the power of the courts to control legislation on the basis of vaguely phrased rights and freedoms with a democratic system under which fundamental choices affecting society should be decided by the elected representatives of the people. The explicit "notwithstanding" clause and the five-year limit were designed to ensure democratic control of any rights limitations.

Until now, the override has never been used by the federal Parliament and only on two occasions by provincial legislatures in English Canada. However, Quebec

employed the override in a systematic and deliberate way during the first five years of charter application to protest the imposition of the Constitution Act, 1982.

ECONOMY

No specific economic system is specified in the Canadian constitution. Property rights have been deliberately omitted in the Canadian Charter of Rights and Freedoms as a concession to provincial governments that were worried about the possible misuse of such rights by private economic interests that are eager to limit regulation of their activities. Generally, the Supreme Court of Canada has interpreted the rights and freedoms of the charter as not protecting purely economic rights. For instance, the right to liberty in Section 7 has been held not to include the right to choose one's profession freely. The prohibition of discrimination in Section 15 has been interpreted as protecting only natural persons or groups of natural person, but not corporations or other legal persons.

On the other hand, the Supreme Court has also held that when charged with a penal or criminal offence corporations can defend themselves by invoking any right or freedom of the charter, even rights that are usually considered applicable only to human individuals, such as the liberty of religion. In a much criticized decision, tobacco manufacturers succeeded in having federal regulations prohibiting advertisement for tobacco products struck down as an unreasonable limitation on freedom of commercial expression.

Section 2(d) of the Canadian Charter, guaranteeing freedom of association, has been interpreted as protecting the right to form and belong to a labor union, but not the right to collective bargaining or to strike. Legislation requiring workers to join a union in order to obtain work in a particular workplace or imposing union dues (later spent for political ends) on nonunionized employees has been held to be constitutional.

Finally, the Constitution Act, 1982, contains a provision, Section 36, affirming the commitment of the federal Parliament and provincial legislatures to promote equal opportunities and provide essential public services of reasonable quality to all Canadians. In the same provision, the federal authorities commit themselves to make equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. To date, however, it remains unclear whether these commitments are purely political or whether they can be enforced by courts.

RELIGIOUS COMMUNITIES

Freedom of conscience and religion is guaranteed by Section 2(a) of the Canadian Charter of Rights and Freedoms. Although the Canadian constitution contains no express principle of the separation of state and religion, courts have found an implied obligation of religious neutrality for the state in Section 2(a). This principle can be satisfied either by the state's total abstention from furnishing aid to any religion or by aiding of all religions in a comparable and equitable manner. Nonreligious beliefs must be accorded the same protection.

For historic reasons, the Constitution Act, 1867, granted Catholics and mainstream Protestants in some provinces entrenched religious privileges to denominational schools supported by public funding. The Supreme Court of Canada has declared that such privileges, although clearly discriminatory, cannot be challenged because they are recognized in the constitution. However, the United Nations Committee on Human Rights has reached the conclusion that this is not sufficient to justify discrimination that is contrary to the International Covenant on Civil and Political Rights.

On the basis of Section 2(a), Canadian courts have held that religious Catholic or Protestant education in state schools as part of the curriculum is unconstitutional, even if parents can obtain an exemption or alternative instruction in ethics for their children.

MILITARY DEFENSE AND STATE OF EMERGENCY

National defense is a responsibility of the federal government. In Canada, general conscription in times of peace has never existed. The Canadian armed forces consist entirely of professional soldiers.

The Canadian constitution contains no express provision relating to a state of emergency. The courts have found implicit emergency powers for the federal Parliament in the "peace, order and good government" clause of Section 91(1) of the Constitution Act, 1867. Currently, those emergency powers are specified in the federal Emergencies Act, which establishes four categories of emergencies: public welfare, public order, international, and war emergency. To be able to exercise the exceptional powers provided for under the act, the federal government must first declare the existence of an emergency, and the declaration must be debated and confirmed by the federal Parliament. The Canadian Charter of Rights and Freedoms continues to apply during a state of emergency; any limitations of rights and freedoms must be justified under Section 1 of the charter.

AMENDMENTS TO THE CONSTITUTION

Some provisions of the formal Canadian constitution, forming, respectively, the "internal federal constitution" and the "internal provincial constitutions," can be amended by an ordinary statute of the federal Parliament

or of the legislature of the interested province. The most important provisions (in particular the Canadian Charter and the division of powers) can only be amended by a set of complex formulas requiring approval by the federal authorities, on the one hand, and a certain number of provinces, on the other. In some cases, all provinces must approve the amendment; in others, only the provinces to which the amendment applies must approve. In most cases, approval is needed by at least two-thirds of the provinces (seven of 10) containing at least 50 percent of the total population.

No constitutional provision has been made expressly immutable, and the Supreme Court of Canada has held that there is no implied immutability. Indeed, even the secession of a province can be achieved by applying the proper amending formula. The court has declared that to admit that any part of the constitution is totally unchangeable would contradict the sovereignty of the Canadian people.

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José Woehrling

CAPE VERDE

At-a-Glance

OFFICIAL NAME
Republic of Cape Verde

CAPITAL
Cidade da Praia

POPULATION
434,812 (2005 est.)

SIZE
1,557 sq. mi. (4,033 sq. km)

LANGUAGES
Portuguese, Crioulo

RELIGIONS
Roman Catholic (infused with indigenous beliefs) 95%, Protestant 5%

NATIONAL OR ETHNIC COMPOSITION
Cape Verdean (mixture of Portuguese and Africans)

DATE OF INDEPENDENCE OR CREATION
July 5, 1975

TYPE OF GOVERNMENT
Semipresidential democracy with a strong parliamentary component

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 25, 1992

DATE OF LAST AMENDMENT
November 23, 1999

The Cape Verdean constitution was approved two years after changes in the political system that turned the country from a one-party system to a multiparty democracy. The Movement for Democracy, the party that won the first multiparty elections in the history of Cape Verde, controlled two-thirds of parliament, a sufficient number to approve all the constitutional norms that it wanted to implement. Thus, the new constitution was not based on a wide consensus of political forces.

The constitution establishes a semipresidential system of government in which the people directly elect both the president of the republic and the National Assembly. The president has the power (if highly conditional) to dissolve the parliament, as well as the right of political veto as well as veto for constitutional reasons; those rights make the office a moderator of the system.

The state is based on the rule of law, founded on the principle of human dignity of all persons as well as on the recognition of the inviolability and inalienability of human rights. These rights are assured by the courts, including the Supreme Court of Justice, which functions temporarily as the Constitutional Court. The constitution includes the principle of separation but interdependence of powers and a clear hierarchy of norms. Cape Verde is a secular state, with separation of state and religions.

CONSTITUTIONAL HISTORY

Cape Verde gained its independence after a struggle for national liberation conducted by the African Party for the Independence of Guinea-Bissau and Cape Verde (PAIGC). After negotiations with the former colonial power Portugal, elections were held for the Constituent Assembly. Only the PAIGC ran for those elections. That party obtained more than 90 percent of all of the votes registered. When independence was proclaimed in 1975, a provisional constitution was adopted, providing for a one-party system and lacking a list of fundamental rights.

In 1980, the first permanent constitutional system was adopted, implementing the so-called system of national revolutionary democracy. The constitution prohibited

the formation of other political parties and established a state-centered economy but also provided an important list of fundamental rights.

Constitutional Law 2/III/90 of September 28, 1990, which amended the constitution of 1980, abolished the one-party system in favor of a liberal democracy. The freedom to form political parties was introduced, and the semipresidential system of government was reformed. On January 13, 1991, the first multiparty elections in the history of Cape Verde were held, and on September 25, 1992, the present constitution entered into force.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Cape Verde is a single written document, made up of 293 articles. It has been revised only twice. The constitution of 1992 has significant impact on the national political life.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Cape Verde is a unitary state, which comprises 17 municipalities. Each island corresponds to at least one municipality.

LEADING CONSTITUTIONAL PRINCIPLES

Cape Verde is a state based on the rule of law, founded on the principle of human dignity of all persons; it recognizes and guarantees human rights as the foundation of the whole human community as well as of peace and justice.

The state is subject to the constitution. It is founded on democratic legality, and it must respect and assure the respect of the laws. The laws and other acts of the state have legal force only if they are in harmony with the constitution.

The Republic of Cape Verde is based upon the popular will, and it organizes itself according to the principle of the separation and the interdependence of powers. Further basic principles are the existence and autonomy of the local powers and the decentralization of public administration. The people exercise political power through referendum, elections, and other constitutionally established means.

The norms and principles of international law as generally accepted by the international community are part of domestic law. They have a value hierarchically higher than the ordinary laws, but lower than Cape Verdean constitutional law.

CONSTITUTIONAL BODIES

The constitutional organs are the president of the republic, the National Assembly, the administration headed by the prime minister, the courts, and the organs of the local power. The constitution also establishes auxiliary organs, such as the Council of the Republic, the ombudsperson, and the Economic and Social Council.

The executive is twofold, including the president, who is elected for a five-year term, and the prime minister, who is head of the administration and president of the Council of Ministers.

The President of the Republic

The president of the republic is the head of state. The president, on his or her own initiative, has the power to dissolve the National Assembly if there is a serious institutional crisis, if it is required for the regular functioning of democratic institutions, and if the Council of the Republic, an organ that advises and assists the head of state, advises the president to do so.

The president of the republic is the commander in chief of the defense force. The president can veto laws of parliament in a relative veto that can be overruled by parliament. The president can also veto legal acts of the administration in an absolute veto that is definite. The veto can be on either political or constitutional grounds.

The president of the republic, after considering the electoral results, appoints and dismisses the prime minister, appoints and dismisses the ministers and secretaries of state on the recommendation of the prime minister, and presides over meetings of the cabinet when invited by the prime minister. The president of the republic dismisses the administration if there has been a vote of no confidence by the parliament.

The president of the republic has the power to preside over various consultative bodies, such as the Council of the Republic and the High Council for National Defense, and can initiate national referendums. The president appoints two members of the Council of the Republic, the chief justice of the Supreme Court, one associate judge of the Supreme Court, two members of the Supreme Council of Judges, and the general auditor, the general prosecutor, both on the advice of the administration. The president can also revoke and commute penalties in individual cases, with the advice of the administration.

As far as foreign relations are concerned, the president has the power to ratify treaties, appoint and dismiss ambassadors, receive credential letters, and recognize and accredit foreign diplomatic representatives.

The prime minister countersigns the acts of the president of the republic, pursuant to the powers vested in the president and carried out on the recommendation and advice of the administration.

The National Assembly

The National Assembly approves constitutional laws and other laws on all matters, except those that fall within the exclusive power of the administration. The National Assembly approves the program of the administration and the state budget on advice of the administration; it adopts treaties and international agreements, which the president then ratifies; and it examines the general accounts of the state. The assembly can also ask the president of the republic to call a national referendum. Furthermore, the National Assembly authorizes and ratifies the declaration of a state of siege and a state of emergency, authorizes the president of the republic to declare war and make peace, and concedes amnesties and generic pardons to offenders.

The National Assembly can censure the administration or vote its confidence in it. Annually, it holds a debate on the state of the nation and reviews the report on the situation of justice submitted by the Supreme Council of Judges. The assembly elects, by a majority of two-thirds of the members of parliament, the judges of the Constitutional Court, the ombudsperson, the president of the Economic and Social Council, three members of the Supreme Council of Judges, and four members of the Supreme Council of the prosecuting office.

In addition, the National Assembly witnesses the installation and the resignation of the president of the republic, authorizes the absence of the president of the republic from the national territory, and requests penal action against him or her.

The Lawmaking Process

Bills can be initiated by members of parliament, the parliamentary groups, or the administration. The constitution also allows for popular legislative initiative, when signed by at least 10,000 voters. The bills are debated in a first reading general debate and a second reading debate on detail. Voting comprises a vote on the first reading, a vote on the second reading, and a final overall vote. If the assembly so decides, texts approved on the first reading can be submitted to committees for their second reading, subject to the power of the assembly to recall them and to a final overall vote by the assembly. The second reading of some laws that require two-thirds majorities to be passed must be done in plenary session.

The Administration

The administration has the power to define, in meetings of the Council of Ministers, the general guidelines for internal and foreign policy and carries out regular evaluations of policy. The prime minister is the head of the administration with the power to preside over the Council of Ministers, lead and coordinate the general policy of the administration, and orient and coordinate the action of all the ministers. The administration is responsible to parliament.

The Judiciary

Justice is administrated by independent courts. Besides the Constitutional Court, there are the Supreme Court of Justice, judicial courts of first instance in all of the municipalities, the military court of instance, and the audit courts. In addition, the Court of Audit is the supreme organ, which reviews the legality of public expenditures and audits the general accounts.

The Constitutional Court, the jurisdiction of which is temporarily held by the Supreme Court of Justice, has the power to decide questions of a legal and constitutional nature, including the review of the constitutionality and legality of the norms. It also verifies the declaration of physical and mental incapacity of the president of the republic, temporary inability of the president to perform his or her functions, and the resignation or the death of the president. It also exercises jurisdiction in matters related to elections and political organizations.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The organs of political power such as the National Assembly, the president of the republic, municipal assemblies, and the mayors are elected by universal, periodic, direct, and secret suffrage. Every citizen, male and female, of 18 or more years of age can vote for the National Assembly and for the president. Every Cape Verdean citizen who has the active right to vote can be elected to parliament, unless he or she is affected by any of the ineligibility established in the constitution or in law. Candidates for member of parliament may run only if nominated by the political parties.

Any citizen of Cape Verdean origin 35 or more years of age can be a candidate for president of the republic. At the time of the submission of his or her candidacy, the candidate must have permanent residence in the country for at least three years. Aliens and stateless persons residing in the country can participate in local elections.

The right of petition, the holding of referendums, and the popular legislative initiative are instruments established in the constitution.

The president fixes the dates for presidential and legislative elections. The administration fixes the dates for local elections.

POLITICAL PARTIES

In Cape Verde, political parties are freely formed without the need for administrative authorization. Only political parties have the power to submit candidatures for legislative elections. In contrast, they have no juridical or public power to submit candidates for presidential elections, but they can support candidates proposed by groups of citizens. In local elections, groups of local citizens have often succeeded against the established political parties.

Currently, there are seven political parties in Cape Verde, four of them are represented in parliament.

CITIZENSHIP

Original citizens of Cape Verde are those persons born in Cape Verde whose father or mother is a Cape Verdean national, those born abroad whose father or mother is a Cape Verdean national and serves the state of Cape Verde abroad, and those born in Cape Verde whose mother and father are stateless persons or have unknown nationality and are ordinarily resident in Cape Verde.

Original citizens of Cape Verde by option and according to a specific declaration are those persons born abroad, whose father, mother, grandfather, or grandmother is a Cape Verdean citizen by birth. Also original citizens by option are those born in Cape Verde whose parents are not Cape Verdean citizens but have been residing in Cape Verde for a continuous period of not less than five years and are not serving their respective states in Cape Verde.

Nonoriginal citizenship can be acquired through certification by a minor whose father or mother has acquired Cape Verdean nationality by adoption, by naturalization subject to an act of government, by marriage, and by economic reasons. Any alien who participates in investment programs, who offers solid guarantees to carry out investments in the country that are capable of increasing job opportunities and contributing significantly to the development of the country, can apply for Cape Verdean citizenship; however, he or she does not acquire political rights.

No Cape Verdean original citizen can be deprived of his or her nationality or of the prerogatives of citizenship. Only an original Cape Verdean citizen can be elected president of the republic.

Cape Verdean citizens may acquire the citizenship of any other country without losing their own.

FUNDAMENTAL RIGHTS

It is enshrined in the constitution that the state shall guarantee the respect for the dignity of all persons and recognize the inviolability and inalienability of human rights as the basis of the whole community, of peace, and of justice. In harmony with this founding principle, the constitution establishes a vast list of fundamental rights and duties.

Title I of Part II of the constitution establishes the general principles relating to fundamental rights and duties; Title II refers to the actual rights, liberties, and guarantees; Title III, to the economic rights and duties; Title IV, to the fundamental duties; and Title V, to family.

Besides the fundamental rights, liberties, and guarantees listed in the constitution, others may be established by laws or by international conventions.

Impact and Functions of Fundamental Rights

The norms referring to fundamental rights shall, in harmony with the provisions established in the constitution, be interpreted and integrated in accordance with the Universal Declaration of Human Rights. It is expressly established in the constitution that the constitutional norms referring to rights, liberties, and guarantees shall be respected and upheld by all public authorities and private persons and are directly applicable.

The state and other public entities are responsible for the actions and omissions of their civil servants, carried out in the exercise of their functions, that violate the rights, liberties, and guarantees of citizens. Civil servants are liable to criminal penalties or disciplinarily action for acts and omissions that result in serious violation of fundamental rights.

Everyone has the right to judicial protection of his or her rights. The right to appeal to the courts for the protection of fundamental rights against actions or omissions of the public powers, after using up all the means of ordinary appeal, is specifically available to all citizens.

Citizens can submit claims regarding the protection of their fundamental rights to the ombudsperson, an independent organ functioning in the National Assembly, which can submit recommendations to the competent organs of political power aimed at the prevention of and reperations for illegalities or injustices.

Limitations of Fundamental Rights

The rights, liberties, and guarantees can be restricted only by law. The restrictive laws cannot reduce the extension and the essential content of the constitutional norms. They are limited to what is necessary to safeguard other protected rights.

ECONOMY

The constitution establishes as general principles economic democracy, conservation of the ecosystem and sustainable development, coexistence of the public and private sectors, and existence of communitarian property. It supports activities that contribute positively to the integration of Cape Verde into the world economy, as well as a series of fundamental norms relating to state planning. The constitution also defines the role of the central bank, the objectives of the fiscal system, the guarantees against unfair taxes, the principle of nonretroactivity of fiscal law, and the basic rules for the elaboration, execution, and control of the state budget.

RELIGIOUS COMMUNITIES

Freedom of conscience, religion, and ceremony is guaranteed. Every citizen has the right to practice or not practice

any religion. The churches and religious communities are separated from the state and independent and free in their organization and functioning. Nevertheless, the state considers churches and other religious communities as partners. Protection is assured to places of worship and to religious symbols.

The majority of the Cape Verdean population is of Christian belief, predominantly Roman Catholic.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are subject to and obey the national organs of sovereignty. Their missions are established in the constitution.

Military service is compulsory; however, the right to conscientious objection is granted. The military remains subordinate to the civil power even during a state of siege or emergency.

The president can declare a state of siege or emergency, in consultation with the administration and authorized by parliament. These situations cannot affect either the constitutional powers and functioning of state organs or the rights and immunities of officeholders. There is a list of fundamental rights that cannot, in any case, be affected by the state of siege or emergency.

AMENDMENTS TO THE CONSTITUTION

The constitution can be amended five years after the date of its last ordinary amendment. The amendments to the constitution shall be adopted by a majority of two-thirds of the members of the National Assembly. The constitution can also be amended at any time by extraordinary amendment, by a majority of four-fifths of the members of parliament. Members of parliament have the initiative of amending the constitution.

The constitution provides certain limits to amendments, including a prohibition of amendment in wartime or under a state of siege or emergency.

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Aristides R. Lima

CENTRAL AFRICAN REPUBLIC

At-a-Glance

OFFICIAL NAME
Central African Republic

CAPITAL
Bangui

POPULATION
4,303,356 (July 2006 est.)

SIZE
240,536 sq. mi. (622, 984 sq. km)

LANGUAGES
French and Sango (official languages), Banda, Gbayi, Zande, Ngbaka

RELIGIONS
Protestant 25%, Roman Catholic 25%, Muslim 15%, indigenous beliefs 35%

NATIONAL OR ETHNIC COMPOSITION
Baya 33%, Banda 27%, Sara 10%, Mandja 13%, Mboum 7%, M'baka 4%, Takoma 4%, other 2%

DATE OF INDEPENDENCE OR CREATION
August 13, 1960

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 27, 2004

DATE OF LAST AMENDMENT
No amendment

In terms of its constitution, the Central African Republic is a republic based on the principles of democracy, unity, laicism, rule of law, and sovereignty of peoples. There is a clear division among the executive, legislative, and judicial powers, although there is significant overlap of the branches of the government.

The Central African Republic is sparsely populated and landlocked. It was classified in 2002 as one of the world's least developed countries. Some 55 percent of the country's gross domestic product (GDP) is derived from agriculture, with cotton, food crops, coffee, tobacco, and timber as the most important crops. The country is rich in natural resources such as diamonds, gold, uranium, and other minerals, but its transportation and communication networks are limited.

CONSTITUTIONAL HISTORY

The French occupied the region in 1894. In 1958, the territory voted to become an autonomous republic within the French Community, and on August 13, 1960, President Dacko proclaimed the republic's independence from France. In 1965, Colonel Bokassa overthrew President Dacko in a coup.

In 1976, the Central African Republic became the Central African Empire, and Bokassa declared himself emperor. He was overthrown in a coup in 1979. Former president Dacko returned to power, and the country's name reverted to Central African Republic. In 1988, the army deposed Dacko in a coup.

In 1991, President Kolingba announced a move toward parliamentary democracy. In the 1993 elections, Prime Minister Patassé defeated Kolingba. In 1996, the military mutinied, but French troops succeeded in suppressing the uprising. An African peacekeeping force occupied Bangui until relieved by a United Nations (UN) peacekeeping mission in 1998. In 1999, Patassé once more defeated Kolingba in the general election. He survived a coup attempt in 2001, only to succumb finally in March 2003 when General Bozizé deposed his civilian government. Bozizé suspended the constitution, dissolved the National Assembly, and established a transitional government.

Although Bozizé's accession to power was irregular and in conflict with the constitution, the transitional government has been inclusive, attracting tacit support from the people and civil society. Bozizé has tried to promote political reconciliation by appointing people from across the political spectrum, including members of the opposition, to the transitional government. Bozizé has affirmed his commitment to restoring democracy. In March 2004, the National Transitional Council created an independent commission to oversee municipal, parliamentary, and presidential elections which were held in 2005. The new constitution, based on a referendum, came into force on December 27, 2004.

FORM AND IMPACT OF THE CONSTITUTION

The Central African Republic has a single, written constitution. Theoretically, the constitution is supreme since the Constitutional Court has the authority to interpret the constitution and to test the constitutionality of all law. The first chapter of the constitution contains a number of fundamental human rights. Furthermore, the constitution gives formal recognition to the rule of law, stating that every inhabitant of the republic must respect the constitution, laws, and regulations. The republican form of the Central African Republic is entrenched in the constitution and may not be changed.

BASIC ORGANIZATIONAL STRUCTURE

The country is a unitary state. Territorially, it is organized into 16 prefectures and one autonomous commune, 60 subprefectures, and 174 communities or municipalities. The capital, Bangui, is administered as a separate community.

LEADING CONSTITUTIONAL PRINCIPLES

The constitutional system is defined by a number of principles: The country is a unitary, democratic republic based on universal adult suffrage, unity, national sovereignty, and human rights. The fundamental principle of the republic is "government of the people, by the people, and for the people." The constitution states that the people of the republic oppose any conquest by civil, military and dictatorial force; seizing power by means of a coup d'état is regarded as a crime against the people.

CONSTITUTIONAL BODIES

The main constitutional bodies are of a strong executive branch (president, prime minister, and Council of Ministers or cabinet), a weaker legislative branch (unicameral National Assembly), and the judiciary, including the Constitutional Court.

The President

The president is the chief executive, as well as the head of state. The president appoints the prime minister, members of the cabinet (on the advice of the prime minister), and military and civil officials. He or she presides over the High Council of Defense and the High Council of the Judiciary and performs all the usual ceremonial duties assigned to a head of state. The president is elected by direct universal ballot for a term of five years, renewable only once.

The Administration

The administration consists of the prime minister and the Council of Ministers or cabinet. The president appoints the prime minister and the other ministers. The prime minister is accountable to the president and to the National Assembly, presides over the cabinet and various interministerial committees, and conducts and coordinates the functions of the executive branch of government.

The National Assembly

The National Assembly passes legislation, imposes taxes, and controls the executive. Members have a free mandate to vote in the assembly without party instructions. The members are elected by universal adult suffrage to five-year terms.

The Lawmaking Process

The president, ministers, and members of the National Assembly may initiate legislation in parliament.

The Judiciary

The judiciary is independent. However, the president appoints members of the judiciary and presides over the High Council of the Judiciary, which is responsible for developing the careers of judicial officers and protecting judicial independence.

The judiciary comprises the Constitutional Court; Criminal Court; Court of Cassation, which consists of the Criminal Chamber, the Civil and Commercial Chamber, and the Social Chamber; the Council of State, which sits as an administrative court; the Court of Accounts, which judges the accounts and finances of territorial authorities and state-owned enterprises; an ad hoc Tribunal of Conflicts, which deals with jurisdictional disputes; and an ad hoc High Court of Justice, which investigates charges of treason against members of the cabinet and parliament. There are also other courts and tribunals, such as military courts, which try military personnel for crimes committed in the course of duty.

The Constitutional Court

The Constitutional Court consists of nine members who serve for a nonrenewable term of seven years. The Constitutional Court interprets the constitution and has the power to review the constitutionality of all legislation and other laws. If legislation is declared unconstitutional, it is null and void and may not be put into effect.

ELECTION PROCESS AND POLITICAL PARTICIPATION

According to the constitution, universal suffrage is the only legitimate source of political power. National sovereignty belongs to the people, who exercise this power directly through a referendum or indirectly through their representatives. Freedom of expression and opinion, the right to vote, and the right to form associations are guaranteed by the constitution. All citizens who are age 21 or older may vote during elections or a referendum. Political parties may be formed, and they may participate in all political activities.

POLITICAL PARTIES

A number of parties actively participated in the political process and contested elections. Among them were or still are the Alliance for Democracy and Progress (ADP), the Central African Democratic Assembly (RDC), the Civic Forum (FC), the Democratic Forum (FODEM), the Liberal Democratic Party (PLD), the Movement for Democracy and Development (MDD), the Movement for the Liberation of the Central African People (MLPC), the Patriotic Front for Progress (FPP), the People's Union for the Republic (UPR), the National Unity Party (PUN), and the Social Democratic Party (PSD).

CITIZENSHIP

Children born within the territory of the Central African Republic, regardless of the nationality of the parents, are citizens, with the exception of children born to certain diplomatic personnel.

Children of a Central African Republican father born abroad automatically obtain citizenship. Children of a foreign father and a Central African Republican mother born abroad are eligible for citizenship if desired by the parents. However, since the Central African Republic recognizes dual citizenship, children may also retain the citizenship of a foreign father.

A foreign national who marries a citizen of the Central African Republic is automatically eligible for citizenship by registration after the marriage. Citizenship may also be acquired by naturalization if the person has resided in the country for five to seven years.

Citizenship may be lost if it was obtained fraudulently or if the person has committed acts of disloyalty against the government or serious crimes after obtaining citizenship. Voluntary renunciation of Central African Republic citizenship is also permitted by law.

FUNDAMENTAL RIGHTS

The constitution provides for the protection of a wide range of fundamental human rights.

Impact and Functions of Fundamental Rights

The preamble to the constitution refers to the protection and equality of vulnerable groups in society, in accordance with, among other covenants, the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights. Chapter 1 deals with the fundamental rights of society. It guarantees the classic civil and political rights, such as liberty; the right to life; the prohibition of torture and inhuman, cruel, degrading, or humiliating punishment; equality regardless of gender, race, ethnic origin, sex, religion, political affiliation, or social status; the inviolability of property; freedom of expression; and freedom of movement. It also protects certain socioeconomic rights, such as access to education, and labor rights, such as the right to work and to strike.

Limitations to Fundamental Rights

The constitution does not contain a general limitation clause to govern fundamental rights. It provides that restrictions may be prescribed by law and that the fundamental rights may only be exercised within the limits of the laws and regulations, including the demands of public order. However, in the absence of a general limitation clause, there are no predetermined standards or "thresholds" against which these limitations of the fundamental rights may be tested.

ECONOMY

The constitution guarantees the right to work, the right to form trade unions, and the freedom of enterprise.

The Central African Republic is a landlocked nation rich in gold, diamonds, and other minerals. Agriculture and forestry are the key elements of the economy. The main export crop is coffee. Other export products include timber, wax, rubber, tobacco, and leather. The country is essentially self-sufficient in terms of food such as maize, groundnuts, rice, millet, cassava, and sesame. Although there is a small livestock industry, its growth is hampered by the presence of tsetse flies as well as marketing problems.

Key industries in the Central African Republic are the mining and oil industries; the diamond industry is

important Electricity is provided by a quasi-governmental utility. The manufacturing industry in the country is small and mainly focuses on processing of agricultural and forest products, such as leather and textiles, and on light industry.

The country's landlocked position, its poor transportation system, a largely unskilled workforce, political instability, and poor macroeconomic policies have hampered economic growth in the past. The country was rated 169 of 177 in the United Nations Human Development Index in 2004.

RELIGIOUS COMMUNITIES

The constitution guarantees religious freedom. Any form of religious intolerance or fundamentalism is forbidden, freedom of worship is assured, and everybody is equal before the law, regardless of religious belief.

MILITARY DEFENSE AND STATE OF EMERGENCY

On a very basic level, the defense of the republic is the constitutional duty of the citizens. The official security forces include the army, navy, air force, gendarmerie, national police, Presidential Security Unit, and local police personnel. The president is the supreme commander of the armed forces and presides over the Council of National Defense.

Only the National Assembly may authorize a declaration of war. If the institutions of the state, its independence or territorial integrity, the execution of its international obligations, or the normal functioning of public powers is under immediate and serious threat, the president may, on the advice of the cabinet, the National Assembly, and the president of the Constitutional Court, declare a state of emergency (state of siege or alert) for a period of 15 days. This period may only be extended by an extraordinary session of the National Assembly. During such an emergency, the National Assembly may not be dissolved and the constitution may not be amended.

AMENDMENTS TO THE CONSTITUTION

The president, together with a three-fourths majority of the National Assembly, may propose an amendment to the constitution. Constitutional amendments may be adopted by a three-fourths majority of the members of the National Assembly or as the result of a national referendum. The republican form of the state and its territorial integrity may not be amended.

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Christo Botha

CHAD

At-a-Glance

OFFICIAL NAME
Republic of Chad

CAPITAL
N'Djamena

POPULATION
6,370,609 (2005 est.)

SIZE
495,750 sq. mi. (1,284,000 sq. km)

LANGUAGES
French and Arabic (official), other languages 70% of the population

RELIGIONS
Sunni Muslim 49%, Christian 30%, animist 15%, other 6%

NATIONAL OR ETHNIC COMPOSITION
Arab 15%, Saras 20%, Chadic 18%, and some 200 other ethnic groups

DATE OF INDEPENDENCE OR CREATION
August 11, 1960

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
March 31, 1996

DATE OF LAST AMENDMENT
June 6, 2005

A product of colonial powers, Chad still struggles today with the random character of its boundaries, conflicts produced by multiple ethnic and religious groups, and a clan-based culture that aggravates the problem. Despite another attempt at democratization in 1991–93, the prospects for democracy, the respect of the rule of law, and fundamental rights remain insecure.

The president of the republic is the most important figure in constitutional life. The president controls the government and, through his or her party, the National Assembly. The judiciary is weak and ineffective. Protection of fundamental rights is insufficient. Democratization has nonetheless produced encouraging progress toward a free press and a civil society.

CONSTITUTIONAL HISTORY

The territory known today as Chad was home to ancient civilizations. Its position in an area of contact between the Arabs of Northern Africa and populations of black Africa has produced a history of ethnic and religious conflicts that is still relevant today.

In the late 19th century, a Sudanese slave trader ruled much of the country; he was expelled by a French military expedition in 1900. It was not until 1917 that the whole territory was under French control. It became an autonomous French colony in 1920. The French colonial power did not invest much in the colony. The more arable parts of the south were used for cotton plantations, until recently the country's most important source of foreign currency. After 60 years of French rule, Chad became an independent republic in 1960.

The history of independent Chad is one of successive coups d'état and authoritarian or dictatorial rule, most recently by Hissein Habré, who ruled from 1982 until 1990 when Idriss Déby, a former ally of Habré, ousted him in a military coup. Déby promised democratization and convened a Sovereign National Conference (Conférence Nationale Souveraine) to compose a new pluralistic constitution, which entered into force in 1996. The constitutional amendment of 2005 reduced the prospects of democratic

development. Among other changes, the two-term limit for the presidency has been abolished.

FORM AND IMPACT OF THE CONSTITUTION

Chad has a written constitution, enshrining fundamental rights. The constitution is complemented by organic law and takes precedence over ordinary law. International treaties that are in conformity with certain constitutional principles are superior to ordinary laws. The constitution was fully revised by a national conference in 1993.

Despite the hopes raised by this revision, respect for law and the constitution among the authorities remains low, especially respect for fundamental rights. The second chamber of parliament, the Senate, has never been established. After being reelected once in 2001, President Déby proposed a constitutional reform package, which was adopted in a popular referendum in 2005. Among other provisions, it abolishes the two-term limit for the presidency, allowing his reelection in 2006. The constitutional provision for the establishment of a Senate has also been abolished.

Strong ethnic and religious tensions have led to repeated coup attempts. There are irregular regional uprisings against government forces, which are dominated by the Zarghawa ethnic group, to which the president belongs. External crises (currently from the neighboring Sudanese province of Darfur) have also posed a threat to the rule of law. Lack of public resources aggravates these problems.

BASIC ORGANIZATIONAL STRUCTURE

Following the French model, Chad is an "indivisible republic," a unitary state divided into 28 départements. Its constitution provides for decentralization of political power to substate entities (collectivités territoriales décentralisées), such as rural communities, municipalities, departments, and regions. These enjoy constitutionally guaranteed autonomy. Decentralization has not yet been put into practice. Most authority remains with the central government.

LEADING CONSTITUTIONAL PRINCIPLES

Modeled after the French example, Chad is a secular, social republic, one and indivisible. It is founded on the principles of democracy, the rule of law, and justice. The separation of state and religion is affirmed.

Chad's government is a presidential republic with separation of powers. The position of the president of the republic is strong. Parliament is unicameral.

The autonomy of customary and traditional laws is assured within certain limits. Fundamental rights are complemented by a series of civic duties.

CONSTITUTIONAL BODIES

The institutional provisions follow, to a great extent, the French model. The main constitutional bodies are the president of the republic; the cabinet; the legislative branch of government, consisting of the National Assembly; the Constitutional Council; the High Court of Justice; the High Council of Communication; and the Judiciary.

The President of the Republic

The president is the most powerful figure of constitutional life in Chad, enjoying vast powers. The president is also the guardian of the constitution and of the integrity and the sovereignty of the nation and an arbiter in institutional disputes.

The president is directly elected for five years. There is no limit on the number of terms. In order to be eligible to run for president, candidates must be of Chadian descent (both mother and father of Chadian origin), be between 30 and 70 years, and have "good morals." The president may not hold any other office.

The prime minister replaces the president of the republic in cases of absence or incapacity.

The president appoints the prime minister and the cabinet. The president can demand the resignation of the prime minister at any time. The president also appoints senior officials in civil administration and the military.

The constitution provides for the dissolution of the National Assembly by the president but only when the functioning of the institutions is threatened by persistent crises between the executive and the legislative branch of government or when the National Assembly has censured the cabinet twice within one year. The president must then wait at least one year before having the right to dissolve the next elected National Assembly.

The Cabinet

The cabinet is composed of the prime minister and the cabinet ministers. It is appointed by the president after a vote of confidence in the National Assembly and is responsible to the assembly. Holding a cabinet post precludes having any other office in public or private institutions.

The cabinet disposes of a large regulatory power. It has the right of legislative initiative. Members of the cabinet may participate in parliamentary deliberations.

The Legislature

The legislature is formed by the National Assembly, which consists of 155 members. Deputies are elected by universal suffrage for a four-year term with possible reelection. The constitution affirms the principle of representation of the whole nation, not of constituencies. There may be no imperative mandate.

Parliamentary activity is limited to two biannual sessions of 90 days maximum each.

The constitution provides for parliamentary immunity. Reports suggest, however, that the assembly is read-

ily prepared to lift the immunity of opposition members in cases of libel suits against the president.

The National Assembly disposes of the lawmaking power. The division between parliamentary lawmaking power and the executive's regulatory power is determined by a catalogue in the constitution.

Parliament possesses the usual means of controlling the executive. The National Assembly must vote on a motion of censure at the demand of one-tenth of its members.

The Lawmaking Process

Laws may be initiated by either the cabinet or members of parliament. Laws need a favorable vote with simple majority in the National Assembly.

The Constitutional Council

As in France, the control of constitutionality of laws and international treaties is assured by a Constitutional Council. The council is composed of nine members. The term of office is nine years without renewal. One-third of the council is replaced every three years. The members may not be removed during their term of office.

The council is responsible for deciding the constitutionality of laws before their entry into force (promulgation) if presented by the president of the republic, the prime minister, the president of the National Assembly, or one-tenth of the members of the National Assembly. It is also responsible for resolving disputes among the different institutions of the republic.

The High Court of Justice

The High Court of Justice adjudicates charges of high treason against the president of the republic or members of the cabinet. Grave human rights violations, abuse of public funds, corruption, drug trafficking, and grave environmental crimes may be considered analogous to high treason. The High Court is made up of deputies from the National Assembly, members of the Constitutional Council, and members of the Supreme Court.

High Council of Communication

The High Council of Communication is an independent body composed of nine members. Four of them are appointed by state institutions, four of them by professional bodies, and one by the president of the Supreme Court. The council's main tasks are the regulation of the media and the guarantee of press freedoms. In practice, it is largely impotent, as evidenced by its noninvolvement in libel suits by government institutions against the media.

The Judiciary

There is a single jurisdiction for civil, criminal, and administrative affairs. It has three levels: Courts of First Instance, Courts of Appeal, and the Supreme Court. It is formally independent, and the independence of individual judges is constitutionally protected. The judiciary is obligated to ensure respect for fundamental rights.

The judiciary lacks basic resources and competent magistrates. Magistrates have admitted taking bribes for the release of criminal offenders. Flagrant disregard for procedural rights of defendants by police authorities, including extrajudicial executions, has apparently undermined morale within the judiciary.

THE ELECTION PROCESS

Every Chadian citizen of at least 18 years may participate in elections. Elections are universal, direct or indirect, equal, and secret. Elections for the office of the president and the National Assembly are organized in two rounds to ensure majorities.

The Constitutional Council watches over the election procedure. Fraud and vote rigging allegedly characterized the 1996 presidential and 1997 assembly elections; assembly elections were boycotted by several parties.

Following the French model, referenda can be organized on any draft law or international agreement affecting the organization of the state institutions.

POLITICAL PARTIES

Chad is on the way to becoming a multiparty system. The National Assembly is composed of more than five parties. The role of parties as a means of structuring political will is impeded by strong ethnic divisions and clan loyalties. Parties serve the purposes of political leaders rather than being characterized by ideological differences. Opposition in parliament is feeble since two major government parties joined forces.

Political parties can be dissolved at the demand of the minister for the interior by an administrative court.

CITIZENSHIP

Citizenship is acquired by descent from parents who are both Chadian citizens, regardless of the country of birth. If only one parent is a Chadian citizen, the child receives citizenship only if it would be otherwise stateless. Naturalization is possible on the condition of 15 years of residence and good health and morality. Citizenship can be revoked by the president if it is determined that a person committed acts that were not in the interest of Chad.

FUNDAMENTAL RIGHTS

The constitution includes a large catalogue of rights and civic duties. Fundamental rights include civil liberties and social rights, as well as rights to culture and to a safe environment. Civil liberties can be limited by the law in order to protect the rights and liberties of others or to protect public order or good manners.

A National Human Rights Commission was established by law in order to deal with individual claims of fundamental rights violations. It is formally attached to the office of the prime minister, who assures its material resources.

Impact and Functions of Fundamental Rights

Actual respect for fundamental rights is low. Freedom of expression, freedom of assembly, and the rights of criminal suspects are frequently and gravely violated. Extrajudicial executions are a reality. The death penalty, after being suspended for some years, is now applied. Female genital mutilation is now prohibited by law, but little is being done to prevent its common practice. Freedom of the press is respected in principle, and there is some press freedom in the capital, N'Djamena. However, the main source of information for the mostly illiterate rural population is radio, which is controlled by the government. High licensing fees discourage private radio operators. Civil society has developed fairly well over the last 10 years but lives under constant threat of attack.

Human rights associations are currently working hard to bring the former dictator Hissein Habré to trial. They have received some help from the current president, Déby, who overthrew Habré's regime.

Limitations to Fundamental Rights

Social rights, especially education, cannot be guaranteed because of a lack of resources.

ECONOMY

The constitution does not favor any economic system over another. Private property is protected, and the right to join a labor organization is recognized.

RELIGIOUS COMMUNITIES

Chad is a secular republic, and freedom of religion is assured. No one may be treated differently on the basis of his or her religious beliefs. On the other hand, no one may rely on religious beliefs in order to be exempted from obligations that serve the national interest.

Ethnic tensions in the country often have a religious component. Persecutions of religious communities are not infrequent, even by public forces.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the commander in chief of the armed forces. The military submits to civil rule, and the armed forces are not political.

Military service is compulsory. Lacking basic legal restrictions, the army has accepted many underage volunteers.

Declarations of war need parliamentary approval. In a state of emergency, the president, meeting with the cabinet, can take appropriate measures for a period of 15 days. Longer periods need the approval of parliament. Emergency measures must respect the proper functioning of institutions and may not include the dissolution of the assembly. No infringements on the right to life, physical integrity, and fair procedures can be justified as appropriate measures.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be initiated by either the president, after approval by the cabinet, or members of parliament. A proposed amendment needs a two-thirds majority in the National Assembly and approval in a public referendum for passage. Specifically excluded from amendment are the separation of powers, the secular form of government, fundamental rights, and political pluralism.

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Malte Beyer

CHILE

At-a-Glance

OFFICIAL NAME
Republic of Chile

CAPITAL
Santiago

POPULATION
15,018,000 (2005 est.)

SIZE
292,260 sq. mi. (756,950 sq. km)

LANGUAGES
Spanish

RELIGIONS
Catholic 89%, Protestant 11%

NATIONAL OR ETHNIC COMPOSITION
White and white-Amerindian 95%, Amerindian 3%, other 2%

DATE OF INDEPENDENCE OR CREATION
September 18, 1810

TYPE OF GOVERNMENT
Presidential

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral congress

DATE OF CONSTITUTION
October 24, 1980

DATE OF LAST AMENDMENT
August 19, 2005

Chile is a democratic republic with a presidential system based on the separation of powers that has operated since 1830. The constitution defines Chile as a unitary state, although a considerable part of its administrative organization is decentralized into two territorial levels that enjoy far-reaching autonomy. The constitution guarantees, in Article 19, the protection of classic fundamental rights as well as essential rights recognized through treaties. Article 20 guarantees judicial review of administrative action to anyone whose fundamental rights are infringed.

The president of the republic is the chief of state and is in charge of the government and the administration. The president has the constitutional power to appoint and dismiss the ministers of state, who directly cooperate with the president. Neither the president nor the ministers are politically responsible before the National Congress, although they can be removed by impeachment.

The National Congress provides popular representation in its two branches. The Chamber of Deputies and the Senate are both elected by popular vote in districts of two seats. There is a system of stable parties that tend to operate in two large coalitions when making major political and electoral decisions.

The economic system, after the failure of the state-planned-economy model in the 1970s, is predominately liberal. The liberal principles guiding state economic management are promoted by explicit constitutional norms.

The armed forces are subject to civil power. The commanders in chief of army, navy, and air force are appointed and dismissed by the president and have four-year terms.

CONSTITUTIONAL HISTORY

Chile's constitutional history as an independent state begins with the creation of the first governing body in September 1810. After the destitution and capture of the Spanish king, Ferdinand VII, by the French emperor, Napoléon, a political and military confrontation began throughout the Spanish colonies between those who remained close to the king and Spanish institutions and those who wanted autonomy while maintaining ties to the monarchy.

Between 1810 and 1814, supporters of autonomy controlled the government. Unsure of the direction that events in Spain would take, and with only a scarce majority in favor of separation, it was only possible to elaborate provisional constitutional adjustments. During this period known as Patria Vieja, three major constitutional instruments were approved (1811, 1812, 1814), none of which managed to establish stable institutions. The new rulers tried to persuade the aristocracy of the advantages of independence by creating collective, and therefore weak, government organs.

In 1814, the supporters of the monarchy regained power. Their punitive measures pushed popular sentiment toward independence. Finally. the royalists were defeated in the Battle of Maipú in April 1818.

Chile's independence was formally declared that year. Toward the end of the revolution, power resided in the hands of Bernardo O'Higgins, one of the military leaders of the emancipation movement. The absence of consensus on the form of government and the danger of new attacks from troops loyal to the monarchy motivated O'Higgins to approve a provisional constitution in which the only counterbalance to the executive (headed by the so-called supreme director) was a Senate of five members appointed by the same supreme director.

A new constitution to replace the provisional constitution was approved in 1822. The new constitution extended O'Higgins's term as supreme director for another 10 years, triggering a rapid loss of legitimacy that led to the 1823 constitution. But this document, which tried to create an original system of government, was too complex and was for the most part not applied.

In 1828, liberal political forces won approval for a new constitution that combined popular federal ideas and traditional institutions of liberal constitutionalism with a technical quality not shown by previous texts. Nonetheless, political support declined, and it produced no visible results.

In 1830, the struggle within the governing class between liberals and conservatives ended in military confrontation and the victory of the conservatives at the Battle of Lircay.

The conservative triumph meant that parliamentary rule faded away in favor of an executive with great political power, although the idea of a leader for life was rejected as incompatible with constitutional institutions. The conservatives also favored the idea of a progressive democracy: Political participation could not be implemented at once without an adequate citizen base but should be introduced in a gradual manner.

The 1833 constitution expressed this conservative vision. Its provisions reinforced presidential powers and reduced the powers of congress. The main innovation, however, was more political than legal recognition of the president as a ruler with ample powers, including interference in the elections.

The text of 1833 prevailed until 1925. While it underwent few reforms, its interpretation changed in a radical manner. Three great periods can be distinguished: presidentialism (1833–61), moderate parliamentarism (1861–91), and parliamentarism (1891–1925). During the presidential period, the president's leadership was unquestioned. His mandate was for five years, invariably transformed by reelection into a 10-year term. Presidential interference in the elections for deputies and senators was accepted by the ruling class. The president also benefited from emergency powers.

Toward the middle of the century emerging political parties started to criticize the presidential system. In a gradual but steady manner, congress limited the presidential privileges by way of normative reforms.

In 1861, the constitution was modified to prevent presidential reelection. In addition, the power to manage election results passed to the political parties. At last, the congress found itself in a political position to negotiate on equal terms with the president. Toward the end of 19th century, the growing power of congress became intolerable for the president. In 1891, the president refused to abide by the will of the congress, which in response refused to approve the budget. Congress triumphed in the ensuing civil war, and with it the parliamentary interpretation of the 1833 constitution.

At the beginning of 1891, the superiority of the congress over the president was recognized within the institutional framework of the 1833 constitution. The main change was the liberal use of the vote of no confidence. This generated a rotation of cabinet ministers that followed the luck of the unstable majorities in both chambers. The parliamentary regime failed to deal with deep social problems. Social crisis, suffrage limitations, elitist parties, concentration of wealth, and a slow legislative process wore down the regime.

In 1920, a reformist president, Arturo Alessandri, gained power. In 1925, a constitutional reform explicitly favoring a presidential-type regime won a popular plebiscite, and in September of that year, 1925, the new constitution was promulgated. The document established the central constitutional order that prevails to this day. Throughout this time, congress defended its prerogatives, firmly based on more than 90 years of uninterrupted functioning, complicating the relationship with the president. From the executive perspective, the only solution to the recurring conflicts was to increase the president's powers and to reduce the powers of parliament. In 1943, a constitutional reform reduced the parliamentary initiative on public spending. In 1970, a new constitutional reform limited the powers of the congress in economic issues.

The existing political parties in 1925 were replaced in the second half of the 20th century by radically different political forces. These parties had a rigid ideological base. The new doctrines advocated an ambitious agenda of social transformation.

The replacement of the old traditional parties was manifested during the presidential elections of 1952 and 1958, with the victory of two independent candidates. In 1964, Eduardo Frei Montalva assumed power by a solid majority, heading an administration that proposed deep social changes. Politics began to transform into a battlefield where neither values nor principles were shared but just a few formal rules established by the constitution.

Salvador Allende's triumph in the presidential election of 1970 followed the same path initiated in 1964. President Allende did not benefit from a clear majority in either chamber, and legislative deadlock resulted. Without legislative support, the president began employing alternative means to develop his policies. These actions generated profound political criticism and constitutional problems.

The parliamentary elections of 1973 ratified the existing institutional deadlock. In August 1973, the Chamber of Deputies approved a statement that the president had broken the law. Similar claims had previously been made by the Supreme Court.

In September 1973, the military intervened. The National Congress was closed, and the 1925 constitution was suspended. Political parties were dissolved, and all party activity was forbidden.

The military dictatorship launched repression entailing numerous human rights abuses. According to the National Committee's Truth and Reconciliation Report presented in 1991, nearly 2,300 people were killed by the actions of the state.

In October 1973, the military government began a constitutional reform process; after seven years, a text was finally presented for a plebiscite, which approved the document (although many questioned the legitimacy of a plebiscitary conducted under military rule).

The new constitution reinforced presidential powers in line with the proposals of three previous democratic presidents in 1964, 1969, and 1971 (Alessandri, Frei, and Allende). All provisions linked to political rights remained suspended until 1989. The rest began to take effect in October 1980.

In 1989, following the transition program anticipated in the constitution itself, presidential and parliamentary elections were held. As well, more than 50 constitutional reforms were submitted to a plebiscite, resulting in the approval by an ample popular majority. To many, this second plebiscite constitutes the democratic foundation of the new constitution.

From 1990 to the present, more than 10 additional reforms have been applied to the constitution. Most important were the creation of regional governments (1992) and a national prosecutor's office (1997) and the reform of the Senate, Constitutional Court, and National Security Council (2005).

FORM AND IMPACT OF THE CONSTITUTION

Chile has a strong tradition of written constitutions. Constitutional jurisprudence, however, became important only in recent decades. The constitution states that any person may make a claim to the rights recognized in Article 19 before the Court of Appeals. Recent jurisprudence, together with the regular functioning of the Constitutional Court, has strengthened the standing of the constitutional text.

Laws interpreting the constitution are not frequently passed; when they are, they need the same degree of approval as constitutional amendments themselves, and they require prior approval by the Constitutional Court. The historical background for this requirement are the various indirect modifications made under the constitutions of 1833 and 1925.

The constitution rules above all other legal acts and practices, including those derived from international instruments and treaties. The doctrine of the primacy of international human-rights treaties (born along with the 1989 reform) was overturned by the Constitutional Court in 2001.

Ample consensus supports the courts in matters concerning human rights, even in cases in which judges clearly extended the protection beyond the text. Some other values explicitly protected in the constitution have been more problematic, such as the principles of Catholic morality and liberalism, which reflect the sentiments of a portion of the population.

BASIC ORGANIZATIONAL STRUCTURE

Chile is a unitary state, and its territory is divided in regions. Each of the 13 established regions constitutes an administrative unit, headed by a regional government and defined by the constitution as decentralized. The regional government is made up of an indirectly elected assembly and an executive, the intendant. The president of the republic appoints and dismisses the intendants at will, calling into question the practical extent of decentralization.

The regional budgets are assigned by the central government. The most important budget item is the National Fund for Regional Development, an interterritorial compensatory fund distributed according to preestablished poverty and development indexes. Investments, however, are controlled by fixed rules that prevent the regional governments from developing their own policies.

Each region is divided into provinces with their own governments who help to implement regional policies. A third level of territorial organization is the municipality, which is controlled by a directly elected mayor and council. The municipalities have their own sources of funding (such as local taxes), as well as some assistance from the center (such as the Municipal Common Fund, another interterritorial compensation fund). This allows them a degree of autonomy.

LEADING CONSTITUTIONAL PRINCIPLES

Chile is a democratic and presidential republic. The constitution establishes a clear division of powers, complemented by checks and balances.

Democracy is expressed in direct elections of representative authorities (president, parliamentarians, councils, and mayors) and in plebiscites. The latter can be and have, at times, been called at the local municipal level; moreover, they are available to resolve conflicts between the president and the National Congress during a constitutional reform process.

The leading principles can be found in Chapter 1 of the constitution. The starting point is that all human beings are born free and equal in dignity and rights. Article 1 also recognizes the importance of family as the "basic core" of society, although the scope of this declaration has changed in a radical manner since the approval of a divorce law in 2004. The article includes clauses on the supremacy of the constitution and the rule of law.

CONSTITUTIONAL BODIES

The two political and central representational institutions in the constitutional regime are the president and the National Congress. Alongside these powers are the judiciary and the Constitutional Court and a set of organs with constitutional autonomy (the Central Bank and the Office of the Comptroller General of the Republic).

The President of the Republic

The president of the republic is the head of state and chief of the administration. The president appoints and dismisses the ministers of state.

The president has considerable powers in the legislative process, including the exclusive right to initiate bills on taxes and other major economic issues. The president can also declare a bill urgent, forcing the National Congress to vote on it within 30 days. Furthermore, the president can veto bills; two-thirds of the members of each chamber are needed to override the veto.

On budgetary bills, congress only has the power to reduce expenditures; it cannot increase estimates of revenues. If congress does not vote on the budgetary law proposal within 60 days, the bill enters into force.

These formal powers, in addition to the president's informal influence over the members of congress of his or her own party or coalition, explain the absolute dominance of the executive in the legislative process. Although there are legislative initiatives presented by members of congress, they usually concern minor issues or are not approved.

At the request of the president, the National Congress can delegate the legislative power on certain matters to him or her for a maximal period of a year, during which the president can issues decrees that have the same mandatory force as laws. As any law, however, these decrees can be revised by the Constitutional Court.

The president has the power to initiate constitutional amendments and can veto amendments proposed by congress. Even if congress overrides the veto by a two-thirds majority of the members of each chamber, the president can still call for a plebiscite on the measure.

The president is also in charge of the country's international affairs. The president can appoint ambassadors and representatives to international organizations and has the power to negotiate, approve, and ratify treaties. In general, treaties require the approval of congress, although certain executive agreements can be approved without its support.

The president can appoint and dismiss undersecretaries, intendants, provincial governors, and a long list of high administrative and military positions. It is estimated that there are more than 3,000 positions at the president's exclusive disposal. Important reforms, such as the creation of a Council of High Public Administration and a Civil Service Office, are under discussion in an attempt to guarantee the professional qualifications of top civil servants.

The president appoints directors of various independent agencies. This process usually requires ratification of a majority or two-thirds of the Senate. Such ratification has become an important tool in achieving political balance.

The president serves a single four-year term without immediate reelection, a rule introduced in 2005.

The National Congress

The legislative power belongs to a congress made up of two houses, the Chamber of Deputies and the Senate. The congress has functioned uninterrupted since 1933, with the exception of the 1973–90 period. The chambers participate equally in the legislative process.

The Chamber of Deputies also has control powers over the administration. The most useful are the oral and written questions and investigation committees. The congress, in addition, can impeach the president, ministers, superior court magistrates, and other high authorities, for offenses, violations, or abuses described in the constitution. The guilty party is removed and may not hold public office for five years. Since 1990, there have been 22 impeachment proceedings, more than half of them against judges. The only successful conviction has been that of a justice of the Supreme Court (1993) responsible for delaying a human rights violation trial.

The Lawmaking Process

The 1980 constitution establishes four types of laws, distinct according to matter, quorum needed for approval, and control of constitutionality. These are laws interpreting the constitution, constitutional organic laws, laws of a qualified quorum, and common laws.

Legislation can be initiated by members of congress or by the president, who has exclusive initiative in certain areas such as taxes and major economic issues. Both chambers must consent to a bill. The president can veto a bill, and a veto can only be rejected by a majority of two-thirds of the members of both chambers.

The Judiciary

The judiciary is independent and influential in the interpretation of the constitution. Its power is organized in three

levels: the Supreme Court, 16 courts of appeal, and more than 400 courts of first instance. The first instance courts can be used in cases concerning civil, labor, or family law.

The courts of appeal and the Supreme Court have jurisdiction to hear applications for the protection of fundamental rights. These remedies have been an efficient instrument to promote and protect fundamental rights.

The judges of the Supreme Court and the courts of appeal are appointed by the president from a list nominated by the Supreme Court. In the case of Supreme Court judges, the appointment must be ratified by two-thirds of the Senate.

The Constitutional Court

The Constitutional Court has power to determine the constitutionality of a variety of normative (legal) acts: legal dispositions or treaties, regulations, instructions, and decrees. It is composed of 10 judges: three appointed by the Supreme Court, three by the president, two by the Senate, and two by the Chamber (with the Senate's ratification). These justices cannot be impeached, and their decisions cannot be appealed.

This body has consolidated its position as the authorized interpreter of the constitution. However, its overuse as a last resort by defeated parties in the National Congress could diminish its legitimacy.

THE ELECTION PROCESS

All Chileans over the age of 18 and not convicted of certain offenses have the right to vote. To run for deputy, a candidate must be at least 21 years of age, have citizenship and residency, and have completed high school. To run for the Senate or the presidency of the republic, the same requirements apply, except that a candidate must be at least 35 years of age.

Presidential Elections

The president is chosen by a direct vote in two rounds, copied from the French *ballotage* system. If no candidate obtains an absolute majority of the votes cast in the first round, a second round is carried out between the two candidates who received the most first-round votes. Since 1989, only one of three presidential elections has gone to a second round.

Parliamentary Elections

The 120 members of the Chamber of Deputies are elected in 60 districts of two seats each. Each party runs two candidates; the top two vote-getting parties each win a seat—unless one of them receives twice as many votes as the other, in which case it receives both. In the past decade, this rule favored the big parties and discriminated against smaller parties.

The Senate is elected in 19 senatorial districts also of two seats each. The electoral rule is identical to the one for the Chamber of Deputies.

POLITICAL PARTIES

Chile has a mature pluralistic system of political parties. Of the six main parties, five have roots from the first quarter of the 20th century. The profound institutional crisis of 1973 has had a moderating effect on the main leaders of the larger parties.

The electoral system has forced the formation of cohesive electoral coalitions. The parties excluded from the two main blocs lack weight in national politics. The larger of these is the Communist Party, which has received 8 percent of the votes in municipal elections.

Parties that are involved in unconstitutional actions can be dissolved by the Constitutional Court.

CITIZENSHIP

Citizenship is acquired by birth on Chilean territory. The principle of *ius soli* applies as a general rule. Children of a Chilean parent born abroad can also acquire Chilean citizenship under conditions elaborated in the constitution.

FUNDAMENTAL RIGHTS

The Chilean constitution enumerates fundamental rights in Article 19, as an elaboration of the principles of equality and freedom of Article 1. The list recapitulates the contents of earlier constitutions and includes the traditional human rights recognized by conventions and treaties. The 1980 text incorporates social rights, such as the right to health care, education, and social security. The right to live in an environment free of contamination is also recognized. There are at least three types of constitutional proceedings to protect fundamental rights, excluding social rights.

Article 19 begins with the right to life and the mental and physical integrity of the human being. The constitution consigns the question of how to protect unborn life to a law. Any type of abortion is punished by law.

Among the guarantees are freedom of speech, personal honor, inviolability of private communication, freedom of conscience and religion, freedom of work and association, and assembly rights. Equality before the law is established with general and special clauses (equal rights for men and women), as is equality in the exercise of rights. Personal freedom is guaranteed by a detailed clause that regulates the conditions in which it may be deprived.

The right to property has been subject of prolific and expanding jurisprudence.

Impact and Functions of the Fundamental Rights

The fundamental rights recognized by the constitution constitute an effective mandate for all three branches of the government. Private or public figures have effectively used litigation against executive decisions, and the constitutional prior review of bills, as means to protect constitutional rights.

These procedures have been most helpful in protecting classic liberal rights *against* state acts. They are less useful in protecting the social rights cited in the constitution, which can often be fulfilled only by positive actions of the state. This situation has been widely criticized, but it cannot be different in a country that has a developing economy.

Limitations to Fundamental Rights

The constitution authorizes certain limits to enumerated rights but requires that their essential content be respected. The Constitutional Court is responsible for defining the extent of these limits.

ECONOMY

The constitution does not opt explicitly for any particular economic model. Nonetheless, the framers' liberal orientation and their desire to prevent the reappearance of any form of state ownership are clear. The constitution protects the right to develop economic activity and bars the state from entrepreneurial activities, except when authorized by a qualified quorum law.

The influence of international economic integration agreements is limited at the moment. Chile is an associated member of MERCOSUR (Mercado Común del Sur, or Southern Common Market) and recently signed free trade agreements with the United States, the European Union, and South Korea.

RELIGIOUS COMMUNITIES

The constitution guarantees to all persons freedom of conscience and religious expression as well as the free exercise of all religions that are not opposed to morals, good customs, or public order. Religious communities may erect and maintain places of worship and other facilities. Equal rights are enjoyed by all churches and religious communities in terms of their assets; all facilities used exclusively for religious activities are exempt from taxes according to the constitution.

MILITARY DEFENSE AND STATE OF EMERGENCY

In case of war, the president takes over the supreme command of the armed forces. It is the president who declares war, subject to authorization by the National Congress. The president can declare a state of emergency and a state of catastrophe and can declare states of alert and siege with the National Congress's approval.

AMENDMENTS TO THE CONSTITUTION

The amendment process specifies different procedures for different types of norms. Those that refer to fundamental rights require approval of two-thirds of the members of each chamber; others can be approved by a three-fifths vote. The amendment is then sent to the president for approval. If vetoed, it returns to congress, where the president's introduced modifications can be accepted. The congress can also revive the original amendment with a majority of two-thirds of the members of each chamber. The president's only recourse then is to call a plebiscite to resolve the controversy.

Since 1989, more than 10 amendments have been approved.

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Alan Bronfman

CHINA

At-a-Glance

OFFICIAL NAME
People's Republic of China

CAPITAL
Beijing

POPULATION
1,300,000,000, not including Hong Kong, Macau, and Taiwan (January 6, 2005 est.)

SIZE
3,706,581 sq. mi. (9,600,000 sq. km)

LANGUAGES
Chinese

RELIGIONS
Not affiliated 82–86%, Christian 0.77%, Muslim 1.4%, Buddhist 8%, Official Catholic Church 0.4%, Unofficial Vatican-affiliated Catholic Church 0.4–0.8%, Registered Protestant 0.8–1.2%, Protestant House Church 2.4–6.5%

NATIONAL OR ETHNIC COMPOSITION
56 ethnic groups: Han 91.59%, others (including Hui, Mongolians, Tibetans) 8.41%

DATE OF INDEPENDENCE OR CREATION
October 1, 1949

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
National People's Congress

DATE OF CONSTITUTION
December 4, 1982

DATE OF LAST AMENDMENT
March 14, 2004

According to the Chinese constitution, all the power of the People's Republic of China belongs to the people themselves, and the framework by which people exercise their power are the National People's Congress and its local counterparts on every level. The Chinese People's Congress system is different from the parliament in the three-branch government systems found in Western countries because it is a decision-making and executive organization (*yixingheyi*) as well as a legislature.

The National People's Congress is a full-fledged constitutional body with comprehensive power. Not only does it enjoy legislative authority, but it also has the power to create administrative organs and judicial and military machinery on the national level. Moreover, these governing bodies are responsible to and supervised by the National People's Congress.

China is a unitary state. There is but one constitution and one legal system; Hong Kong and Macao, however, enjoy their own independent legal system since returning to China in 1997 and 1999. The division of power between the national and the local governments is in accordance with the principle of unified national leadership with a certain degree of activism on the side of the local government.

The Chinese constitution has recently been playing a more important role in national life. Citizens are paying more attention to their constitutional rights. There has been, however, only one precedent of a court's invoking a provision of the constitution as a source of authority (the Shandong Higher Court, in a ruling approved by the Supreme Court in 1999). There has never been a constitutionality suit in a Chinese court. Only the standing committee of the National People's Congress has the authority to interpret the constitution. It also has the power to review the legitimacy of national and local administrative regulations and of local statutes.

The presidency is part of the supreme state power; it acts with the standing committee of the National People's Congress as head of the state. The major function of the presidency is to represent the country to the outside

world. The national executive is the State Council, with the prime minister as its head. The prime minister is accountable to the National People's Congress and its standing committee. The congress representatives are elected indirectly by the voters. No official has ever been elected directly by the people.

The party system in China is a multiparty cooperative system led by the Communist Party. The Communist Party of China is the ruling party; the other parties are auxiliary. The Chinese People's Political Consulting Conference coordinates the various parties under Communist direction.

Religious freedom is granted by the constitution to Chinese citizens. Normal religious activities are protected by the government. Religious organizations and religious affairs cannot be dominated by foreign influences.

The Chinese economy has been a socialist market economy since 1992. The amendments to the constitution of the People's Republic of China, adopted at the First Session of the Eighth National People's Congress on March 29, 1993, specify: "The state practices a socialist market economy. . . . The state shall enhance economic legislation and improve macro-control of the economy. . . . The state shall, in accordance with the law, prohibit disturbance of the socioeconomic order by any organization or individual." In this way, the establishment of a lawful standardized system for guaranteeing the smooth construction of a socialist market economic structure and setting up a lawful order for free and fair market competition have been put on the agenda.

CONSTITUTIONAL HISTORY

China had been a centralized empire since 221 B.C.E. It never evolved ideas of freedom, democracy, and constitutionalism. Constitutions were established in modern China as weapons for saving the country from foreign invaders and as a democratic mask by dictators and not as an instrument to prevent the abuse of government power or to protect human rights.

The idea of a constitution was transplanted from the West. In the face of the high-tech warships and artillery of Western countries, China had to learn the skills to survive attacks by its enemies. The Chinese people gradually understood the real source of Western strength—not sophisticated technology, as they first thought, or the Western political system, as they later believed. It was the culture as a whole that made the West advanced. The constitutional idea was part of the deepening but painful process of "finding the truth from the West."

Constitutional history in modern China can be viewed as a series of texts published by successive governments. More deeply, this history represented a process of continuous study of Western constitutional culture and theory. Implanting the constitutional spirit in Chinese culture is still a tough task in China today.

In the late Qing dynasty (1644–1911), the very existence and legitimacy of the Manchu regime, which had ruled all of China since 1681, were being challenged by democratic revolutionary activity, including assassinations, led by Dr. Sun Yat-sen (1866–1925). At the same time, the Western powers were urging the acceptance of constitutionalism. Foreigners refused to be ruled by Chinese law, which they condemned as cruel, and introduced a special jurisdiction for themselves instead. The need to remove the stigma of this loss of judicial sovereignty fueled the legal transformation of modern China.

The Qing government sent official delegations to the leading powers such as Great Britain, Germany, and Japan to study their constitutions. On the basis of their reports, the government decided to imitate monarchical constitutionalism. In 1908, the Royal Constitutional Outlines (*qinding xianfa dagang*) were published; it was the first constitution ever made in China. As the main goal was to retain power for the royal family, the nine-article constitution amounted to a declaration of the emperor's rights. For example, the first article stipulated that "the Qing emperor rules over the Qing empire forever with everlasting honor." The 14 articles concerning the rights and duties of the subjects existed only as an appendix to the Royal Constitutional Outlines. In 1911, the government issued the 19 Important Credenda (*zhongda xintiao shijiutiao*), a constitutional document with stronger limits on the state but too late to save the dynasty from overthrow that same year.

The revolutionary movement that had begun in the late Qing Empire resulted in the establishment of a modern democratic government by the end of 1911. The revolutionary government promulgated the Governmental Organization Outlines of the Republic of China (*zhonghua minguo linshizhengfu zuzhi dagang*). This document set up a governing structure modeled after the United States; the Chinese provinces declaring independence from the Manchus (who were foreigners from Manchuria) viewed themselves as similar to the American colonial states forming a union in 1776. Four months later, having to yield power to Yuan Shikai (1859–1916), a sophisticated and powerful politician, the acting president, Sun Yat-sen, managed to legislate the Transitional Covenantal Constitution of the Republic of China (*zhonghua minguo linshi yuefa*), which changed the presidential system into a cabinet system. The difference between the presidential system (Dagang) and the cabinet system (Yuefa) mirrored the troubling process of modern Chinese constitutionalism.

Yuan Shikai and powerful regional warlords led post-Qing China through a turbulent era with ceaseless changes of governments. Each new regime promulgated its own constitution as a badge of legitimacy. For example, in October 1923, Caokun assumed the presidency by bribing and intimidating the congress members, and the Constitution of the Republic of China (*zhonghua minguo xianfa*) was immediately published to make this administration appear legal. This document was the first formal constitution as such in China. It restored the cabinet system and made local rule a national policy to appease the warlords.

Chiang Kai-shek succeeded Sun Yat-sen as the leader of a nationalist revolution that put an end to the warlords' separatist regimes. The new nationalist government took the founding father Sun Yat-sen's political theory as its constitutional foundation. Sun had foreseen that the nationalist revolution would go through three successive stages—the military, the disciplinary, and the constitutional; the Nationalist Party was to lead in the first two periods and return governing power to the people in the third. Sun believed that the people were ignorant and had to be taught to exercise power. Chiang Kai-shek sought to extend the disciplinary period as long as possible, while the Communists challenged it vehemently.

Sun Yat-sen divided the governing power into five, rather than three, branches. In addition to the three familiar in the West, he added the examination power and the supervising power, following traditional Chinese political wisdom. Adhering to this constitutional theory, the Nationalist Party began a comprehensive legislative program in 1928, topped in 1947 with its Constitution of the Republic of China (*zhonghua minguo xianfa*), which is still in effect in Taiwan today. It granted comprehensive rights to the people, but it did not stop Chiang Kai-shek from taking absolute power.

The Nationalists lost power because of their notoriously corrupt government and their failure to defeat the Communists on the battlefields. In 1949, the Communist Party completely abolished the Nationalist legal system without providing a new one to take its place. Instead, the party's ever-changing policies have served to direct the civil and political life of China ever since. The lack of a coherent legal system has still not been rectified.

The Communist Party began issuing constitutional legislation in its revolutionary years. Its first such instrument was the Constitutional Outlines of the China Soviet Republic (*zhonghua suweiai gongheguo xianfa dagang*), adopted in 1931. It declared that power belongs to the working class and the masses. The 1954 constitution of the People's Republic of China (*zhonghua renmin gongheguo xianfa*), issued after the Communist leader Mao Zedong (1893–1976) and his comrades took over power in mainland China in 1949, imitated the 1936 Russian constitution, with a long preamble praising the party's glorious history of winning independence for the Chinese people from feudalism, capitalism, and imperialism. According to this constitution, the sovereign body of China is the People's Congress and its Standing Committee.

The current constitution was adopted in 1982 and had been amended several times, an indication of dramatic changes in the political and economic situations ever since the open door policy initiated by Deng Xiaoping. Dramatic political and economic change has occurred since 1979. Human rights issues loom large as a result of economic growth in an international context. Following a zigzag process, the constitutional amendments by 2004 added formal guarantees for civil rights and private property in a socialist legal framework.

FORM AND IMPACT OF THE CONSTITUTION

China has a written constitution that claims to be the supreme law. Any statute, administrative law, or local bylaw is null and void if it is contrary to the constitution. No constitutional body other than the standing Committee of the National People's Congress exists, however, to protect this exalted legal status.

The constitution has undergone drastic changes since its enactment in 1954, in part because the economic system had to be changed repeatedly to adapt to the changing policies of the Communist Party. Besides, the constitution has been regarded as the embodiment of the will of the ruling party, and this will keeps changing. As a convention, amendments originate in the party and are always passed.

The preamble of the constitution says that "the people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation." Everybody has a responsibility, but nobody will take it. Without specifying a procedure to review violations of the constitution, the constitution will remain largely a ceremonial document.

The constitution assigns no special status to international law and treaties.

BASIC ORGANIZATIONAL STRUCTURE

The People's Republic of China is a unitary multinational state composed of 23 provinces, four municipalities directly under the central government, five national autonomous areas, and two special administrative regions (Hong Kong and Macau). Taiwan is declared an inseparable part of China in the constitution. All of these components must follow the leadership of the central government, but they are encouraged to show some originality and initiative. The individual components are granted varying powers by the constitution and the central government.

On the provincial level, there are three different kinds of administrative units. First, 23 ordinary provinces and four municipalities, all with a Han Chinese majority, relate to the central government in accordance with the principle of democratic centralism. They have no autonomous power, but their people's congresses and their standing committees may adopt local regulations, although they all report to the Standing Committee of the National People's Congress, and they must not contravene the constitution, the statutes, and the central administrative rules and regulations.

The second kind of provincial administration is formed by the five national autonomous areas (Inner Mongolia,

Guangxi Zhuang, Ningxia Hui, Xinjiang Uygur, and Tibet), established for the formal purpose of "strengthening socialist relations of equality, unity, and mutual assistance among the people of all nationalities." They enjoy more autonomous power than the ordinary provinces in areas such as economic regulation, finances, and culture. For example, they may "independently administer educational, scientific, cultural, public health, and physical culture affairs in their respective areas, protect and accumulate the cultural heritage of the nationalities and work for the development and flourishing of their cultures" (Article 119). In short, they have power to enact specific regulations in light of the political, economic, and cultural characteristics of the nationality or nationalities in the areas concerned. However, these regulations must be approved by the Standing Committee of the National People's Congress. In addition to the provincial autonomous regions, there are autonomous prefectures and counties.

The third kind of administrative units are special administrative regions, namely, Hong Kong and Macau. They were established to maintain the prosperity and stability of those areas in the light of their history and realities while still achieving national unity and territorial integrity. The legal reference is Article 31 of the constitution, the principle of "one country, two systems," which means that the socialist system and policies will not be practiced in those regions. The special administrative regions are responsible to the State Council for the record, but they exercise a high degree of autonomy and enjoy executive, legislative, and independent judicial power. The central government levies no taxes in those regions.

These two areas each have their own basic law, but the power of interpretation is vested in the Standing Committee of the National People's Congress. The major interest of the central government in Hong Kong and Macau is national sovereignty. The central government runs their foreign and defense affairs. It also appoints their chief executives and other principal executive officials.

The unitary system of China has its roots in the centralist tradition going back to 221 B.C.E. when Qin Shihuang (259–210 B.C.E.), the first feudal emperor, united a war-stricken country. "The Great Union" (Dayitong) has been widely accepted as a political and cultural ideal and has become a part of the political psychology of the Chinese people. In fact, a powerful central government may better allocate national resources to common economic objectives, but it may also prevent experimental initiatives on the regional and local levels. Regional autonomy faces a great challenge in a totalitarian, centralized framework.

On the other hand, China's history of multitiered administration also goes back to the Qin Empire (221–206 B.C.E.). Today, provinces and national autonomous areas have their subordinate prefectures and counties, and counties are composed of towns (*zhen*) and townships (*xiang*).

The various administrative levels tend to be subordinate to the level above in hierarchical fashion. According to the constitution the chief executive on every level is elected and recalled only by the people's congress in that jurisdiction; in fact, the officials are responsible only to their counterparts on the higher level. To this day, no prime minister, governor, or mayor has ever been directly elected by the people in China.

In accordance with the constitution, residents' committees and villagers' committees are established among residents of urban neighborhoods and rural villages and are meant to be mass organizations at the grassroots level. Their chairpersons, vice chairpersons, and members are elected by the residents. They are the only cadres (but not government officials as such) the people have the right to elect directly.

LEADING CONSTITUTIONAL PRINCIPLES

Throughout the history of the People's Republic of China, the formulation of constitutional principles has varied considerably. For example, the 1954 constitution took socialism and democracy as its essential principles. It focused on state or collective ownership. It proclaimed that the state would eradicate exploitation and poverty and build a prosperous and happy socialist country. It upheld the ideology of Marxism-Leninism, purportedly democratic to the masses and dictatorial to the enemy. It has nothing to do with separation of powers and checks and balances.

The current 1982 constitution and its amendments accept such cardinal principles as people's sovereignty and representative democracy. In regard to the distribution of power, this constitution embodies the principle of democratic centralism. The constitution says that the state protects the basic rights of the Chinese citizens and practices the socialist rule of law.

According to the constitution, the National People's Congress is the basis of the political system. "All power in the People's Republic of China belongs to the people. The organs through which the people exercise state power are the National People's Congress and the local people's congresses at different levels" (Article 2).

The National People's Congress and its local counterparts have been gaining momentum and power in an ongoing process of constitutional reform. This has become apparent in cases in which they help the judiciary render justice in particular cases. Such power, however, may also be an excuse for interfering with the judicial process.

According to the principle of democratic centralism, the people create the people's congresses at different levels through general elections. These congresses then install the administrative and judicial organs, which are under the supervision of and are responsible to the congresses. Unified leadership of the central authorities is emphasized, although the initiative and enthusiasm of the local authorities are encouraged. The people's congresses not

only make legislative decisions but are also in charge of putting these decisions into practice. Thus, the people's congresses have in fact both legislative and executive power. The supremacy of the people's congresses over the administrative authorities exists at least in the legal text.

The principle of the socialist rule of law was introduced in the constitution in 1999 as an amendment, which states: "The People's Republic of China [rules] in accordance with the law and build[s] a socialist country of law," and "No organization or individual may enjoy the privilege of being above the Constitution and the law" (Article 5). Nevertheless, the lack of judicial independence has been a stumbling block on the way to the rule of law in China.

A new amendment in 2004, which declares that "the State respects and preserves human rights" (Article 33), can be regarded as another constitutional principle. That language is to some degree a response to Western criticism of China's human rights record. More importantly, China stresses "collective human rights," that is, the rights of the whole people to survive and develop. The language of rights is also checked by an emphasis on the citizen's duties under the constitution.

The current constitution takes "four cardinal principles" as its basic guidelines; they are proclaimed in the preamble and can be found throughout the text. These principles are Marxism-Leninism and the thought of Mao Zedong, the leadership of the Communist Party, the people's democratic dictatorship, and the socialist road. In the amendments of 1999 and 2004, the theory of the former party leader Deng Xiaoping and the idea of the "Three Represents" were added to reflect the changing character of socialist theory. The "Three Represents" are that the Communist Party of China should represent the development trend of advanced productive forces, the orientation of advanced culture, and the fundamental interests of the overwhelming majority of the people in China.

CONSTITUTIONAL BODIES

The national constitutional organs consist of the National People's Congress and its Standing Committee, the president of the People's Republic of China, the State Council and its ministries and commissions, the Central Military Commission, and judicial organs such as the Supreme People's Court and the Supreme People's Procuratorate.

The National People's Congress and Its Standing Committee (the Parliament of China)

The National People's Congress is the highest organ of state power. The legislative power of the state resides in the congress and its Standing Committee. According to the constitution, the congress creates and holds accountable all the other central governing bodies.

The congress exercises the following functions and powers (Article 62): to amend and to enforce the constitution; to enact and amend basic statutes concerning criminal offenses, civil affairs, the state organs, and other matters; to elect the president, the vice president, and other top officials; to approve the national economic and social development plan and its implementation; to approve the state budget and its implementation report; to decide on questions of war and peace; and to exercise such other functions and powers as the highest organ of state power should exercise.

The National People's Congress is composed of deputies elected indirectly through several levels from the various provinces and other high-level administrative divisions and from the armed forces. The approximately 3,000 deputies all serve only part-time during their five-year terms; they convene once a year for less than 20 days. The Standing Committee is the permanent body of the congress and exercises almost all powers when the congress is not in plenary session.

The Standing Committee is elected by the National People's Congress. Its members may not hold any office in any of the administrative, judicial, or other organs of the state. The constitution authorizes the Standing Committee to perform nearly all the functions of the congress, except that its changes to existing laws may not contravene the basic principles of these statutes. It also interprets statutes and supervises the work of the State Council, the central military commission, the Supreme People's Court, and the Supreme People's Procuratorate, among others (Article 67).

The President

The president acts as the head of state and represents the country to the outside world. According to the constitution, citizens who have the right to vote and to run for elections and who have reached the age of 45 are eligible to be president or vice president (Article 79). Both are elected by the National People's Congress. Their terms of office are the same as that of the congress, and they can serve no more than two consecutive terms. In recent years the constitutional convention that the general secretary (head) of the Communist Party has also been the state president has developed.

The State Council

The State Council is the central administration, the executive body of the People's National Congress. It is the highest organ of state administration. The council is composed of the prime minister, the vice prime ministers, state councilors, ministers in charge of ministries or commissions, the auditor general, and the secretary general. The prime minister is nominated by the state president and is formally appointed by the National People's Congress. All the other members of the State Council are nominated by the prime minister and formally appointed

by the National People's Congress. Members of the State Council serve five-year terms; the prime minister, vice prime ministers, and state councilors can serve only two consecutive terms.

The prime minister has overall responsibility for the State Council. The ministers have overall responsibility for the ministries or commissions under their charge. The State Council enjoys comprehensive power, from adopting administrative measures to deciding on a declaration of a state of emergency. The State Council can enact administrative rules and regulations, which may not be contravened by any local people's congress or local executive.

Since 1949, the executive branch has played the critical role in the government, especially during the so-called Cultural Revolution (1966–69) when the people's congress system and the judiciary were put aside. With the growing importance of the parliament and the judiciary, the State Council and other executive branches are not as prominent as before, although they still wield huge power without sufficient checks and balances.

The Central Military Commission

The central military commission has the supreme authority in China's military. However, it has not been fully defined in the constitution. It is composed of a chairperson, vice chairpersons, and ordinary members. The National People's Congress elects the chair of the central military commission and, upon nomination by the chairperson, decides on the choice of all other members of the central military commission. The term of office is five years, the same as that of the National People's Congress. The chairperson is responsible to the congress and its Standing Committee.

Historically, the true leadership of the military resides in the Communist Party. The 1982 constitution appears to assign control of the military to the state, but, in fact, the commission shares the same personnel as its counterpart body in the party.

The Lawmaking Process

The legislative power resides in the National People's Congress and its Standing Committee.

The following bodies have the power to propose bills: the presidium of the congress, the Standing Committee, committees of the congress created for a specific issue, the State Council, the central military commission, the Supreme People's Court, the Supreme People's Procuratorate, and any group of 30 congresspersons. The Standing Committee is in charge of the daily routine of legislation. Its law subcommittee does most of the preparation of bills, including writing and editing drafts. A draft usually has to be reviewed at least three times within the Standing Committee before it is submitted to the congress.

According to the 2000 Legislative Law, any governmental bodies may ask the Standing Committee to review any statute or regulation that it believes is unconstitutional or illegal. Similar requests from civil organizations, state-owned enterprises, and private citizens are referred to the law committee and can be assigned to the appropriate ad hoc committee if deemed necessary.

Statutes passed by the National People's Congress or its Standing Committee are promulgated by the state president.

The Judiciary

There are two kinds of judicial organs in China: people's courts and people's procuratorates. By law, judicial organs are independent of the executive, responsible only to the people's congress and the standing committee at the same level. Unfortunately, the judiciary is created by and reports to that congress and thus does not enjoy independence in the sense that the judiciary does in the West.

The common courts are organized into four tiers, corresponding to the respective administrative layers. In addition to the common courts, there are special courts, such as the military and admiralty law courts. The president of the Supreme People's Court is elected by the National People's Congress and serves no more than two consecutive terms. Local chief judges are elected by the local congresses.

According to the People's Courts Organizing Law, all citizens who have the right to vote and to run for election and who have reached the age of 23 are eligible to be judges or presidents of the people's courts. However, a 1993 amendment requests that the judges have professional legal knowledge. The poor qualification of the judiciary has long been a serious problem in China.

According to the constitution, courts are not subject to interference by administrative organs, public organizations, or individuals. But the individual judges have little authority, especially in view of the powers of the judicial committee in every court. The committee reviews any verdict or ruling that the head of the court finds in error in matters of fact or law. The head of the court and the committee can change any ruling they regard as wrong.

The people's congresses have legal power to supervise the work of the courts. In practice, they tend to interfere in particular cases. No judge has power to review the constitutionality of any law or administrative regulation; he or she may only decide whether to apply it in a particular case. When a court's interpretation of law conflicts with the interpretation of a congress, the latter prevails. For example, a judge in a Luoyang court was dismissed at the request of the Henan province people's congress when she ruled a province law invalid because it contradicted a corresponding national law.

Hong Kong and Macau retained their independent legislative and judicial powers after returning to China. However, the Standing Committee of the National People's Congress retains the power to interpret the Hong Kong Basic Law, although local courts can interpret those provisions that are within the limits of the region's autonomy. In 1999, a dispute arose between the Court of

Final Appeal for the region and the Standing Committee. The Standing Committee prevailed, leaving much doubt about Hong Kong judicial independence.

People's procuratorates are state organs for legal supervision. As are the courts, they are appointed by and accountable to the congresses. According to the constitution (Article 35), the courts, procuratorates, and public security organs must coordinate their efforts and check each other to ensure correct and effective enforcement of the law. How their coordination and their checking each other can work at the same time is still a mystery. But one point is certain: that is, that all of these branches are subordinate to the Communist Party's political and law committee of the same level. It is not easy for any of these branches to be independent.

THE ELECTION PROCESS

The constitution prescribes that, except persons deprived of political rights, all citizens who have reached the age of 18 have the right to vote in and to run for elections, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or time of residence. The Chinese election system includes the election of the people's congresses at separate levels and the grassroots elections of the village committees.

There are direct and indirect elections for the people's congresses according to their level in the administrative hierarchy. Those at or below the county level are elected directly by their constituencies. The National People's Congress is composed of deputies elected from the high-level territorial divisions and from the armed forces. All the minority nationalities are entitled to appropriate representation. The military has its own election system. The congresses of the high-level divisions are in turn elected by the people's congresses of the next lower level.

While the Election Law takes equality as its principle, the number of deputies is determined by the Standing Committee, and the result is always a poorly balanced representation among different constituencies. Taking the ninth National People's Congress (1998–2003) as an example, one deputy represented 880,000 rural people, while another represented only 220,000 urban people, and a military deputy represented only 10,000 people. The Election Law prescribes the quota distribution principle at the lower levels. As a rule, the urban population has four times the number of deputies in proportion to the rural population.

There are no political campaigns in China. Candidates are nominated by electorates or precincts. Factors such as gender, party affiliation, and nationality weigh heavily in the selection. The qualified candidates are recognized by the election commission of each precinct five days before the election. Private citizens rivaling party officials have difficulties in passing through this stage of the election process. There is no definite rule on whether a candidate may or may not publicly address the constituency, and the voters have little access to the political opinion of the candidates. Large legal gaps give wide leeway to the local election commission or standing committee, which is in charge of the election process at each level. The election commission or the presidium of the people's congress must verify the results at each level. All the costs of elections are paid by the public purse.

POLITICAL PARTIES

A broad, patriotic, united front was one of the key political strategies of the Communist Party of China in the years before it won power and was kept alive as part of the new political structure. The system of multiparty cooperation under the leadership of the Communist Party is emphasized in the preamble of the constitution.

The leading role of the Communist Party, which is not specified in any operative constitutional article, is an omnipresent fact in Chinese political life. It has political, organizational, and intellectual components. Politically, the party's principles and policies guide the state; the constitution itself has been viewed as the legalization of the party's will. Organizationally, the party recommends officials to fill government posts. Intellectually, the party aims to indoctrinate the people with the party's political ideas. Such leadership tends to contradict the constitution's rule of law clause: "All political parties and public organizations . . . must abide by the constitution and the law" (Article 5).

The Chinese People's Political Consultative Conference embodies the party's "united front" policy. It is through this framework that the eight "democratic parties" founded before 1949 participate in politics as associate parties. They are not the party's rivals, and the conference is not a constitutional, but only a "consultative" body.

CITIZENSHIP

There are two ways to acquire Chinese citizenship: by birth and by naturalization. A person can be a Chinese citizen if at least one of his or her parents is a citizen, unless one or both parents settle abroad and the person is born abroad and acquires foreign citizenship as a result. Any person born in China whose parents have no or unknown nationality is also a citizen.

Foreign nationals or stateless persons can be naturalized if they are willing to abide by China's constitution and laws and they are near relatives of Chinese citizens, reside in China, or have other legitimate reasons. A person whose application for naturalization as a Chinese citizen has been approved cannot retain foreign citizenship. China does not recognize dual citizenship.

FUNDAMENTAL RIGHTS

Unlike the earlier Communist Chinese constitutions, the current document places the chapter on fundamental

rights and duties before the chapter on the structure of the state. This puts a greater emphasis on civil rights.

In Articles 33 to 50, the constitution provides citizens with a full set of rights. Article 33 promises that all citizens are "equal before the law." An amendment was added in 2004 in response to domestic and international criticism, declaring that "the State respects and preserves human rights." This was the first time that *human rights* entered the constitutional lexicon in China.

Article 34 gives citizens the right to vote in and to run for elections when they have reached the age of 18 (except persons deprived of political rights according to law). Freedom of speech, press, association, and demonstration is provided in Article 35. According to Article 36, freedom of religious belief and "normal" religious activities are protected. Articles 37–40 declare that personal freedom and personal dignity are inviolable and prohibit unlawful search. They guarantee freedom and privacy of correspondence. The right to criticize and to make suggestions to any state organ or official is granted by Article 41, which also grants a right of compensation when citizens suffer losses through infringement of their civil rights by any state organ or official.

Articles 42–47 list the economic, social, and cultural rights, such as the right to work and to rest. Article 45 provides for a social insurance system that gives the right to material assistance from the state and society to old, ill, or disabled citizens, including disabled veterans. The blind, deaf mutes, and other disabled citizens may expect the state and society to help make arrangements for their work, livelihood, and education. The state protects the equal rights and interests of women, and maltreatment of old people, women, and children is prohibited

An amendment in 2004 made the protection of a citizen's lawful private property one of the general principles of the constitution. It is "inviolable." Expropriation or requisition of private property by the state shall take place only if it is in the public interest and in accordance with law and if compensation is provided.

The Chinese constitution provides positive rights. For example, Article 42 says that the state by using various channels creates conditions for employment, strengthens labor protection, improves working conditions, and increases remuneration for work and social benefits. Receiving an education, according to Article 46, is another positive right by which the state promotes the all-around moral, intellectual, and physical development of children and young people.

Fundamental Duties

The enumeration of positive rights appears to be attractive. However, positive rights can be a good excuse for the government to exercise enormous power over society and the economy. In addition, the constitution stresses corresponding duties, which to some degree dim the rosy color of the positive rights. For example, work and education are duties as well as rights. Work is even characterized as being "the glorious duty of every able-bodied citizen."

Articles 52–56 specify numerous duties, such as safeguarding the unity of the country and its nationalities, abiding by the constitution and the law, keeping state secrets, protecting public property, observing labor discipline and public order, and respecting social ethics. Thus, the constitution sounds like a moral code.

Impact and Functions of Fundamental Rights

The unity of rights and duties is highlighted by the constitution. Every citizen, as Article 33 says, enjoys the rights and at the same time must perform the duties prescribed by the constitution and the law. This makes rights guarantees helpless against their greatest threat, which is state power. It remains to be seen to what extent the fundamental rights clauses in the Chinese constitution can be put into practice, given that they rarely enjoy judicial protections today.

International Human Rights Treaties

Rights in the Chinese constitution are defined mostly in terms of civil rights of citizens, not as general rights of "human beings." International human rights conventions and treaties have no definite legal position in the constitution. Since 1980, China has signed, approved, or joined 14 such conventions created by the United Nations, nine conventions passed by the International Labor Organization, three international humanitarian conventions, and 12 other international conventions and treaties concerning human rights. The Chinese government has expressed reservations against some clauses of these conventions, both some procedural and some substantive. China has also not been willing to be supervised by the international community.

In 1997, China joined the 1966 International Covenant on Economic, Social and Cultural Rights, which was approved by the National People's Congress in 2001, with the reservation of the free union clause. China also joined the 1966 International Covenant on Civil and Political Rights in 1998 but has not yet approved this covenant.

The Chinese government weighs the general human-rights principles in the context of the varying situations of different countries. It also recognizes collective human rights and gives priority to countries' rights to exist and to develop.

Limitations to Fundamental Rights

Citizens of the People's Republic of China, in exercising their freedoms and rights may not infringe upon the interests of the state, of society, of the collective, or upon the lawful freedoms and rights of other citizens (Article 51). Defining those competing interests has been a prob-

lem. The rights of citizens are easy prey of "the interests of the collective" when the latter is not clearly defined.

A few rights clauses are given special provisos, which leave the state much room for limiting freedoms. For example, the freedom of religion clause prohibits religious bodies and religious affairs from being subject to any foreign domination. However, it remains unclear what constitutes foreign domination. Similarly, while citizens are guaranteed the right to make complaints against state organs or expose them for violation of the law or dereliction of duty, it is prohibited to invent or to distort facts for the purpose of libel or a false charge (Article 41).

Some rights are effectively curbed by broad adjectives. Freedom of religion is guaranteed for *normal* religious activities; the state protects the *lawful* rights and interests of returned overseas Chinese (Article 50); *lawful* private property is inviolable (Article 13). It is the state that decides what these terms mean. Furthermore, the Chinese constitution has no "limitation-limits" clause; rights may be limited indefinitely, at least in theory. In fact, many statutes and regulations narrow the fundamental rights in the constitution. For example, the Law of Assembly and Demonstration was amended in 1989 by a strict licensing procedure. Freedom of assembly and association depends on approval by the relevant government body and on the confirmation by the civil registration bureau, according to the 1998 Regulation of Social Groups Registration. The 1997 Publishing Regulation provides for prepublication censorship and after-publication punishment.

ECONOMY

Articles 6–18 specify that socialist public ownership of the means of production is the basis of the economic system, that is, ownership by the whole people and collective ownership by the working people. The state-owned economy is established as the leading force in the national economy. Collective ownership by the working people and the lawful rights and interests of urban and rural economic collectives are also protected or encouraged as sectors of the socialist economy.

Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches, and other natural resources are owned by the state or by collectives. Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives, except those portions that belong to the state.

Amendments to the constitution have been focused on the economic system since 1988. In an amendment that year, private economic activity is permitted within the limits prescribed by law. The right to the use of land may be transferred according to law. The socialist planned economy was dethroned, and the socialist market economy was proclaimed in 1993.

As for private property, the constitution in 1982 tolerated only lawful personal income, savings, homes, and right to inheritance. An amendment in 2004 declared that a citizen's lawful private property is inviolable. The state had long been expropriating and requisitioning land. Now, the state can do so only in the public interest and in accordance with the provisions of law, and compensation is clearly required.

The right to social insurance, social relief, and medical health services was explicitly added to the constitution in the 2004 amendments.

Workers and staff in state-owned enterprises and collective economic organizations may practice democratic management through their congresses, and in other ways in accordance with the law, their unions are branches of the local government-controlled unions. There is no right to strike. On the contrary, heroic socialist labor is to be emulated and promoted, and voluntary labor is encouraged.

RELIGIOUS COMMUNITIES

Freedom of religious belief is guaranteed, but the free exercise of religion is not explicitly recognized. In effect, since religion is a matter of the mind, it is better to keep it in one's mind. Normal religious activities are protected in Article 36; the term *normal* allows activities to be limited by the state. Article 36 specifically prohibits any foreign domination of religious bodies or religious affairs. The historical background, according to the state, is that religion had been used as an instrument of foreign invasion in China.

No one, the article warns, may make use of religion to engage in activities that disrupt public order, impair the health of citizens, or interfere with the educational system. This statement causes religious activities to be viewed as especially dangerous to public order and education.

Religious association is also limited by administrative regulations. The 2005 Regulation on Religious Affairs (*zongjiao shiwu tiaoli*), the first national law on this subject, requires religious bodies and sites to be registered in accordance with the 1998 Regulation on the Registration of Social Associations. Any religious association or site is legal only when licensed by the qualified religious office and civil registration agency. This double-licensing system makes legalization of nonconformist religious bodies difficult. Traditional religions such as Buddhism, Taoism, Islam, Roman Catholicism, and Protestantism are officially recognized. Their adherents were formed into state-backed patriotic organizations to promote the Party's religious policy. Those religious groups that are not affiliated with the government-sanctioned religious bodies face interference and closure by law-enforcement bodies. Space does exist for civil religious activities. It is the highly organized religious groups that are the primary targets of state control.

State-backed religious bodies and sites are encouraged by positioning their leaders in people's congresses and by granting financial aid and tax exemptions. They are in charge of leading their adherents to adapt to socialist society.

MILITARY DEFENSE AND STATE OF EMERGENCY

National defense in China is the task of the armed forces, the constitution states. Article 29 aims to revolutionize, modernize, and regularize the armed forces to strengthen their national defense capability.

Defending the homeland is described by the constitution as the sacred obligation of every citizen, and it is the honorable duty of citizens to perform military service or join the militia in accordance with the law. No conscientious objection is recognized; only the disabled are excused. In addition, those who are deprived of political rights cannot enter the military.

The National Defense Law puts the Communist Party in charge of the armed forces, which include the active duty and reserve corps of the People's Liberation Army, the People's Armed Police Corps, and the militia. The armed forces are given responsibility for strengthening the national defense, resisting aggression, defending the homeland, safeguarding the people's peaceful labor, and participating in national reconstruction.

The armed forces have always played an important role in national political life. They claimed 268 members of 2,985 (8.98 percent) in the National People's Congress of 2004, a rather disproportionate representation.

The Central Military Commission has final say in making military law. It need not report its laws to the Standing Committee of the National People's Congress. Thus, the constitutionality of military law is beyond the power of the National People's Congress.

The constitution and the national defense law both affirm that China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual nonaggression, noninterference in internal affairs, equality and mutual benefit, and peaceful coexistence in diplomatic relations and economic and cultural exchange with other countries. This is the basis for China's military relationships with other countries. China proclaims support for the international community in maintaining world and regional peace and in its efforts to resolve international disputes and encourage disarmament.

It is the National People's Congress alone that has the power to make war and peace. The Standing Committee of the National People's Congress also decides whether to call a state of emergency throughout the country or in particular provinces. The State Council has the responsibility to call emergencies in more localized areas. However, the state president officially proclaims a state of emergency or war and issues mobilization orders.

The 1996 Martial Law Act declared that the state shall enforce martial law when insurgents or riots threaten the nation's unity, security, or public order. Every constitutional and legal right can be withdrawn in that circumstance, and personal freedom can be strictly limited.

AMENDMENTS TO THE CONSTITUTION

Frequent amendments characterize China's constitutional history since 1949. The 1982 constitution was a complete rewrite; since then, amendments have become the route to change the document. As of 2004, there had been four changes with a total of 31 amendments. The primary reason there were so many amendments was the dramatic change in the economic system. More than four amendments relate to socialist public ownership. The private sector of the economy is now far more tolerated, and private property has become "inviolable," although it still is not "sacred," as is public property. Compensation has to be given when private property is expropriated by the state.

Human rights have been the subject of some other amendments. In 2004, the state explicitly promised to respect and preserve human rights.

Amending the constitution is not as difficult as the strict procedure might indicate. Every proposed amendment succeeded in recent years. Amendments can be proposed only by the Standing Committee of the National People's Congress or by a group of more than one-fifth of the deputies; a two-thirds majority of all the deputies to the congress is necessary for adoptions.

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COLOMBIA

At-a-Glance

OFFICIAL NAME
Republic of Colombia

CAPITAL
Bogotá

POPULATION
45,325,261 (2004 est.)

SIZE
44,083 sq. mi. (114,174 sq. km)

LANGUAGES
Spanish

RELIGIONS
Catholic 95%, unaffiliated or other 5%

NATIONAL OR ETHNIC COMPOSITION
Mestizo 58%, white 20%, Mulatto 14%, black 4%, Indian 1%, other 3%

DATE OF INDEPENDENCE OR CREATION
July 20, 1810

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
July 4, 1991

DATE OF LAST AMENDMENT
July 27, 2005

Colombia's Constitution begins with declaring that the state is founded on the principle of the "Social Rule of Law." Colombia is organized in the form of a unitary republic, decentralized, with autonomy of its territorial entities. It is democratic, participative, and pluralist. Moreover, it is based on the respect for human dignity, on work, on solidarity of the people, and on the primacy of the general interest. The legislative, executive, and judicial powers are clearly separated but collaborate to perform their functions. The National Electoral Council independently supervises the election of government officials. Political decisions can also be made by referendums, popular consultations, and other forms of political participation.

Personal rights hold supremacy within the constitutional order. They must be respected by all authorities, and their protection is guaranteed by the courts, including a Constitutional Court.

Religious freedom is guaranteed, although the presence of a strong Roman Catholic tradition has justified the existence of a treaty with the Holy See.

CONSTITUTIONAL HISTORY

During the Spanish colonial period, the Colombian territory was under the jurisdiction of the Audiencia del Nuevo Reino de Granada (Court of the New Kingdom of Granada), located at the city of Santa Fe from 1549, and later of the Virreinato de la Nueva Granada (Vice Kingdom of the New Granada). The latter was established in 1717, abolished in 1723, and reestablished in 1739.

Between 1763 and 1830, Europe lost a substantial part of its colonies in the Western Hemisphere. The invasion of Spain by the French emperor Napoléon in 1808 produced a legitimacy crisis in Spain and in the American colonies. At first, the new Spanish government was accepted. However, tensions created by the lack of representation of the *criollo* (the descendents of the colonists) part of the population and by excessive taxation led to the declaration of independence on July 20, 1810. A new government was established, and the first constitutions were passed.

In the independence period (1810–19), the provinces issued their own constitutions. This was a time of great

naiveté, sometimes called the *patria boba* (dumb nation). The population was divided between those guided by Camilo Torres, who defended federalism, and those who proposed a centralized government, guided by the champion of human rights Antonio Nariño.

The second era of Colombian constitutional history is known as Gran Colombia (1819–30). After winning the Battle of Boyacá on August 7, 1819, Simón Bolívar, the liberator, proclaimed guidelines for the constitutional organization of the state in the Carta de Angostura (Angostura letter). This was the basis for the 1821 constitution. Bolívar declared a dictatorship in 1828. Another constitution was issued in 1830, but it never gained any practical significance; Venezuela and Ecuador had declared their independence, and the Great Colombia was divided.

Nueva Granada (1830–58) was the third constitutional period. An 1832 constitution followed the model of the 1830 text and was moderately centralist. In 1843, a more conservative and centralist constitution was passed. By the end of the 1840s, the Liberal and Conservative Parties had taken shape; they were to become a landmark of Colombian history throughout the following 140 years. Once the Liberal Party entered office, a series of reforms took place: the abolition of monopolies, of Indian reservations, and of slavery. All vestiges of the colonial period were ended. The 1853 constitution had a profederal inclination and emphasized municipal organization.

The next period (1858–86) was marked by federalism—the 1858 constitution, attributed to Florentino González, established a federal state. Tomás Cipriano Mosquera led a successful revolt (1860–62) that resulted in the Pacto de la Unión (Union Pact) of 1861. It was celebrated as a provisional constitution that legitimated Mosquera as president. In 1863, the radically liberal constitution of Rionegro was issued. It did not mention God in its preamble, it abolished the death penalty, and it limited the presidential term to two years. However, the amendment process was so complicated that adjustments became impractical, and the system eventually failed. There were more than 50 provincial and two national civil wars during this period of only 28 years.

The fifth period of Colombian constitutional history (1886 to today) has been characterized by a unitary republic with administrative decentralization. The 1886 constitution, attributed to Miguel Antonio Caro, was a compromise between the moderate factions of the two traditional parties, determined to overcome the crisis of the previous decades. Inspired by the constitutions of 1830 and 1843, it joined political centralism with administrative decentralization. As did the model of Bolivár, it strengthened presidential powers, established Catholicism as the official religion of the country, included economic protection, and created the central bank. After many amendments, the document was replaced in 1991, by which time the old structures were undermined by the difficulty of reform, armed uprisings, an incomplete peace process, and the corruption and violence introduced by the drug cartels.

FORM AND IMPACT OF THE CONSTITUTION

The 1991 constitution has 380 articles and 60 transitory articles. It has been amended 18 times, and further amendments are under consideration.

Foreign relations are to be based on national sovereignty, respect for self-determination and the principles of international law, and the integration of Latin America and the Caribbean. International human rights treaties approved by Congress take precedence over ordinary laws. The treaties and the laws that implement them are reviewed by the Constitutional Court before ratification to make sure they comply with the constitution.

The constitution is the supreme legal document, and all other laws and rules must comply with it. Human rights hold a supreme position; the constitution includes a complete system of procedures for their effective guarantee. The governmental structure is explicitly designed to render service to people.

The values established by the constitution are life, human dignity, coexistence, work, justice, equality, knowledge, liberty, solidarity, peace, and the supremacy of the public interest within a legal, democratic, and participative system that guarantees fairness.

BASIC ORGANIZATIONAL STRUCTURE

Colombia is a politically centralized nation with administrative decentralization and autonomy of territorial entities. The territory is divided into 32 departments and more than 1,100 municipalities with administrative autonomy. The municipalities have popularly elected mayors in charge of rendering public services. The departments have governors, who are also elected popularly and implement and coordinate the policies laid down by the national government.

LEADING CONSTITUTIONAL PRINCIPLES

The first 10 articles of the constitution establish its basic principles. According to constitutional jurisprudence, they have a higher status than the rest of the document and must be complied with by all state authorities. They proclaim Colombia to be a unitary, decentralized republic with autonomy of its territorial entities, democratic, participative, and pluralist. The clause calling for a welfare state has been used by the Constitutional Court to build its interpretation of the entire constitution.

The purpose of the state is to serve the community, promote general prosperity, guarantee duties and rights, enable participation, defend national independence, ensure peaceful coexistence, and maintain justice.

Sovereignty resides with the people. They can adopt decisions directly, through referendums, plebiscites, and popular consults. They can also remove mayors, governors, and national authorities from office.

The nation recognizes the primacy of individual rights and protects the family as a basic institution. The constitution has been called person-oriented, with the human being is at its center.

The principle of responsibility establishes that people are free as long as they do not infringe on the constitution or the law. Public officials also are responsible for the exercise of their functions.

Colombian ethnic and cultural diversity is recognized. This principle is a great advance compared with the previous constitution, which conceived the nation as a homogeneous entity without recognition of the existence of black and indigenous communities.

CONSTITUTIONAL BODIES

The main bodies included in the constitution are the president of the republic; the Congress, which is divided into two chambers: the Senate and the Chamber of Representatives; and the Judiciary. The crucial Constitutional Court impacts the activities of both president and Congress.

The President

The president is the head of state, head of government, supreme administrative authority, and supreme commander of the armed forces. He or she freely appoints and dismisses cabinet ministers, is in charge of the direction of foreign relations, and opens and closes sessions of Congress. The president signs, promulgates, and regulates laws; appoints directors of decentralized service entities; oversees public services; organizes the national credit and national debt; and grants pardons for political crimes.

The president is elected by the citizens for a four-year term by the absolute majority of votes cast in a direct and secret ballot. If none of the candidates obtains a majority in the first round, the two candidates who have the greatest number of votes compete in a second and final round. A president must be Colombian by birth, an active citizen, and at least 30 years old.

A constitutional amendment, approved by Congress in December 2004, allows presidential reelection for only one term. The amendment states that nobody can be elected to the presidential office for more than two terms. Reelection, as allowed by this amendment, can be immediate.

While in office the president may not be prosecuted or judged for any crimes except by the Chamber of Representatives and the Senate.

The Congress

Senators and representatives are elected by the citizens in direct and secret elections for four-year terms. They represent the people and must act according to justice and common well-being.

The Senate is made up of 100 members elected by national vote. An additional two senators are chosen nationally by Indian communities. To be elected as senator one must be Colombian by birth and at least 30 years old. The Chamber of Representatives is elected in territorial districts, two representatives from each department and one more for every additional 250,000 inhabitants in a department. It is made up of approximately 170 representatives. To be elected as a representative one must be a Colombian citizen at least 25 years old.

The Lawmaking Process

One of the main functions of Congress is to make laws. Laws can be initiated by members of Congress, by the administration (through its ministers), or by 5 percent of voting citizens. In addition, the Constitutional Court, the Supreme Judicature Council, the Supreme Justice Court, the Council of State, the National Electoral Council, the attorney general, and the general finance office of the republic may present bills concerning their own their functions to Congress. However, bills related to the national development plan, administrative structure, the budget, the central bank, national credit, and foreign commerce can only be presented by the cabinet.

For a bill to become a law, it must be approved in four debates: first by the permanent committee of the Chamber of Representatives or Senate, then by the full chamber, and then by the commission and chamber in the other house. Finally, it must be signed by the president of the republic. In case of discrepancies between the chambers, a joint committee tries to find a common text, which must be approved by both chambers.

The Judiciary

The judicial branch in Colombia is independent of the executive and the legislature. There are four different jurisdictions. Ordinary jurisdiction has competence over civil, commercial, family, labor, and criminal matters. The highest authority of this branch is the Supreme Court of Justice, inspired by the French system. The administrative jurisdiction, also based on the French model, judges disputes between individuals and state bodies. The highest authority of this branch is the Council of State. The constitutional jurisdiction has powers over the constitutionality of laws and government actions. Cases in the latter category may originate in the other jurisdictions, but the highest appeal is still the Constitutional Court. Finally, the disciplinary jurisdiction judges the conduct of administrative and judicial personnel, as well as lawyers. Its highest authority is the Supreme Judicature Council, Disciplinary Section. The Supreme Judicature Council, Administrative Section, is in charge of the administration of the judiciary.

The magistrates of the Supreme Court of Justice and of the Council of State are elected by the members of those entities from lists presented by the Supreme Judicature

Council, Administrative Section. The magistrates of the Constitutional Court are elected by the Senate, one-third from among groups of three candidates presented by the Supreme Justice Court, another third from groups of three candidates presented by the Council of State, and the last presented by the president of the republic.

The constitutional jurisdiction has made some very important decisions in recent years. For example, it has decided not to impose penalties for possession of personal doses of illegal drugs or for assistance of terminally ill patients in committing suicide.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens 18 years old or older have the right and the duty to vote in elections for president of the republic, members of Congress, governors, departmental assemblies, mayors, and city councils. They also have the right to participate in popular referendums, law initiatives, and constitutional amendments.

The National Electoral Council supervises and protects the electoral process. Its members are elected by the Council of State for four-year terms from among groups of candidates presented by political parties. Its composition must reflect the political composition of Congress.

POLITICAL PARTIES

For more than a century, Colombia had a two-party system. The constitution of 1991 gave official status to any party that had at least one member in Congress or that was created with the support of 50,000 signatures. As a result, the country now has a vigorous multiparty system. In fact, observers believe the system is too pluralistic: Because there may be as many as 70 parties active at any given moment, it is difficult for the president to build or hold majority support in Congress.

CITIZENSHIP

Nationals are those who have a Colombian father or mother and who were born in Colombia, or they are children of foreigners, one of whose parents was domiciled in Colombia at the time of birth. People born to Colombians abroad who later move to the country are also nationals.

Colombian nationality can be acquired through adoption. Double nationality is permitted. Nationals gain citizenship when they reach the age of 18.

FUNDAMENTAL RIGHTS

One of the fundamental principles of the constitution is that the rights of human beings have primacy within the constitutional order.

The constitution specifies a full but not limiting list of rights. It incorporates human rights treaties into the national legal system and requires that constitutional rights must be interpreted according to these treaties.

Among the explicit guarantees are the right to life, personal integrity, equality, speech, good name, free movement, information, career choice, legal defense, due process of law, and association. Economic and social rights are also recognized, such as education, health, social security, housing, work, collective bargaining, property, access to property by workers, a healthy environment, and consumer protection.

Impact and Functions of Fundamental Rights

Individual rights are of immediate application. This means that they are directly applicable to all particular and concrete situations and do not need the promulgation of a law to regulate their exercise. They hold a preferential position in the constitutional system, as they can be raised in the context of any subject, and they have specific procedures for their protection.

Regarding equality, the constitution not only establishes equality before the law, with no distinction concerning race, sex, or social condition, but also establishes the state's duty to promote true and material equality in favor of low-income groups. As a result of the *tutela* action, a procedural right in court, fundamental rights have begun to take effect in family, work, education, and religious contexts with an important and significant impact on Colombian society.

At times, judges from the different jurisdictions have disagreed in their interpretations of fundamental rights. However, this sometimes yielded new ways of interpretation and broadened the scope of protected rights.

Limitations to Fundamental Rights

Fundamental rights are not absolute. They are limited by other fundamental rights and by the legal system as such. Their exercise can be regulated by laws. The Constitutional Court has established the principles of rationality and proportion in accepting limits on rights.

In a state of emergency, war, or internal commotion, the president of the republic has the power to promulgate measures with the status of law in order to reestablish order. However, even then human rights and fundamental liberties cannot be limited.

ECONOMY

The state does not control economic activity or private enterprise. There is a free, competitive economic system, with implied rights for the people.

Nevertheless, the *direction* of the economy is under state control. The state controls national resources and

land use and owns underground and nonrenewable natural resources. In addition, it rationalizes the economy to achieve a better lifestyle for all inhabitants; to that aim, it influences public and private services and the production, distribution, and consumption of products. The state must intervene to ensure that everyone has access to goods and basic services, especially those with who have income.

Every administration must issue a national development-plan law with public participation. It specifies long-term objectives, priorities of state activity, budgets, and public investment programs. This law takes precedence over other laws but not over the constitution.

The central bank, called Banco de la Republica, is an autonomous legal entity, separate from other branches of state power. It regulates the currency, international exchange rates, and credit. It also issues bills and coins, administers international reserves, acts as bank lender of last resort and banker of banks, and is the fiscal agent of the state. Its board of directors is the monetary, exchange, and credit authority. It has seven members, among them the minister of finance, who acts as president of the board. The manager of the bank is elected by the board and is part of it. The other five members are appointed by the president of the republic for four-year terms that can be extended.

RELIGIOUS COMMUNITIES

The Catholic religion has deep roots in Colombian society. In the past, the state was linked to the Catholic Church, and teaching in schools was provided by religious communities. Currently, the state has an international treaty with the Holy See, called the Concordato. The Catholic Church has acted as an intermediary between the government and various rebel groups and has rendered very valuable services in peace negotiations.

The constitution of 1991 established freedom of religion and equality before the law for religious communities. Freedom of religion is an individual right of all people and is protected through the *tutela* action.

There are small Jewish, Muslim, Protestant, and other Christian communities in Colombia. There are also Indian communities who practice their own ancestral religions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The public force, whose commander in chief is the president of the republic, is composed of the armed forces and the national police. The armed forces have the task of defending the country's sovereignty, independence, territorial integrity, and constitutional order. The national police is an armed body of a civil nature, which has the tasks of maintaining the necessary conditions for the exercise of the rights and liberties of the public and ensuring that people coexist peacefully.

The minimal age for recruitment to the armed forces is 18. Colombians are considered to have the duty to take up arms when public needs require in order to defend freedom and national institutions.

Active duty service members cannot vote or participate in political party activities, debates, or political movements. They may not assemble without legitimate orders to that effect, and they may not submit petitions, except regarding their own service. Crimes committed by members of the public forces in the course of duty are judged under the military criminal code by military tribunals.

Only the government may produce or import arms, military ammunition, and explosives. People may not carry arms without the permission of the competent authorities. Such permission cannot be extended to political meetings, elections, or public corporation meetings.

The president of the republic, with the signature of all ministers, has the power to declare a state of emergency in case of war, internal commotion, or economic, social, or ecological emergency. In a state of emergency, the administration can issue decrees with the force of law in order to confront the exceptional circumstances and encourage the restoration of normality.

Decrees issued under a state of emergency must be signed by the president and all cabinet ministers. They may only address subjects directly related to the exceptional circumstances; they may not suspend human rights or fundamental freedoms; and they must not interrupt the normal functioning of state bodies. The Constitutional Court reviews the constitutionality of these decrees.

AMENDMENTS TO THE CONSTITUTION

The 1991 constitution had 18 amendments in its first 13 years, one approved by referendum. There are three different ways to amend the constitution. Congress can pass a bill called a Legislative Act. The Legislative Act needs eight debates in Congress, the last four with absolute majority for approval. Such a proposal can be submitted by the administration, 10 members of Congress, 20 percent of the municipality council members or department deputies, or a number of citizens equivalent to 5 percent of those who may vote.

Amendments can also be adopted by a Constituent Assembly. In this procedure, Congress initiates the proposal, approves it by an absolute majority, and presents it to a direct vote by the citizens. This procedure has never been used.

The third method of amending the constitution is by referendum. The proposal can be initiated by the administration, Congress, or 5 percent of all citizens. It must first be passed by an absolute majority in Congress. At least 25

percent of all citizens must participate, and a majority of them must approve. Even then, the amendment can be rescinded by another referendum within six months of its publication. Two recent governments tried to amend the constitution through referendums. The first attempt failed, and only one of 10 articles submitted in the second attempt was approved.

The Constitutional Court, at the request of any citizen, reviews the amendment process to make sure it complies with the constitution. However, it may not address the content of the proposed changes.

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Juan Manuel Charry Urueña

COMOROS

At-a-Glance

OFFICIAL NAME
Union of the Comoros

CAPITAL
Moroni

POPULATION
671,247 (2005 est.)

SIZE
719 sq. mi. (1,862 sq. km)

LANGUAGES
French (official), Arabic (official), Shikomor

RELIGION
Sunni Muslim 98%, other 2%

NATIONAL OR ETHNIC COMPOSITION
Comorian 96.9%, French 0.33%, other (Swahili, Malagasy, Arabian) 2.77%

DATE OF INDEPENDENCE OR CREATION
July 6, 1975

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Each island has a unicameral legislature, which in turn has representation in the unicameral National Assembly of the Union

DATE OF THE CONSTITUTION
December 23, 2001

DATE OF LAST AMENDMENT
No amendment

The Comorian state, l'Union des Comores, is a parliamentary democracy. It has a federal constitution and a constitution for each of the three main islands.

The constitution is the fundamental law of the country. It guarantees the division of power among the executive, the legislative, and the judiciary, the latter independent of the executive and the legislative.

The federal constitution gives each island significant autonomy over its own financial management and administration. Nevertheless, the union government has supremacy when necessary and relevant. Recent legislation passed by the Assembly of the Union has given the union exclusive authority over matters such as religion, nationality, money, and immigration. The union and islands governments share competence over, among other, internal security, education, health, environment, agriculture, and tourism.

The preamble provides that Islam is a source of inspiration for the government of the union. Islam is thus a state religion, although the constitution states that everyone is equal in rights and duties regardless of religious affiliation.

There is no specific bill of rights within the constitution. However, the preamble guarantees some basic individual human rights such as the right to freedom, to security, and to information.

CONSTITUTIONAL HISTORY

Before French colonization in the middle of the 19th century, Bantu Africans populated the Comoros Islands. They were then invaded by Arab-Persians, followed by Madagascans. The three islands (Grande Comore, Anjouan, and Moheli) were a French protectorate from 1886 onward. In 1912, together with Mayotte, they became a French colony. In 1945, the islands obtained administrative autonomy and, in 1958, became a French overseas territory.

In 1974, Grande Comore, Anjouan, and Moheli opted for independence by referendum. Mayotte decided to remain French. On July 6, 1975, independence was proclaimed for the three Comorian islands. They became

the state of Comoros. The Federal Islamic Republic of the Comoros (République fédérale islamique des Comores) was created on October 1, 1978.

In 1997, the population of Anjouan and Moheli rose against the government and asked to be reattached to France. France found the request inadequate and refused.

After several peace conferences and coups d'états, a referendum aiming at ending the political and constitutional crisis was held on December 23, 2001. The referendum marked the formal approval of the new Comorian constitution.

FORM AND IMPACT OF THE CONSTITUTION

The Union of the Comoros has a written constitution, and each of the three islands has its own constitution. The issues concerning the division of powers between the union and the islands have been referred to legislation that was recently passed by the Assembly of the Union. In view of the current political situation, it is also likely that they might be totally changed at any time.

The constitution of the union is the highest law of the country. It takes precedence over any federal law, island constitution, or island law. A constitutional amendment is required before any international treaty provision can enter into force. After such amendment or ratification, the instrument enjoys immediate force and direct effect.

BASIC ORGANIZATIONAL STRUCTURE

The constitution of the union provides that four islands make up the republic: Anjouan, Grande Comore, Mayotte, and Mohéli. In reality, Mayotte remains French territory, and only the three other islands are economically, administratively, and politically part of the union.

The state is organized as a federation. Each island has its own constitution and its own administration headed by a president assisted by cabinet ministers. They are economically and administratively autonomous.

Matters related to religion, currency, external relations, defense, and national symbols are the exclusive responsibility of the union government. The island authorities can rule on any other matter provided that the union does not impose its veto. A veto can be imposed if it is anticipated that the proposed law will jeopardize the interest of the islands and/or the unity of the Union of the Comoros.

LEADING CONSTITUTIONAL PRINCIPLES

The Union of the Comoros is a parliamentary democracy. The constitution guarantees the divisions among the executive, the legislative, and the judiciary. Each of the three institutions has its own system of accountability. The judiciary's independence is guaranteed by the constitution.

The key principles defining the constitutional system are the following: All state bodies must be established by law and be based on democracy; they have to respect the principles of good governance; the Union of the Comoros is a republic; every island can freely administer its own affairs; Islam is a permanent source of inspiration for the government of the union and thus is the religion of the state; the presidency rotates among the islands; the president is elected in a one-round universal suffrage vote every four years; and no authority can limit freedom of movement or relocation or circulation of goods in the territory of the union.

CONSTITUTIONAL BODIES

Provision is made for six constitutional entities: the president, the Assembly of the Union, the Council of the Ulemas, the Economic and Social Council, the judiciary, and the Constitutional Court.

The President of the Union

The president is elected together with two vice presidents by direct universal suffrage for a period of four years. Every four years, the presidency rotates among the islands.

The president is the representative of the state in the international arena. The president is the head of the administration and nominates the cabinet ministers with the assistance of the vice presidents. The president promulgates the laws that have been voted by the Assembly of the Union and defines and leads the administration's policy.

Finally, the president has to present an annual report on the state of the union to the assembly, to the Constitutional Court, and to the assemblies and executives of the islands.

The Assembly of the Union

The assembly is the legislative organ of the union. It votes new laws, amends existing ones, and approves the state budget.

The assembly is composed of 33 delegates elected for five years. The population directly elects 18 of them, and the three island assemblies designate the 15 remaining delegates. The members of the island assemblies are elected by the population of each island.

The Lawmaking Process

Bills can be introduced by the president as well as by the delegates. Bills of laws and amendments introduced by delegates are not accepted if they lead to a diminution of the resources of the union or increase its public tasks.

Laws specified by the constitution as organic laws require a majority of two-thirds of all the members of the assembly. The same applies to financial laws.

The Council of the Ulemas (Le Conseil des Ulémas)

The Council of the Ulemas is one of the two consultative organs created by the constitution. It has the task of assisting the administration of the union and those of the islands on religious matters.

The Economic and Social Council

The Economic and Social Council assists the administration of the union and the islands in economic and social affairs.

The Judiciary

The judiciary is independent of the executive and the legislature. The president of the union, assisted by the High Council of the Magistracy (le Conseil Supérieur de la Magistrature), is responsible for the independence of the judiciary.

On criminal and administrative matters, the Supreme Court (Cour Suprême) is the highest judicial authority of the Comoros. No appeal exists against a decision of the Supreme Court. The Supreme Court also sits as a High Court of Justice (Haute Court de Justice) to try the head of state, a vice president, or any member of the administration in case of high treason.

The Constitutional Court

The Constitutional Court judges the constitutionality of the laws of the union and the islands. It also controls the election and referendum processes and hears electoral litigation. It is also the guardian of human rights, and any individual citizen can appeal to it.

THE ELECTION PROCESS

The constitution provides that all Comorians, male and female, aged 18 and above, who possess full civil and political rights are allowed to vote. All citizens aged 40 and above can be candidates in presidential elections, and those aged 30 and above can be candidates to be members of the Assembly of the Union, provided that they possess full civil and political rights.

POLITICAL PARTIES

The constitution guarantees the existence of a multiparty political system. All parties enjoy freedom of activity provided they respect the rules of democracy and national unity.

CITIZENSHIP

Anybody born to a Comorian parent enjoys Comorian nationality.

FUNDAMENTAL RIGHTS

The preamble of the constitution guarantees a number of fundamental rights and freedoms, especially civil and political rights such as freedom of expression and of association, and the right to a judicial defense. Economic and social rights such as the rights to education and health, to the security of investment, and to private property are also guaranteed.

Impact and Functions of Fundamental Rights

The constitution gives particular consideration to principles and rights contained in international instruments such as the United Nations Charter, the Organization of African Unity (OAU) Charter, the Covenant of the League of Arab States, the Universal Declaration of Human Rights, and the African Charter on Human and People's Rights. It also puts particular emphasis on instruments protecting the rights of the child.

Limitations to Fundamental Rights

The fundamental rights are subject to respect for morality and law and order and to abstention from any act that can be a nuisance to others.

ECONOMY

The constitution makes no specific provision for any economic system. Economic analysts have been reluctant to qualify the Comorian economy as a market economy. Moreover, the political and economic crisis the country is now undergoing does not allow any proper definition of its economic system.

RELIGIOUS COMMUNITIES

The constitution imposes Islam as the national religion, though not in so many words. The preamble states that the people of the Comoros wish to find in Islam the inspiration for the principles and rules governing the union; no other religion is mentioned by name. The constitution also provides for the Council of Ulemas to guide the union and island governments.

Another interesting point is that although the constitution recognizes many international instruments that guarantee freedom of religion, it does not provide for such freedom. Nevertheless, a Christian community is present in the country, and it practices Christianity without any hindrance.

MILITARY DEFENSE AND STATE OF EMERGENCY

External defense is under the authority of the union. The president of the union is the chief of the army and is responsible for the safety of the country against external attacks. Only men can be members of the armed forces.

AMENDMENTS TO THE CONSTITUTION

Only the president of the union and at least one-third of the assembly are allowed to submit changes to the constitution. An amendment is valid if it is approved by two-thirds of the members of the assembly and of the island assemblies or if it wins majority support in a referendum. No amendment proposing a change to the unity and inviolability of the borders of the union or to the autonomy of the islands is allowed.

The constitution will automatically be amended if Mayotte returns to the sovereignty of the Union of Comoros.

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Mohamed Sanaty

CONGO, DEMOCRATIC REPUBLIC OF THE

At-a-Glance

OFFICIAL NAME
Democratic Republic of the Congo

CAPITAL
Kinshasa

POPULATION
62,660,551 (July 2006 est.)

SIZE
905,400 sq. mi. (2,345,000 sq. km)

LANGUAGES
French (official), Tshiluba, Lingala, Kikongo, Swahili (national)

RELIGIONS
Roman Catholic 50%, Protestant 20%, Kimbanguist 10%, Muslim 10%, traditional beliefs 10%

NATIONAL OR ETHNIC COMPOSITION
Bantu (predominant group with about 300 subnational groups), Tutsi, and Pygmy (minorities)

DATE OF INDEPENDENCE OR CREATION
June 30, 1960

TYPE OF GOVERNMENT
Quasi-presidential

TYPE OF STATE
Quasi-federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 18, 2006

DATE OF LAST AMENDMENT
No amendment

During the inter-Congolese Dialogue (ICD) held in Sun City, South Africa, a 204-article constitution was adopted to govern the country during a 24-month transitional period. Based on the all-inclusive agreement signed in Pretoria on December 17, 2002, this constitution was promulgated on April 3, 2003.

The new constitution of the Democratic Republic of the Congo (DRC) was adopted by the transitional parliament on May 13, 2005, and approved by referendum on December 18–19, 2005. It came into force on its promulgation in January 2006. It provides that the Democratic Republic of the Congo is an independent, sovereign, united, indivisible, social, democratic, and secular state, based on the separation of the executive, legislative, and judicial powers, and respectful of human rights and fundamental freedoms. The president is the head of state and presides over the Council of Ministers despite that the prime minister is the head of the executive branch of government. The legislative power is vested in the Parliament, which consists of the National Assembly and the Senate. The Constitutional Court is the highest court in all constitutional matters.

The constitution enshrines the rights of all people in the country, including freedom of religion, and provides for a pluralistic system of political parties. The military is apolitical and subject to the civil government and to the rule of law. They cannot participate in elections either as voters or candidates. The economic system can be described as a social market economy.

CONSTITUTIONAL HISTORY

During the 1884–85 Berlin Conference on the Colonization of Africa, the Congo was allocated to Belgian king Leopold II. It became a Belgian colony in October 1908. The first fundamental law that governed was drafted by the Belgian government, adopted by the Belgian Parliament, and promulgated by the Belgian king even before the

Belgian Congo gained its independence on June 30, 1960. It established a parliamentary regime.

A 1965 coup d'état suspended the Luluabourg Constitution adopted by referendum in 1964 and inaugurated the Second Republic, under which the country was renamed Zaire, in 1971. On May 17, 1997, the country regained its original name, Democratic Republic of the Congo. In 1998, the Congo was confronted with yet another rebellion, aggravated by foreign aggression.

Internal and international pressure to end the conflict resulted in the signing of the Lusaka Agreement in 1999 under the aegis of the Southern African Development Community, the Organization of African Unity (now superseded by the African Union), and the United Nations. This agreement provided for an inter-Congolese dialogue to reconcile the people and leaders of the Congo and to reunite the country under a single government of national unity with a national and integrated army to guarantee the integrity of the country and secure its peoples.

The inter-Congolese Dialogue took place in Sun City, South Africa. The first round of talks in February-April 2002 resulted in an agreement which was rejected by some parties. On December 17, 2002, an all-inclusive agreement was reached in Pretoria, allowing for the inter-Congolese Dialogue to the reconvened in Sun City late in March 2003. The Pretoria Agreement was ratified and served as the basis for the interim constitution adopted on March 31 and promulgated on April 3, 2003. This agreement provided for the formation of a transitional government of national unity. Together with the interim constitution to which it was annexed, it became the basic law during the transition.

In its more than 40 years of independence, the Congo has known more than 32 constitutional documents. This sets a world record of one constitution for every 15 months.

Parliament adopted a new constitution on May 13, 2005. This constitution was approved by referendum held on December 18–19, 2005 and promulgated on February 18, 2006.

FORM AND IMPACT OF THE CONSTITUTION

The new Congolese constitution prevails over any other law or conduct. It is binding on all state organs and must be respected by all people in the republic. It is also entrenched in the sense that it cannot be easily amended.

BASIC ORGANIZATIONAL STRUCTURE

The Democratic Republic of the Congo is a unitary state made up of the capital city of Kinshasa and 25 provinces, which all enjoy legal personality. However, this provision will only come into operation within 36 months following the establishment of the political institutions set by the new constitution. Until then, the republic will consist of Kinshasa and 10 provinces, as provided by the previous constitutions. The capital is granted the status of a province and may be transferred to any other place of the republic by referendum. The provinces are subdivided into a number of entities, some of which are decentralized while some others are not.

The constitution provides for a division of competence between the republic and its provinces. There are areas of exclusive and shared competence. The provinces are administered by their own elected organs. They are also represented in the national administration through the Senate and enjoy a high level of autonomy. The constitution does not determine the nature of the state, whether federal or not. Nevertheless, the autonomy enjoyed by the provinces and the extent to which the central administration may still interfere with provincial matters lead to the argument that the Democratic Republic of the Congo has become a quasi-federal state.

LEADING CONSTITUTIONAL PRINCIPLES

The Congolese system is a quasi-presidential system defined by a number of leading principles: The Congo is a republic; a pluralist, independent, sovereign, united, indivisible, democratic, social, and secular state respectful of human rights, constitutionalism, and the rule of law. The constitution guarantees the independence of the judiciary. Sovereignty belongs to the people who exercise it through referendum and/or elections.

CONSTITUTIONAL BODIES

The constitutional bodies are the president, Parliament consisting of the National Assembly and the Senate, the cabinet, the courts and tribunals, and the Economic and Social Council. Out of the five institutions supporting democracy established under the interim constitution, the new constitution only retains the National Independent Electoral Commission and the High Authority of the Media and Communication. The other institutions are considered dissolved on the establishment of the new Parliament. Nevertheless, the latter may later establish new ones by organic law.

The President

The president is the head of state and represents the nation. He or she is the symbol of national unity and the guarantor of national independence, territorial integrity, sovereignty, and respect for the constitution, treaties, and other international agreements. The president is directly elected by universal adult suffrage for a five-year term renewable only once. He or she appoints the prime minister within and after consultation with the majority party in Parliament. The other members of the cabinet are appointed on a list presented by the prime minister. The

president is also the commander in chief of the armed forces and presides over the High Council of Defense.

The Cabinet or Administration

The cabinet consists of the prime minister, ministers, and vice ministers. It may include vice prime ministers and state or delegated ministers. It is led by the prime minister. The cabinet determines the policy of the nation after consulting the president. It is accountable to Parliament.

Parliament

The legislative authority of the republic is vested in Parliament, which is bicameral and consists of the National Assembly and the Senate.

The National Assembly

The National Assembly enacts laws and controls the administration, public enterprises, and public services. Its members are called deputies and represent the nation. They are elected on a direct and universal adult suffrage for a five-year term. They may be reelected and enjoy parliamentary immunities. They may not be prosecuted and/or arrested except in some circumstances and in the conditions prescribed by national legislation. The administration is accountable to Parliament, and both the president and the prime minister may be removed from office by the Constitutional Court seized by Parliament.

On the other hand, the National Assembly may be dissolved by the president after consulting the prime minister and the presidents of both the National Assembly and the Senate when there is a persisting crisis between the National Assembly and the administration or the cabinet. A deputy who resigns from the political party or grouping that nominated him/her during elections ceases to be a member of the National Assembly.

The Senate

The Senate is the second chamber of Parliament. Its members, the senators, are elected by the provincial assemblies for a five-year term, which is renewable. They represent their respective provinces although their mandate is a national one. Former elected presidents are senators for life.

The senators also enjoy parliamentary immunities. As for the deputies, any senator who resigns from the party or political grouping that nominated him or her during elections ceases to be a senator.

The Lawmaking Process

The National Assembly and the Senate constitute the legislative authority during the transition. They must adopt bills in identical terms. Otherwise, a joint commission must be set up to propose a single. If the disagreement persists, the National Assembly decides in the last instance. The president and the administration also participate in the lawmaking process.

The Judiciary

Justice is administered in the name of the people, but judicial decisions are enforced in the name of the president. Article 147 of the constitution provides for the independence of the judiciary. The judiciary is meant to guarantee individual freedoms and fundamental human rights. The judges are subject to the constitution, a special law determines their status.

Courts and tribunals that form the judiciary include the Constitutional Court, the Court of Cassation, the Council of State, the High Military Court, and other civil and military courts and tribunals. The offices of the public prosecutors also belong to the judiciary. The nine-member Constitutional Court is the judge of the constitutionality of laws and other acts having the force of law. It must decide on their conformity to the constitution before their promulgation by the president and may invalidate them in case of inconsistency with the constitution.

It is also competent to interpret the constitution and deals with disputes related to legislative and presidential elections and to referenda. The Constitutional Court is the criminal judge of the president and the prime minister in the conditions prescribed by national legislation.

THE ELECTION PROCESS

Sovereignty belongs to the people, who assume it directly through referendum or elections and indirectly through their representatives. Article 5 entitles all Congolese, male or female, over the age of 18 to stand for elections and vote in the elections.

POLITICAL PARTIES

Political pluralism is guaranteed. Political parties must respect the principles of pluralist democracy, national unity, and sovereignty. The constitution provides for public funding of electoral campaigns and other party activities. Political opposition is recognized. A law determines the rights and duties of the opposition. The creation of a single-party state is considered a crime of high treason.

CITIZENSHIP

A law determines the conditions of recognition, acquisition, loss, and resumption of Congolese citizenship, which cannot be retained concurrently with other citizenship. To address the problem that gave rise to the recent rebellions, the constitution confers the Congolese citizenship on anyone who belongs to any ethnic groups and nationalities that occupied the territory what became known as Democratic Republic of the Congo on independence.

FUNDAMENTAL RIGHTS

The preamble to the constitution refers to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and other United Nations and African Union instruments duly ratified by the Congo. Title II of the constitution enshrines individual and collective rights and duties. These rights are civil, political, social, cultural, individual, and even peoples' rights. The constitution also imposes a number of duties on Congolese citizens such as the duty prescribed by Article 63 to defend the nation and its territorial integrity and to oppose any individual or group who would seize power by force or assume it in violation of the constitution.

All national, provincial, local, and customary authorities are also bound to safeguard the unity of the republic and its territorial integrity. Failure to do so would constitute a crime of high treason.

Women's rights and the rights of the elderly and disabled persons are also entrenched in the constitution. The Bill of Rights in binding on all individuals and state organs.

Impact and Functions and Fundamental Rights

Human rights are at the heart of the constitution. Democracy and human rights are intertwined. The constitution was inspired by these principles and cannot be interpreted without reference to international human rights agreements.

Limitations to Fundamental Rights

There is no general limitation clause in the constitution, but rather specific limitations to specific rights. Rights may be limited only to protect the law, public order, and morals. On the other hand, fundamental rights may be suspended in circumstances such as during the declaration of a state of emergency or when the country is aggressed by a foreign power. However, even under these exceptional circumstances, some rights and fundamental principles cannot be derogated from.

These include the right to life; the right to appeal against a judicial decision and to be defended in court; the right to freedom of thought, conscience, and religion; the principle of legality of crimes and sentences; the interdiction of torture and other cruel, inhuman, and degrading treatments; and the prevention of slavery, servitude, and imprisonment for debts.

ECONOMY

A number of constitutional rights relate to the economy, namely the rights to freedom of movement and enterprise, equality before the law and equal protection of the law, freedom of association, and private property; the obligation of the state to encourage and secure private foreign or national investments; freedom to exercise art, trade, and industry; and prohibition on expropriation of private property, except in the public interest and in accordance with the law.

The Democratic Republic of the Congo is a "social" state that guarantees fundamental rights such as the right to work, protection against unemployment, equitable and satisfactory remuneration, education, health, and nondiscrimination against all people, including women. The Congolese system can be described as a social market economy, combining aspects of social responsibility with market economy.

RELIGIOUS COMMUNITIES

There is no state religion. The Democratic Republic of the Congo is a secular state respectful of all forms of thoughts and beliefs. The right to freedom of thought, conscience, and religion is guaranteed under the law, public order, and morals. A law determines the conditions for the creation of religious associations.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are distinguished from the police, who are responsible for public order. The armed forces must defend the territorial integrity of the country; participate in the economic, social, and cultural development; and protect persons and their properties, within the limits of the law.

The armed forces are subject to the civil authority and to the president, who is their supreme commandant. The organization of a private militia is a crime of high treason. Education, morality, and balanced representation of all the provinces are key criteria in the recruitment in the army. Any recruitment of persons under the age of 18 or participation by them in wars or armed conflicts is unconstitutional. The president of the republic may declare a state of emergency or siege after consulting the prime minister and the presidents of both the National Assembly and the Senate. He or she then addresses the nation.

The president may also declare war by a decree initiated by the cabinet as advised by the High Council of Defense and with the authorization of both the National Assembly and the Senate.

AMENDMENTS TO THE CONSTITUTION

The president, the National Assembly, the Senate, the cabinet, or at least 100,000 citizens through a petition ad-

dressed to one of the two chambers of Parliament may propose constitutional amendments. The National Assembly and the Senate must each decide on an absolute majority vote whether a proposed constitutional amendment is well founded. A constitutional amendment is final after its approval by referendum unless it has been ratified by a three-fifths majority of the National Assembly and the Senate during a joint session. No constitutional amendment may be decided during the state of war, siege, or emergency; when the presidency is vacant or when the National Assembly and the Senate are prevented from seating freely. No constitutional amendment is allowed if it changes the republican form of the state and the representative nature of the government; if it infringes the principle of universal suffrage, the independence of the judiciary, the plurality of political parties and unions; if it changes the number and duration of the terms of office of the president; or if it reduces the fundamental rights and freedoms or the powers vested in the provinces and decentralized territorial entities.

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André Mbata B. Mangu

CONGO, REPUBLIC OF THE

At-a-Glance

OFFICIAL NAME
Republic of the Congo

CAPITAL
Brazzaville

POPULATION
2,998,040 (2004 est.)

SIZE
132,000 sq. mi. (342,000 sq. km)

LANGUAGES
French (official), Lingala, Kikongo (national)

RELIGIONS
Roman Catholic 35%, other Christian (Protestant, Kimbanguist) 15%, Muslim 2%, traditional beliefs 48%

NATIONAL OR ETHNIC COMPOSITION
Bantu (15 principal groups, including Kongo, Téké, Vili, M'Bochi, and Sangha, and 70 subgroups), and Pygmy (minority group)

DATE OF INDEPENDENCE OR CREATION
August 15, 1960

TYPE OF GOVERNMENT
Presidential

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
Approved by referendum in January 20, 2002; entered into force in June 2002

DATE OF LAST AMENDMENT
No amendment

The Republic of the Congo is a unitary state with a presidential government based on the separation of the executive, legislative, and judicial powers. An elected president is the head of state and presides over the Council of Ministers. Parliament consists of the National Assembly and the Senate. The Constitutional Court decides on the constitutionality of any law in the republic. The Supreme Court of Justice is the highest court in all other matters.

In 1997, after overthrowing President Pascal Lissouba, who had been democratically elected in terms of the 1992 constitution, the former military and Marxist-Leninist leader General Sassou-Ngusesso set up a forum for national reconciliation, which proposed a new constitution. The latter was adopted by referendum in January 2002 and is now the supreme law of the republic. It provides that the Congo is a sovereign, indivisible, secular, social, and democratic state that guarantees the rights of all people in the country, including their right to religious freedom. It also establishes a pluralistic system of political parties. The economic system is a social market economy.

The civil service is apolitical. The military is subject to the civil government and the rule of law, although this principle has been regularly violated in the past.

CONSTITUTIONAL HISTORY

The Congo emerged from the Berlin conference of 1884–85 as a French colony. Its first constitution was adopted in 1959 under the French Community. The former French Middle Congo gained its independence from France on August 15, 1960, and became the Republic of the Congo.

The constitution established a parliamentary regime, which shortly fell apart after a series of "revolutions" or coups d'état (1963, 1968, 1977, 1979, and 1997). In 1991, the Congo abandoned its Marxist-Leninist stance

and one-party system. A national conference recommended the adoption of a pluralist and democratic constitution. This constitution was approved by referendum in 1992, paving the way for free and fair elections. It provided for a French-modeled semipresidential government. It was suspended in 1997 in still another coup. A forum of national reconciliation was then set up to discuss the nature and duration of the transition. A new constitution that emerged from this forum was approved by referendum on January 20, 2002. The last presidential, local, and legislative elections took place from March to July 2002.

FORM AND IMPACT OF THE CONSTITUTION

The Congolese constitution is a written, supreme, and entrenched constitution. It prevails over any other law in the republic. It is difficult to amend, as special majorities are required in the National Assembly and the Senate.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of the Congo is a unitary state made up of 10 regions dependent on the central government, plus the city of Brazzaville. These regions differ considerably from one another in area and population and have a degree of autonomy.

LEADING CONSTITUTIONAL PRINCIPLES

The Congo is a republic; it is a pluralist, unitary, social, secular, and democratic state respectful of human rights, constitutionalism, and the rule of law under a presidential system of government. The leading principle of the republic is "government of the people by the people and for the people." National sovereignty belongs only to the people, who exercise it through universal adult suffrage, by their elected representatives, or by referendum.

CONSTITUTIONAL BODIES

The constitutional bodies are the president; parliament, which consists of the National Assembly and the Senate, the Supreme Court; the Constitutional Court; the High Court of Justice; the Court of Accounts and Budgetary Discipline; the Economic and Social Council; the Council for Freedom of Communication; the Human Rights Commission; and the mediator of the republic.

The President

The president is elected by universal adult suffrage for a seven-year term that is renewable only once. The president is the head of state and of the administration and presides over the Council of Ministers. As the symbol of national unity, the president must ensure respect for the constitution and the regular functioning of public institutions. The president determines the policy of the nation and guarantees the continuity of the state, national independence, territorial integrity, and respect for international agreements. The president is the keystone and the leading institution of the republic.

There is no prime minister. The ministers are appointed by the president and accountable only to the president, who may dismiss them. They do not form an administration in the true sense of the word. They merely assist the president in the exercise of executive power.

Parliament

The legislative power is vested in parliament, which also controls the executive authority. Parliament consists of the National Assembly and the Senate. The president cannot dissolve parliament. On the other hand, the latter cannot remove the president from office.

The National Assembly

The National Assembly consists of deputies who represent the nation as a whole and are elected by universal adult suffrage for a five-year term. They may be reelected. Imperative mandate is prohibited. Their term of office may also end with death, resignation, incompatibility, or sentencing for criminal offense.

A deputy who resigns from the party or political grouping that nominated him or her during the election ceases to be a deputy. Only the National Assembly or the president may authorize a declaration of war.

The Senate

The Senate consists of senators elected for a six-year term by local councils. In addition to its legislative power, the Senate mediates political conflicts and serves as the adviser to the nation.

As with deputies, any senator who resigns from the party or political grouping that nominated him or her during the election ceases to be a senator.

The Lawmaking Process

The main task of parliament is to enact laws. Constitutional bodies such as the president and the Constitutional Court also take part in the lawmaking process. The president and the members of parliament may concurrently initiate legislation or amend it.

The National Assembly and the Senate must adopt bills in identical terms. Otherwise, the president may request a joint commission to propose a single text to be adopted by the two houses. This final text cannot be amended without presidential authorization. If the joint commission fails to adopt a consensual text, the president may, after a second deliberation by the National Assembly and the Senate, request the National Assembly to decide finally. The president may request parliament to vote a law authorizing the president to legislate by ordinance or decree to implement his or her program of action.

The Judiciary

Justice is administered in the name of the people. The constitution provides for the independence of the judiciary vis-à-vis the executive and the legislature, but the president guarantees this independence and presides over the High Council of the Judiciary.

The judicial power is vested in the Supreme Court and other courts or tribunals. A special law deals with their organization, composition, and functioning. The members of the Supreme Court and magistrates are nominated by the High Council of the Judiciary and appointed by the president.

The judiciary protects individual freedoms and fundamental human rights. Judges are subject to the law in performing their functions, and a law regulates their status.

THE ELECTION PROCESS

All power emanates from the people, who assume it directly through referenda or elections and indirectly through their representatives. Any Congolese citizen over the age of 18 may stand for election and vote in the election.

POLITICAL PARTIES

Title IV of the constitution deals with political parties. Parties must be national and not identify themselves with any ethnic group, region, religion, or belief. They must respect the principles of democracy, national unity, territorial integrity, and national sovereignty, and they must promote fundamental human rights. A law provides for the funding of political parties; foreign funding is outlawed.

CITIZENSHIP

Every Congolese is entitled to Congolese citizenship and may change his or her citizenship under the conditions determined by the law.

FUNDAMENTAL RIGHTS

Fundamental rights and freedoms are enshrined in the constitution, including civil, political, social, economic, and cultural rights. Women's rights, children's rights, and the rights of the elderly and disabled persons are also entrenched. Foreigners are entitled to the same rights and freedoms as nationals as applicable by treaties and laws on condition of reciprocity. Inspired by the African Charter on Human and Peoples' Rights, the constitution also provides for duties of the citizens.

Impact and Functions of Fundamental Rights

The Human Rights Commission is designed to protect and promote human rights and fundamental freedoms. The constitution also stresses that the judiciary is the guardian of the law and fundamental freedoms.

Limitations to Fundamental Rights

Fundamental rights are not absolute. They may be limited by law. There is no general limitation clause but rather internal limitations specific to each right. The limitations should be reasonable and subject to the law. Fundamental rights may be suspended in certain circumstances such as in a case of emergency.

ECONOMY

The constitution does not refer to any economic system, other than stating that the Republic of the Congo is a "social" state. Various explicit freedoms and rights demonstrate that the framers sought to establish a social market economy: freedom of movement, art, trade, and industry; right to private property and inheritance; freedom of association; and right to work, education, and health; nondiscrimination against all, including women and children, and prohibition of expropriation of private property except for public interests and in accordance with the law.

RELIGIOUS COMMUNITIES

There is no state religion; the Republic of the Congo is a secular state. Nevertheless, the constitution guarantees the right to freedom of thought, conscience, and religion. Use of religion for political purposes is outlawed.

MILITARY DEFENSE AND STATE OF EMERGENCY

The public force consists of the national police, gendarmerie, and armed forces. They are apolitical and subject

to civilian authority and to the rule of law. They cannot be used for personal interests. A law determines their organization and functioning and the status of their members. It is a breach of criminal law to organize or maintain a private militia, although the incumbent president used militias to return to power.

The president is the chief of the armed forces, also presiding over the Council of Defense. If there is a serious threat to the institutions of the republic, national independence, or territorial integrity, or when international agreements cannot be enforced, the president may take exceptional measures required by the circumstances or proclaim a state of emergency after consulting the presidents of the National Assembly, the Senate, and the Constitutional Court.

AMENDMENTS TO THE CONSTITUTION

The president and the members of parliament may initiate constitutional amendments. Amendments that affect the republican form of the state, its secular character, the terms of office of the president, and human rights are prohibited. An organic law deals with constitutional amendments. Before an amendment is submitted to a referendum or to the National Assembly and the Senate, in which a two-thirds vote is required for approval, the Constitutional Court must declare that the bill is consistent with the constitution.

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COSTA RICA

At-a-Glance

OFFICIAL NAME
Republic of Costa Rica

CAPITAL
San José

POPULATION
4,016,173 (2005 est.)

SIZE
19,730 sq. mi. (51,100 sq. km)

LANGUAGES
Spanish (official), with a southwestern Caribbean Creole dialect of English spoken around the Limon area

RELIGIONS
Catholic 69%, Protestant 18%, unaffiliated or other 13%

NATIONAL OR ETHNIC COMPOSITION
European and some mestizo 94%, African origin 3%, Chinese 1%, indigenous 1%, other 1%

DATE OF INDEPENDENCE OR CREATION
September 15, 1821

TYPE OF GOVERNMENT
Mix of presidentialism and parliamentarism

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 7, 1949

DATE OF LAST AMENDMENT
July 15, 2003

Costa Rica is a democratic republic with a mixed government system with elements of presidentialism and parliamentarism. According to the 1949 constitution, the executive power is exercised, on behalf of the people, by the president and the cabinet ministers. The 57 members of the unicameral Legislative Assembly are elected at the same time as the president for a term of four years. The Supreme Electoral Tribunal independently organizes and supervises all acts pertaining to suffrage. The main tasks of the Constitutional Chamber of the Supreme Court of Justice are to protect the fundamental rights established by the constitution and the international legal instruments ratified by Costa Rica and to ensure their full implementation. Costa Rica is divided into seven provinces, which are administered by governors.

The constitution provides for liberal rights as well as for social rights and guarantees. It establishes Roman Catholicism as the state religion but also secures freedom of religion. Costa Rica has no military and maintains only a nonconscripted civil guard with police duties.

CONSTITUTIONAL HISTORY

Christopher Columbus's last voyage to the "New World" in 1502 took him to the shores of Costa Rica (translated "rich coast"). Spanish settlement of Costa Rica started in 1522. Spain administered the region for nearly three centuries as part of the Captaincy General of Guatemala under a military governor. In 1821, the Central American provinces, Costa Rica, Guatemala, Honduras, Nicaragua, and El Salvador, declared independence from Spain and subsequently formed the Central American Federation. Costa Rica ratified its first constitution in 1825. In 1838, the Central American Federation was dissolved, and Costa Rica became a fully independent republic.

The 1871 constitution installed a powerful presidential regime in which the president of the republic concentrated in his hand the main functions of the state, and the congress played a secondary role.

The result of the 1948 presidential election was annulled when the government's candidate, who finished

second, refused to accept defeat. The subsequent revolt in favor of the winning oppositional candidate led to an interim regime. The Government Board convened a Constituent Assembly to promulgate a new constitution. The final text of the constitution of November 7, 1949, was the product of compromise among the main political players. It established the separation of powers among the legislative, executive, and judicial branches of government. The Supreme Electoral Tribunal is considered a fourth power. Since 1949, the constitution has been partially amended more than 50 times.

FORM AND IMPACT OF THE CONSTITUTION

Costa Rica has a written constitution, codified in a single document. The Constitución Politica de la República de Costa Rica of November 7, 1949, is the 10th constitution in the country's history.

International treaties play an important role in Costa Rican legislation since Article 7 of the constitution provides that treaties, international agreements, and concordats that have been ratified and approved by the Legislative Assembly are superior to national law. However, any international agreements that affect the territorial integrity or political organization of Costa Rica require the approval of the Legislative Assembly by a vote of not less than three-fourths of its total membership and the approval of two-thirds of the members of a Constitutional Assembly called for the purpose.

BASIC ORGANIZATIONAL STRUCTURE

Costa Rica is divided into seven provinces, which are administered by governors appointed by the president. However, most government agencies have their own administrative organization, which ignores provincial boundaries. Each province is divided into cantons, which again are subdivided into districts. Costa Rica held its first general mayoral election, whereby mayors were elected directly by the voters, in December 2002.

LEADING CONSTITUTIONAL PRINCIPLES

Costa Rica is a free and independent democratic republic. Its system of government is a mixture of presidentialism and parliamentarism with a strong system of constitutional checks and balances. The legislative, executive, and judicial branches are distinct and independent; none of these branches may delegate the exercise of its own functions. Public officials are mere depositaries of authority and must take an oath to observe and comply with the constitution and the laws.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the Costa Rican constitution are the Legislative Assembly, the president, and the cabinet of ministers. The Supreme Electoral Tribunal and the Office of the Comptroller-General also play important roles.

THE LEGISLATIVE ASSEMBLY

The legislature is the unicameral Legislative Assembly with 57 representatives who represent the whole nation but are elected at provincial level at the same time as the president. The legislature has six standing committees—government and administration, economic affairs, budgetary matters, social affairs, legal affairs, agriculture and natural resources—which are responsible for evaluating proposed laws. The Legislative Assembly has the power to question cabinet ministers and censure them if they are guilty of unconstitutional acts or serious errors. In 1992, the legislature created the Office of the Ombudsperson, which may take cases against the government either on its own initiative or at the request of any third party.

The Lawmaking Process

The initiative for enactment of laws can be taken by any member of the Legislative Assembly or by the executive branch through the cabinet ministers. In order to become a law, any bill of law must be subjected to two debates, obtain the approval of the Legislative Assembly and the sanction of the executive branch, and be published in the *Official Journal*. The Legislative Assembly may also delegate the consideration and passing of bills to permanent commissions, which must reflect on a proportional basis the number of representatives of the constituent political parties.

The President and Cabinet Ministers

The executive power is exercised, on behalf of the people, by the president of the republic and the cabinet ministers in the capacity of subordinate collaborators. The president and the two vice presidents are elected by popular vote; in case no candidate obtains 40 percent of the votes, a second ballot is held. The president may appoint and remove the cabinet ministers.

The Supreme Electoral Tribunal

The organization, direction, and supervision of acts pertaining to suffrage are the exclusive function of the Supreme Electoral Tribunal, which enjoys independence in the performance of its duties. The members of the

Supreme Electoral Tribunal are appointed by the Supreme Court of Justice by a vote of no less than two-thirds of its members.

The Office of the Comptroller-General

The constitutional body in charge of the oversight of public finances is the Office of the Comptroller-General of the republic. This office is an auxiliary to the Legislative Assembly, but it enjoys full functional and administrative independence in the performance of its duties.

The Judiciary

The legal system is based on the Spanish civil-law system. Legislative acts are subject to judicial review by the Supreme Court of Justice. The justices are elected for renewable eight-year terms by the Legislative Assembly.

A Constitutional Chamber of the Supreme Court was established in 1989 in order to guarantee, by means of habeas corpus and *amparo,* the rights and freedoms enshrined in the constitution and the human rights recognized in international law that are in force in Costa Rica. It also monitors the constitutionality of all laws and acts subject to public law. The Constitutional Chamber rules on its own jurisdiction so that constitutional matters are not decided by other courts and that jurisprudence maintains sufficient consistency to safeguard the principle of prompt recourse.

Costa Rica became the first nation to recognize the jurisdiction of the Inter-American Human Rights Court, based in Costa Rica's capital city, San José.

THE ELECTION PROCESS

Costa Rican citizens of at least 18 years of age are eligible to vote. In April 2003, the Supreme Court annulled a constitutional amendment barring presidents from running for reelection enacted by the Legislative Assembly in 1969. Thus former presidents of Costa Rica may run for reelection after they have been out of office for two presidential terms.

POLITICAL PARTIES

An important element introduced by the 1949 constitution was the constitutionalization of political parties. All citizens have the right to organize themselves into parties in order to participate in national politics, provided that such parties have committed themselves in their programs to respect the constitutional order of the republic. In addition, the Electoral Code gives parties a monopoly in nominating candidates for elective positions.

Since the mid-20th century, Costa Rica has had a stable democratic government. The fairness of national elections has been indicated by the fact that almost every four-year period has seen a change in the party winning the presidency. At the 2002 elections, the two main political parties, Social Christian Unity Party (PUSC) and National Liberation Party (PLN), were challenged by the recently formed Citizen Action Party (PAC).

CITIZENSHIP

Costa Rican citizenship may be acquired either by birth or by naturalization. Citizenship by birth includes children born within the territory of the republic to a Costa Rican father or mother as well as children born abroad to a Costa Rican–born father or mother upon registration in the civil register. Children born in Costa Rica to foreign parents and infants of unknown parents who are found in Costa Rica are also Costa Rican by birth. The conditions to become a Costa Rican by naturalization are easier to fulfill for nationals of Central America, Spaniards, and Iberian Americans than for other foreigners.

FUNDAMENTAL RIGHTS

The constitution establishes the basic rights of all persons, without discrimination on grounds of sex, race, national or family origin, language, religion, or political opinion. The right to life is guaranteed, and the death penalty does not exist in the Costa Rican legal system. The constitution also provides for social rights, such as labor as a right of the individual and an obligation to society. Freedom of education and training and due process are guaranteed. Every person also has the right to a healthy and ecologically balanced environment and is therefore entitled to denounce any acts that may infringe this right and claim redress for the damage caused.

Every person has the right to present writs of habeas corpus to guarantee his or her freedom and personal integrity and writs of *amparo* to maintain or reestablish the enjoyment of other rights conferred by the constitution, as well as those of fundamental nature established in international human rights instruments, provided that they are enforceable in Costa Rica.

Impact and Function of Fundamental Rights

While freedom of expression is guaranteed in principle, members of the clergy or secular individuals cannot make political propaganda in any way invoking religious motives or making use of religious beliefs. The Inter-American Court of Human Rights found in July 2004 that the criminal defamation sentence against the Costa Rican journalist Mauricio Herrera Ulloa violated the right to freedom of thought and expression according to Article 13 of the American Convention on Human Rights.

Limitations to Fundamental Rights

Some fundamental rights are limited by law such as the right to freedom of communication. For reasons of public necessity, the Legislative Assembly can impose limitations related to social interest on property.

ECONOMY

The constitution protects the right to private property. However, domestic and foreign property owners have had difficulty in obtaining adequate, timely compensation for lands expropriated for national parks and other purposes. Furthermore, the law grants substantial rights to squatters who invade uncultivated land, regardless of who may hold title to the property.

RELIGIOUS COMMUNITIES

The constitution establishes the Roman Catholic and apostolic religion as the state religion but also provides for freedom of religion. Persons of all denominations freely practice their religion without government interference. In the event of a violation of religious freedom, the victim's remedy is to file a lawsuit with the Constitutional Chamber of the Supreme Court of Justice.

The government does not inhibit the establishment of religious groups through taxation or special licensing requirements. Although religious groups are not required to register as such with the government, all groups must incorporate in order to have legal standing and must have a minimum of 12 members. Religious groups must register with the Department of Justice to conduct any type of fundraising activity.

MILITARY DEFENSE AND STATE OF EMERGENCY

Article 12 of the constitution abolishes the army as a permanent institution. Military forces may only be organized under an international agreement or for the national defense. In either case, they must always be subordinate to the civil power and may not deliberate or make political statements or representations individually or collectively. Costa Rica maintains a nonconscripted civil guard that has police duties. In addition, a professional coast guard was established in 2000.

The constitution provides for three kinds of states of emergency: suspension of constitutional rights and guarantees, authorization to declare a state of national defense and to make peace, and the right to control sections of the budget during periods of legislative recess. The suspension of constitutional rights and guarantees may last a maximum of only 30 days and requires the approval of not less than two-thirds of all members of the Legislative Assembly.

AMENDMENTS TO THE CONSTITUTION

A general amendment to the constitution can only be made by a Constituent Assembly called for this purpose. A law calling such assembly needs a vote of no less than two-thirds of the total membership of the Legislative Assembly but does not require the approval of the executive branch. The Legislative Assembly may also partially amend the constitution in strict compliance with the provisions of Article 195. There have been more than 50 partial amendments to the Costa Rican constitution since it entered into force in 1949.

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Michael Wiener

CÔTE D’IVOIRE

At-a-Glance

OFFICIAL NAME
Republic of Côte d’Ivoire

CAPITAL
Yamoussoukro (official); Abidjan (de facto)

POPULATION
18,100,000 (2003 est.)

SIZE
124,500 sq. mi. (322,500 sq. km)

LANGUAGES
French (official language), five principal native language groups

RELIGIONS
Muslim 35–40%; Christian (Catholic, Protestant, and other) 25–35%; indigenous beliefs 10–20%

NATIONAL OR ETHNIC COMPOSITION
More than 60 ethnic groups in five principal divisions: Akan, Krou, Southern Mande, Northern Mande, Senoufo/Lobi; more than 5 million non-Ivoirian Africans (many from Burkina Faso); 100,000 Lebanese, 20,000 French

DATE OF INDEPENDENCE OR CREATION
August 7, 1960 (from France)

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 24, 2000

DATE OF LAST AMENDMENT
No amendment

The Republic of Côte d’Ivoire is a presidential democracy. It is a secular, unitary state made up of 58 departments. The constitution adopted in 2000 provides for a separation of the legislative, executive, and judicial powers. A multiparty system is officially recognized. The president is the dominant figure in Côte d’Ivoire’s constitution: the head of state, head of the executive, and commander in chief of the armed forces. The constitution enumerates many fundamental freedoms and rights that the authorities have to protect. The Constitutional Council has jurisdiction over constitutional disputes.

Côte d’Ivoire was unstable in the early years of the 21st century. It was unclear whether or how national reconciliation could succeed.

CONSTITUTIONAL HISTORY

French missionaries landed in what is now Côte d’Ivoire in the early 17th century. In the 19th century, the territories of local kings were placed under a French protectorate. In 1893, Côte d’Ivoire officially became a French colony. The country became independent on August 7, 1960. The country’s first constitution also dates to that year.

Under its first president, Félix Houphouët-Boigny who ruled the country until 1993, Côte d’Ivoire was stable. On Christmas Eve 1999, his successor was overthrown in a military coup. In a referendum in 2000, a new constitution was adopted. Shortly afterward, presidential elections took place; General Guei stopped the counting and declared himself winner. After bloody fighting, he had to flee the country, and his opponent, Gbagbo, was declared president.

A coup attempt in January 2001 failed, but another one in 2002 turned into a prolonged rebellion. The northern part of the country split off and has been controlled by the Patriotic Movement of Côte d’Ivoire ever since. A government of national reconciliation was formed in 2002. However, new fighting occurred at the end of 2004. Peacekeeping missions, the United Nations Operation in Côte d’Ivoire (UNOCI), were deployed to the country from the United Nations as well as peacekeeping missions from the Economic Community of West African States (ECOWAS).

FORM AND IMPACT OF THE CONSTITUTION

The constitution adopted in 2000 has only limited impact. This is due to the ongoing division of the republic into northern and southern segments since the 2002 rebellion and the lack of stability.

The constitution of Côte d'Ivoire is one single document with 133 articles. International treaties, after being ratified and officially published in Côte d'Ivoire, take precedence over national laws. However, ratification of international treaties that are contrary to the relevant provisions of the constitution may take place only after the constitution is amended.

BASIC ORGANIZATIONAL STRUCTURE

The country has a centralist structure. It is divided into 19 regions and 58 departments. At the moment, the official state authorities control only about half of the country.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution provides for a presidential democracy within the framework of division of powers. The people participate in politics by way of referendum and through elections.

According to the constitution, Côte d'Ivoire is a secular, democratic, and social state. Equality of all before the law is to be ensured by the authorities. The constitution also speaks of ethnic, cultural, and religious diversity. The country shall be one and indivisible. The national motto is "Union, Discipline, and Work."

The promotion of regional and subregional integration, with a view to achieving African unity, is one of the commitments listed in the constitution.

CONSTITUTIONAL BODIES

Major constitutional organs are the president of the republic, the executive government, the National Assembly, and the judiciary.

The President of the Republic

The president of the republic is the head of state as well as head of the executive. The president determines the politics of the nation.

The president appoints and dismisses the prime minister and, upon the prime minister's advice, the other members of the executive government. The president also appoints other high civil and military officials. Together with the parliament, the president plays a strong role in the creation of new law. The president of the republic commands the armed forces. The president is elected for a five-year term by the people with the possibility of one reelection.

The Executive Government

The executive government is headed by the prime minister, who is appointed by the president of the republic, as are the cabinet ministers on the advice of the prime minister. The prime minister holds personal responsibility before the president of the republic.

The National Assembly (Assemblée Nationale)

The 225 members of this unicameral parliament are elected for a five-year term through universal suffrage. The National Assembly holds ordinary sessions twice a year. Extraordinary sessions can be held upon request of the president of the republic or the absolute majority of the members of the National Assembly. The mandate of members of parliament is renewable. Each member of parliament is supposed to represent the whole people. The National Assembly of Côte d'Ivoire has the authority to declare a state of war.

The Lawmaking Process

The president of the republic and the members of parliament have the right to initiate legislation. In practice, the president dominates that function. The president has to promulgate a law within 15 days after its transmission from parliament. If the president fails to do so in the given time, the Constitutional Council can declare a law executable. However, the president may call for a second reading of the law. If a two-thirds majority in parliament votes for the draft law in the second reading, the presidential refusal is overridden. Regular laws may be submitted to the Constitutional Council in order to check their compliance with the constitution. Organic law—the law regulating the structure and system of constitutional organs or other law defined as organic by the constitution—must be submitted to the Constitutional Council before promulgation for a ruling on constitutionality.

The constitution provides for an alternative way of creating new law. The president can submit a bill to a national referendum on any question. In case of approval, the president promulgates the law within the 15-day period.

The Judiciary

The legal system is based on French law as well as on customary law. The judiciary is supposed to be independent from the executive and legislative powers. Apart from

ordinary jurisdiction with the Supreme Court as highest instance, there is also a Higher Court of Justice. It exclusively deals with crimes committed by cabinet members and high treason by the president of the republic.

Another institution, the Constitutional Council, has to decide whether laws are in accordance with the constitution. Some of its members are selected by the president, others by parliament.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The people can participate politically in referendums and elections.

Côte d'Ivoire has universal suffrage for all Ivoirians. The minimal voting age is 18. To be eligible as president of the republic, a candidate has to be between 40 and 75 years of age, Ivoirian by birth, and of Ivoirian descent.

The 225 members of the National Assembly are elected for five-year terms from single-seat constituencies. According to the 2000 Electoral Code, only Ivoirians who have been citizens of the country for at least 10 years and have reached 25 years of age are eligible to serve in the National Assembly.

POLITICAL PARTIES

Côte d'Ivoire has had a pluralistic party system since 1990. There are a few large and numerous smaller parties. Opposition parties boycotted recent major elections. The constitution bars regional, denominational, tribal, ethnic, or racially based parties.

CITIZENSHIP

The concept of *Ivoirity* has been widely discussed since the mid-1990s. *Ivoirity* is described as a set of sociohistorical, geographical, and linguistic data that determine whether a person is an Ivoirian. Such a person is supposed to be born of Ivoirian parents of one of the ethnic groups of Côte d'Ivoire. Because a very high percentage of non-Ivoirians live in the country, the question of who is entitled to citizenship and is eligible to stand for office has been a top political issue for more than a decade.

FUNDAMENTAL RIGHTS

Fundamental freedoms and the rights and duties of the citizen are enumerated in the first title of the constitution. The traditional set of liberal rights is guaranteed. The individual is regarded as sacred and enjoys many rights that the authorities must protect. Ivoirian citizens have the duty to respect the laws and regulations of the republic, to respect public assets, and to protect the environment.

Impact and Functions of Fundamental Rights

The actual impact of the fundamental rights specified in the constitution is very limited. The country is split into a rebel-held north and a south run by the government. The peace process has been fragile over the past years. Torture and summary executions have been reported. Military actions have included alarming attacks against civilians. Violence first broke out between indigenous groups and outsiders and later was aimed at the French in particular and non-African residents in general.

Limitations to Fundamental Rights

The fundamental rights are not unlimited. For instance, deprivation of property may be done for public benefit with compensation. Restrictions to the inviolability of a person's home may be introduced by special law.

ECONOMY

The constitution of Côte d'Ivoire does not favor any specific economic system. However, certain rights set the economic framework. Thus, the right to join trade unions and the right to strike are guaranteed. Every citizen is allowed to engage in free enterprise. Special laws may provide limits to these rights.

RELIGIOUS COMMUNITIES

The republic of Côte d'Ivoire is a secular country. Freedom of all religious opinions is be guaranteed. These provisions reflect the religious reality, as both the Christian (in the south) and Muslim (in the north) religions are widespread, and neither dominates the country.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is supreme commander of the armed forces and appoints high military personnel. Therefore, the president has a strong position during a state of emergency.

A state of emergency can be decreed at a meeting of the executive government, but it can be prolonged beyond a period of 15 days only with the prior consent of the National Assembly.

AMENDMENTS TO THE CONSTITUTION

A revision of the constitution may be initiated conjointly by the president of the republic and the National Assem-

bly. In most cases, a four-fifths majority of the parliament is required to pass an amendment. In cases of changes that affect the election of the president or the presidential mandate, the proposed revision must be approved in a referendum by an absolute majority of votes cast. No amendment can change the republican or secular form of the state or its territorial integrity.

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Hartmut Rank

CROATIA

At-a-Glance

OFFICIAL NAME
Republic of Croatia

CAPITAL
Zagreb

POPULATION
4,496,869 (July 2004 est.)

SIZE
21,831 sq. mi. (56,542 sq. km)

LANGUAGE
Croatian

NATIONAL OR ETHNIC COMPOSITION
Croat 89.6%, Serb 4.5%, Bosniak 0.5%, Hungarian 0.4%, Slovene 0.3%, Czech 0.2%, Roma 0.2%, Albanian 0.1%, Montenegrin 0.1%, other 4.1% (2001)

DATE OF INDEPENDENCE OR CREATION
June 25, 1991 (from Yugoslavia)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 21, 1990

DATE OF LAST AMENDMENT
March 26, 2001

Croatia is a new parliamentary democracy in the process of transitioning toward realization of the rule of law. There is a separation of executive, legislative, and judicial powers. Croatia is a unitary state divided into 21 counties and the capital. There are also local government units. The constitution provides for far-reaching guarantees of human rights and specifically the rights of ethnic minorities. A system of institutions protects against violations of the constitution, including a rather strong constitutional court, an ombudsperson, and an independent judiciary. The constitution is still in the process of implementation, and the rule of law has gradually strengthened during the last decade.

The governmental organization was substantially changed in 2000 and 2001 when the former semipresidential system was replaced by a parliamentary one. The president of the republic is elected directly and participates in important decisions of the government. The prime minister is the central political figure and depends on the confidence of parliament as the representative body of the people. Free, equal, general, and direct elections of the members of parliament are guaranteed. Political parties dominate the political system and sometimes tend to disregard the constitution.

The economic system can be described as transitioning into a market economy. The military is subject to the civil government in terms of law and fact. "Love for peace" is considered one of the fundamental values of the constitution. Religious freedom is guaranteed. State and religious communities are separated.

CONSTITUTIONAL HISTORY

Since the 12th century, Croatia has lived as a part of various compound states in which it struggled to maintain its independence; it was attached to Hungary (1102), the Habsburg monarchy (1527), the Austro-Hungarian Empire (1867), the Kingdom of Yugoslavia (1918), and the Yugoslav federation (1945–91). For many years, large parts of the country were occupied by the Turks, and a military frontier existed along the border with the Ottoman Empire.

In 1945, the communist federation of Yugoslavia was established in order to accommodate a number of nationalities, several of which have at times formed their own nation-states. The 1974 constitution attempted to maintain unity in a confederal constitutional arrange-

ment and to ensure equality to the six republics and two autonomous provinces. This system did not perform well, and together with the collapse of the communist regime, the federation disintegrated in 1991. Croatia defended its independence in the Homeland War against Serbia from 1991 to 1995. It received international recognition on January 15, 1991.

The framers of the 1990 constitution attempted to ensure a peaceful transition to a pluralist political system, rule of law, and a free market economy. During the war and a state of emergency that lasted until 1997, a highly centralized system of presidential dominance developed. This system required constitutional changes after the first change of governmental parties, which occurred in 2000. Parliamentary government was established in order to prevent another such centralization of power. The bicameral system was abandoned in 2001 with the aim of strengthening the position of parliament in relation to the executive. The Republic of Croatia has been a candidate for membership in the European Union since 2004.

FORM AND IMPACT OF THE CONSTITUTION

The 1990 constitution was amended in 1997, 2000, and 2001, and the integral text was published in April 2001. The implementation of the constitution is under way, but it can be qualified as transitional since changes related to the expected membership in the European Union and in the North Atlantic Treaty Organization (NATO) have been under consideration. International law is an integral part of the domestic legal system, even dominant over domestic legislation. Legislation must continually be adjusted to European law.

BASIC ORGANIZATIONAL STRUCTURE

Croatia is a unitary and centralist state. Local government is guaranteed. It is based on 21 counties and more than 400 municipalities and townships. Reform of this system is under consideration.

LEADING CONSTITUTIONAL PRINCIPLES

Certain values are enumerated in the constitution as fundamental and provide a basis for its interpretation: freedom, equal rights, national equality, equality of genders, love of peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law, and a democratic multiparty system.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president, the cabinet of administration, parliament, the Constitutional Court, and the judiciary.

The President of the Republic

The president of the republic represents Croatia at home and abroad. The president also is responsible for the regular and harmonious functioning of the state and its stability. The president is responsible for the defense of the independence and territorial integrity of the republic.

The president is elected directly by the people for a five-year term and can be reelected only once. In order to reduce the role of the president, the prime minister and not the president is the head of government.

The Cabinet

The cabinet is appointed by, and responsible to, the parliamentary majority. The prime minister has the authority to set the administration's policy. In three important areas, the cabinet needs the countersignature of the president of the republic: emergency measures, foreign policy, and control of the security services and the military.

Sabor (Parliament)

The Sabor is a representative body of the people vested with the legislative power. It monitors the executive and can dismiss the cabinet after a vote of no confidence.

Representatives are elected in general, direct, free, equal, and secret balloting. Croatian citizens who live abroad participate in elections. Proportional representation is applied.

The Lawmaking Process

Bills are generally initiated by the cabinet. Legislation related to human rights, elections, state organization, and local government must be passed by the majority of all members of parliament, laws related to ethnic minorities by a two-thirds majority of all representatives.

The Constitutional Court

The Constitutional Court is a fourth branch of government separate from the judiciary. It rules on the constitutionality of legislation and offers protection to individual constitutional rights. The court supervises elections and referenda and rules on the impeachment of the president of the republic for violations of the constitution. It consists of 13 justices elected by parliament for a term of eight years. Justices may be reelected.

The independence of the justices is guaranteed and respected. The court has established and continues to strengthen its role as a watchdog of democracy. Its best-known decision was a 1998 ruling that a reduction of

retirement allowances during a state of emergency was unconstitutional. By hearing individual constitutional appeals, the court plays an important role in establishing respect for human rights.

The Judiciary

The judicial power is autonomous and independent. Judges are appointed for life by the State Council of Judiciary. The judiciary has an enormous backlog of cases and is generally considered to be inefficient. It is undergoing serious reconstruction.

The Supreme Court is the highest court; it is expected to ensure uniform application of laws and equal justice to all. The president of the Supreme Court is appointed for a four-year term by parliament at the nomination of the president of the republic on the recommendation of the sitting justices.

THE ELECTION PROCESS

All Croatian citizens over the age of 18 have the right to stand for elections and to vote. Proportional representation is used in both parliamentary and local elections. The president is elected by a majority of voters, in two rounds of balloting if necessary.

POLITICAL PARTIES

Political parties are easy to establish and are numerous. They dominate public life. A political party can be banned by a decision of the Constitutional Court for acting against democratic constitutional order.

CITIZENSHIP

Croatian citizenship is primarily acquired on the basis of place of birth in Croatia. It can also be obtained by naturalization. A great number of Croatian nationals living abroad bear dual citizenship and participate in Croatian elections.

FUNDAMENTAL RIGHTS

The first chapter of the constitution defines human rights. In addition to the traditional set of human rights and civil liberties, it includes a set of social and economic rights, as well as strong, explicit guarantees of the rights of ethnic minorities. Rights pertain to the relationships between citizens and government and between citizens themselves.

The provisions on human rights are binding on the legislature and other branches of government. Legislation concerning human rights requires the approval of a majority of all representatives. Constitutional law relating to the rights of ethnic minorities must be passed by a two-thirds majority. Article 20 provides that anyone who violates human rights and fundamental freedoms shall be held personally responsible and may not be exculpated by the invocation of a superior order.

The people's ombudsperson is authorized to provide extrajudicial protection of human rights.

Impact and Functions of Human Rights

Thanks in part to international attention, human rights and freedoms have been the focus of the struggle to develop and promote the rule of law in Croatia. Generally, it can be said that public awareness of the importance of human rights has risen continuously since the end of the war in 1995. The initially precarious situation has improved under strict monitoring by international organizations, such as the Organization for Security and Cooperation in Europe and the European Union.

Limitations to Fundamental Rights

Freedoms and rights may only be restricted by law and only to protect the freedoms and rights of others, public order, public morality, or health. Every restriction must be proportional to the need for it.

ECONOMY

The constitution, at length, specifies the basic principles of a market economy in order to facilitate a smooth transition to that system. Among these principles are freedom of property, market freedoms, the freedom of occupation and profession, the right to form associations such as trade unions and employer associations, and a prohibition of the abuse of monopolies.

Other principles are aimed at speeding up the development of markets. The rights acquired through the investment of capital cannot be diminished by law or by any other legal act. Foreign investors are guaranteed free transfer and repatriation of profits and of the capital invested.

The republic, declared a social state, is expected to promote the public welfare. Specific social rights, such as the right to work and the right to just remuneration, are also included in Croatian law by virtue of the European Social Charter, which Croatia has signed. Social responsibility is expected to work in combination with market freedom.

In general, the Croatian economic system may be defined as a transitional economy, rapidly developing toward a free market economy, but needing to develop proper instruments of social responsibility that work with market freedoms, as required by the constitution.

RELIGIOUS COMMUNITIES

Freedom of religion and belief includes the equality of religious communities in the country. There is no state religion, but there is a Catholic majority, through whom the Catholic Church has some influence. The constitution demands that public authorities remain strictly neutral in their relations with religious communities and treat them equally.

The importance of religious equality stems from the fact that the most important ethnic minorities are not Catholic. All the communities regulate and administer their affairs independently within the limits of the relevant laws. Religious schools are permitted and assisted by the state.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces protect the sovereignty, independence, and territorial integrity of the republic. They may act beyond Croatia's borders only with a prior decision of parliament, except when performing maneuvers within international defense organizations or when offering humanitarian aid. In case of an emergency, the armed forces may be used to assist the police and other governmental bodies.

During a state of war, the president of the republic may issue decrees with the force of law within the bounds of authority obtained from parliament. If parliament is not in session, the president is authorized to regulate all the issues required by the state of war through decrees with the force of law. In cases of emergency apart from war, the president may, at the proposal of the prime minister and with the countersignature of the prime minister, issue decrees with the force of law.

Not even in the case of an immediate threat to the existence of the state may restrictions be imposed on the application of constitutional provisions concerning the right to life, prohibition of torture, and cruel or degrading treatment or punishment; on the legal definitions of penal offenses and punishments; or on freedom of thought, conscience, and religion.

Parliament exercises civil control over the military and security services. The people's ombudsperson is also authorized to oversee their activities.

Conscientious objection is guaranteed. Croatian conscripts have increasingly tended to request alternative civilian service in social institutions.

AMENDMENTS TO THE CONSTITUTION

The constitution is relatively easy to change. Amendments may be proposed by at least one-fifth of the members of parliament, the president of the republic, or the cabinet. Parliament decides by a majority vote of all the representatives whether to start proceedings. Draft amendments are first approved by a majority vote of all members. Decision to amend the constitution is then made by a two-thirds majority vote of all the members, whereupon the amendment is promulgated by parliament.

Certain aspects of the constitution cannot be amended. Any act that might lead to the renewal of a South Slav state community or of any other Balkan state is explicitly prohibited.

Any other international alliances are also specially regulated. They may be initiated by one-third of the members of parliament, the president of the republic, or the cabinet. They must be first approved by a two-thirds majority vote of all the representatives and ratified in a referendum by a majority vote of the total number of electors in the state.

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Branko Smerdel

CUBA

At-a-Glance

OFFICIAL NAME
Republic of Cuba

CAPITAL
Havana

POPULATION
11,308,764 (July 2004 est.)

SIZE
42,803 sq. mi. (110,860 sq. km)

LANGUAGES
Spanish

RELIGIONS
Non-Catholic, Santeria, and other mixed communities; Roman Catholic; Protestant; Jehovah's Witnesses, Jewish

NATIONAL OR ETHNIC COMPOSITION
Mixed race 51%, white 30%, Afro 18%, Chinese 1%

DATE OF INDEPENDENCE OR CREATION
May 20, 1902
January 1, 1959 (Day of the Revolution's Victory)

TYPE OF GOVERNMENT
State socialism

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
February 24, 1976

DATE OF LAST AMENDMENT
June 26, 2002 (Agreement V-74)

The Republic of Cuba is a socialist state with a Soviet-style popular democracy based on the principle of legality. It has a unitary government in which the legislative power formally dominates, by constitutional rules, the executive and judicial branches. Organized as a unitary state, Cuba has a strong central government without local autonomy. The economic system is organized on socialist principles of state control.

The head of state is the president of the Council of State, who by the constitution is also the president of the Council of Ministers. The sole president since 1976, when the current constitution was adopted, has been Fidel Castro, who is also first secretary of the Communist Party. The president proposes the members of the Council of Ministers, and the National Assembly of People's Power approves them.

Since changes to the constitution were approved in 1992, free, equal, general, and direct elections of the members of National Assembly of People's Power are guaranteed by the constitution. Candidates are not required to belong to the Communist Party in order to be nominated; however, the election process is closely supervised by the party. Candidates to the Municipal Assembly are proposed directly by the people. The candidates to the other representative organs are proposed by the candidatures commissions, made up of members of the mass organizations, such as the Committees for the Defense of the Revolution, neighborhood committees that enroll most of the adult population.

Religious freedom is guaranteed by the constitution; the state and religious communities are declared to be separated. Clerics may be elected as deputies to the National Assembly of People's Power or as delegates to the other representative organs.

The members of the military can both vote and run for office in general elections. They are considered the same as the people and serve according to the constitution in order to preserve peace. The constitution states that the National Assembly of People's Power can declare war only if the nation is attacked.

CONSTITUTIONAL HISTORY

Before 1492, the island was populated by indigenous people, who were almost exterminated within a few years after Christopher Columbus arrived. In 1868, Cuba declared war against Spain, initiating the war of liberation. At this time in the free territories, four constitutions were approved (1869, 1872, 1895, and 1897). Cuba was a colony of Spain until 1898, when the United States of America intervened in the war of liberation between Cubans and Spain.

In 1901, after a constituent assembly was formed to approve the first free constitution of the new state, the U.S. government imposed an amendment, the Emends Platt, that limited Cuban sovereignty by authorizing the U.S. government to intervene in Cuba in defense of "their properties." In 1902, the republic was established with a presidential system of government, a bicameral parliament as legislative power, and an independent judiciary.

In 1928, women acquired the fundamental right to vote in elections.

A new constitution was approved in 1940. It established a semipresidential government and recognized many fundamental rights, but these fundamental rights were not implemented in fact. In 1952, an army sergeant, Fulgencio Batista, rose to power through a coup d'état and established a new constitution, but in the face of popular opposition and armed rebellion, he restored the previous document later in the decade.

The victory of the revolution led by Fidel Castro occurred on January 1, 1959. The following day, Castro reestablished the 1940 constitution. The revolutionary and provisionary government was headed by the president of the republic, accompanied by the Council of Ministers. This structure was maintained after February 7, 1959, when the Fundamental Law of the Republic was promulgated, replacing the 1940 constitution.

In 1976, a new constitution, establishing Cuba as a socialist state, was adopted and approved in a referendum. With some modifications, this constitution is still operative today. It provided formal equality in voting rights and added new fundamental rights for members of the military forces and citizens.

The new government structure departed from the principle of three separate powers. The constitution states that the National Assembly of People's Power is the supreme power in the republic. It is vested with the power to elect from among its deputies the members of the Council of State, judges of the Supreme Court, and the attorney general of the republic.

The president of the Council of State is both the head of state and government and the commander in chief of the military forces. The president has far-reaching powers during a state of emergency as head of the National Council of Defense. The president chooses the cabinet ministers, who then are appointed by the National Assembly of People's Power or by the Council of State.

The government, headed by the president of the Council of Ministers (who is also the president of the Council of State), is responsible to the legislative organ and may be removed by the National Assembly of People's Power.

FORM AND IMPACT OF THE CONSTITUTION

Cuba has a written constitution, codified in a single document, called the Constitution of the Republic of Cuba, which takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Cuba, and it must first be given legal form by the Council of State. Articles 10 and 66 establish that the constitution and laws must be strictly observed by all state organs and their leaders, officials, and employees, and that strict observation of the constitution is a duty of all.

The constitution is also considered a source of values. The preamble says that Cuban citizens continue the work and traditions fostered by early independence leaders. It also states that Cuban foreign policy is to be based on fraternal friendship, help, cooperation, and solidarity with the people of the world, especially with those of Latin America and the Caribbean. Article 62 establishes that none of the freedoms recognized for citizens may be exercised against what is established in the constitution or in the laws.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Cuba is a unitary state, divided into 14 provinces and 169 municipalities. Local communities are entities subordinated to the state, which have no administrative or political autonomy. However, local communities can make their own decisions and pursue initiatives aimed at taking advantage of local resources and potential. To this end, they can mobilize social and mass organizations.

The constitutional reform of 1992 introduced some changes relating to municipalities, recognizing them as the local society that has legal personality and the powers to satisfy the local needs. This resulted in some decentralization in the determination or distribution of the national financial and investment budgets.

Also introduced by the 1992 constitutional reform are the People's Councils, organized in local neighborhoods. Chosen by municipal assemblies, they are the supreme local authority to coordinate and control local economic entities. They also have powers in education and other local services and promote public participation in local programs. In permanent session, they control the administration of the towns.

LEADING CONSTITUTIONAL PRINCIPLES

The Cuban constitutional system defines Cuba as a democracy, a unitary republic, and a socialist state. Article 1 of the constitution says: "Cuba is an organized socialist state of workers, independent and sovereign, with all and for the good of all a united and democratic republic, for the enjoyment of political freedom, social justice, the individual and collective well-being and human solidarity." Direct democracy, whereby people decide relevant issues directly and exercise popular control over administrative activity, is another basic principle.

Articles 9, 11, and 12 of the constitution concern principles of foreign policy: the fight for national independence, the right to self-determination, and the defensive character of the state. The constitution states that the republic "considers wars of aggression and of conquest international crimes [and] recognizes the legitimacy of the struggle for national liberation" (Article 12 Section h). "Power to declare war formally resides in the National Assembly" (Article 75 Section j). The constitution states that Cuba wishes to integrate with Latin American and Caribbean countries in order to reach true independence (Article 12 Section c) and promotes the unity of "Third World countries" confronting the "neocolonialist and imperialist policy which seeks to limit and subordinate the sovereignty of our peoples, and worsen the economic conditions of exploitation and oppression of the underdeveloped nations" (Article 12 Section d).

The protection of the environment and of natural resources is a constitutional principle. The constitution also recognizes the civic duty of contributing to the protection and conservation of water, the atmosphere, the land, the flora, the fauna, and the whole rich potential of nature.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the National Assembly of People's Power, the Council of State and Council of Ministers, and their president.

The National Assembly of People's Power

The constitution states that the National Assembly of People's Power is the supreme representative organ of the state. It can amend the constitution and call for a popular referendum. The national assembly is vested with the legislative and constituent power.

The members of the National Assembly of People's Power are directly elected by the people, with one or more deputies elected from each municipality. The assembly has the right to appoint and revoke the executive government of the state. It can make inquiries to the Council of State and Council of Ministers; these inquiries must be answered during the course of the same session or at the following one.

The members of the National Assembly of People's Power generally retain their previous jobs, as they receive no salary for their assembly work, as is generally the case in Cuban representative bodies. The constitution requires them to exercise their duties for the benefit of the people and to remain in contact with their electors and render account of their activities. They can be removed from office at any time. However, no deputy may be arrested or placed on trial without the authorization of the assembly—or the Council of State if the assembly is not in session—except in cases of flagrant offenses.

The assembly consists of 601 deputies. Its period of office, the legislative term, is five years. The deputies are elected by secret ballot from lists presented in each municipality, which have one deputy for each 20,000 inhabitants. These can be voted en bloc or individually by selecting one, two, or three candidates from the list.

The National Assembly of People's Power has two general sessions per year, in June and December, each lasting a few days. At other times, deputies gather in permanent and temporary commissions to work on bills or evaluate ministries' reports. The assembly elects a Council of State from among its members to execute its decisions and to represent the state.

The Council of State

The Council of State is the organ of the National Assembly of People's Power that represents it in the period between its brief sessions. It is elected by the assembly. It enforces the laws and performs other duties assigned by the constitution. It issues decrees that can modify laws; the assembly has the right to ratify or revoke the decrees in later session. The Council of State also gives binding interpretations of existing laws whenever necessary. It decrees general mobilization for the defense of the country and assumes the authority to declare war in the event of aggression or to make peace. It can replace the members of the Council of Ministers when the National Assembly of People's Power is in recess.

The Council of State has the right to pardon criminal offenders. It issues instructions to the office of the attorney general of the republic and to the courts through the governing council of the people's Supreme Court. It can ratify or reject international treaties and can suspend and revoke decisions of the Council of Ministers or provisions of local administrative bodies, if it considers such decisions to be detrimental to the constitution, the laws, or the general interest of the nation.

The Council of Ministers

The Council of Ministers is the highest-ranking executive and administrative organ and constitutes the executive government of the republic. Members of the Council of Ministers are proposed by the president and approved

by the National Assembly of People's Power or its Council of State. The Council of Ministers is vested with the powers to organize and conduct the political, economic, cultural, scientific, social, and defense activities approved by the national assembly; to conduct the foreign policy of the republic; to draw up the draft for the state budget and prepare legislative bills; to attend to the national defense; to conduct the administration of the state and to implement laws and decree laws; and to issue decrees of its own.

The cabinet ministers serve for the duration of the assembly term. They must report to the National Assembly of People's Power at least once in a legislative period.

The President of the Council of State and Council of Ministers

The president of the Council of State is also the president of the Council of Ministers. He or she represents the state and the government, controls and supervises the activities of the ministries, proposes the members of the Council of Ministers to the National Assembly of People's Power, exercises the supreme command of the armed forces, and signs decree laws of the Council of State.

The Lawmaking Process

The National Assembly of People's Power passes legislation on the principle of the "unity of power," without the participation of other organs of the state. Bills can be proposed by the deputies of the national assembly or its commissions, the Council of State and the Council of Ministers, the National Committee of Mass Organizations, the Supreme Court and the attorney general (in matters within their jurisdictions), or a group of at least 10,000 citizens who are eligible to vote. The president of the National Assembly of People's Power promulgates the laws and arranges for their publication.

The Judiciary

The judiciary in Cuba is structured independently. However, all judges are elected by the National Assembly of People's Power or by the Council of State when the assembly is not meeting, and the Council of State can issue instructions to the courts through the Governing Council. The People's Supreme Court (Corte Suprema del Pueblo) is the highest court of the system. It is headed by a Governing Council. There are various chambers, divided according to the legal nature of the matter—civil and administrative, criminal, military, special, economic, labor, and state security.

The Governing Council exercises legislative initiative in matters related to the administration of justice and statutory power; it makes decisions and enacts norms that are binding for all courts. It issues binding instructions, on its experience, to establish uniform judicial practice in the interpretation and enforcement of the law.

The Attorney General of the Republic

The office of the attorney general of the republic is a unit subordinate only to the National Assembly of People's Power and the Council of State. It is independent of all other judicial and administrative bodies. It is a unit structured vertically and operates at all levels of the country. According to the constitution, its main objective is to ensure compliance with the law and represent the state in exercising penal authority.

THE ELECTION PROCESS

All Cubans over the age of 16 have both the right to vote in elections and the right to stand for elections to the municipal and provincial assemblies. The right to be elected to the National Assembly of People's Power is gained at the age of 18.

The process of choosing national and provincial assemblies is opened by the Council of State every five years (general process); corresponding municipal elections are held every two and a half years (partial process).

Delegates or deputies of all assemblies elect the president and vice president of those organs. There are no general elections for the executive branch. The head of state is chosen ex officio by the National Assembly of People's Power when it chooses the president of its Council of State. The presidents of provincial and municipal assemblies are ex officio presidents of the corresponding administrative councils.

MASS OR SOCIAL ORGANIZATIONS AND POLITICAL PARTY

Many mass organizations exist in Cuban society, such as the Committee for the Defense of the Revolution (CDR), the Federation of Cuban Women (FMC), the National Association of Small Farmers (ANAP), the Federation of University Students (FEU), the Federation of Students of Intermediate Education (FEEM), and the Central Organization of Cuban Trade Unions (CTC). There are also professional organizations, such as the National Union of Writers and Artists of Cuba (UNEAC), the Union of Journalists of Cuba (UPEC), and the National Union of Cuban Jurists (UNJC).

The constitution establishes that the state recognizes, protects, and stimulates mass organizations because they represent the specific interests of their members and incorporate the people in the task of building and consolidating society (Article 7).

These mass organizations participate in the electoral process. They propose candidates for the provincial and national assemblies, who are then nominated by the municipal assemblies.

As the only legal political party, the Communist Party of Cuba (PCC) constitutes a fundamental element of public life. The constitution acknowledges its role in Article 5. According to the constitution, the PCC is the highest force in the society and the state, which organizes and guides the common effort to achieve the goals of the construction of socialism. Its internal structure must be in accordance with democratic principles, as understood in Marxist-Leninist doctrine, that are established in its statutes. As a social grouping, it relies on membership fees. The PCC does not directly participate in proposing candidates for the electoral process.

Another political organization, the Young Communist League (UJC), undertakes to promote the participation of young people in the construction of socialist society as defined in the constitution (Article 6).

CITIZENSHIP

Cuban citizenship is acquired by birth or by naturalization. By birth, the main principle is the *ius solis,* through which all children born in Cuba are considered Cuban citizens. There are a few exceptions: the children of foreigners who are working for foreign governments or international bodies and the children of other foreign nonpermanent residents in the country. Also considered Cuban citizens are those born abroad, at least one of whose parents is on official assignment from the Cuban state. The principle of *ius sanguinis* is also applied. This means that a child acquires Cuban citizenship if one of his or her parents is a Cuban citizen or a Cuban national who lost citizenship but satisfies a legal requirement, such as having been born in Cuba.

FUNDAMENTAL RIGHTS

Although the constitution defines fundamental rights in Chapter 7, many other rights are regulated in other chapters without legal distinction between them. They all have the same legal status.

The constitution recognizes the traditional, classic set of human rights: freedom of conscience, press, and religion, and the right to property and inheritance, to association and assembly. It also proclaims the right to work; to rest; to social security; to education; to protection, safety, and hygiene at work; and to health protection and care. The inviolability of the home, mail, and freedom is also guaranteed by the constitution.

Cuba's constitution, as do other constitutions, distinguishes between human rights, which apply to every human being, and those fundamental rights reserved for Cubans only. In this last group, one may find the freedom of speech and of the press and the right to vote and to be elected.

In Chapter 6, the constitution establishes the equality of men and women and obligates the state to work toward that goal.

Impact and Functions of Fundamental Rights

Fundamental rights also involve the right to intervene in the direction of the state or to participate in the organs of power. There are in the constitution various provisions that aim at defending fundamental rights.

Article 26 establishes the right to claim and obtain due compensation for any person who suffers damages or injuries that are unjustly caused by a state official or employee while in the performance of his or her public functions. Citizens also have the right to file complaints and send petitions to the authorities and to receive an answer.

Limitations to Fundamental Rights

The Cuban constitution specifies possible limitations to fundamental rights according to the specific needs of the public and for the protection of rights of others. For example, according to Article 62, none of the freedoms recognized for citizens may be exercised contrary to what is established in the constitution and the law or contrary to the existence and objectives of the socialist state, effectively prohibiting all forms of legal dissent and opposition to the government. Article 60 provides for confiscation of property as a punishment. Article 25 authorizes the expropriation of property for the benefit of the public or social interest, with due compensation.

ECONOMY

The economic system is organized on socialist principles of state control: That is, most of the means of production are owned and operated by the government. There are different kinds of property, including state ownership, cooperative ownership, personal ownership, and small farmer's ownership. After 1992, another type of property was recognized, one that allows the establishment of foreign capital in the country, under the form of companies of mixed capital. The state directs and controls foreign trade and organizes enterprises and other economic entities for the administration of socialist property.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed by the constitution as a human right, is protected by the separation of religion from the state. There is no established state church. All religions must be treated equally. Catholicism, Protestantism, and African religions are practiced in Cuba.

MILITARY DEFENSE AND STATE OF EMERGENCY

The creation and maintenance of armed forces are the responsibility of the government. In Cuba, general con-

scription requires all men above the age of 16 to perform basic military service. In addition, professional soldiers also serve. Women are allowed to volunteer.

Exceptional situations may be declared in case of war, catastrophe, or natural disaster, and in any other circumstances that affect domestic order, the security of the country, or the stability of the state. The National Assembly of People's Power, or the Council of State when the assembly is not meeting, declares war. The Council of State has responsibility to declare the national mobilization of the population, and the president may declare a state of emergency in case of a natural catastrophe. At this time, the most important military body is the Council of National Defense and, at the local level, the Council of Provincial or Municipality Defense.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be changed if two-thirds of the members of the National Assembly of People's Power vote in favor of an amendment. A popular referendum is required if the change affects the fundamental rights or duties recognized by the constitution or the authority of the National Assembly of People's Power or the Council of State.

There are intangible clauses and fundamental provisions that are not subject to change under any circumstances. Articles 3, 11, and 137 guarantee the continuity of the existing political and social system. These provisions were introduced in the last constitutional reform in 2002.

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Martha Prieto

CYPRUS

At-a-Glance

OFFICIAL NAME
Republic of Cyprus

CAPITAL
Nicosia

POPULATION
790,000 (2005 est.)

SIZE
3,568 sq. mi. (9,240 sq. km)

LANGUAGES
Greek, Turkish

RELIGIONS
Christian Orthodox 83%, Muslim 13%, Maronite 0.6%, Armenian 0.4%, Roman Catholic 0.3%, unaffiliated or other 2.7%

NATIONAL OR ETHNIC COMPOSITION
Greek 83%, Turkish 13%, other 4%

DATE OF INDEPENDENCE OR CREATION
October 1, 1960

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicommunal parliament

DATE OF CONSTITUTION
August 16, 1960

DATE OF LAST AMENDMENT
December 28, 1996

The Republic of Cyprus is a presidential democracy based on the rule of law, with a clear division of executive, legislative, and judicial powers. It is a unitary state that comprises two legally recognized communities, the Greek community and the Turkish community. The constitution safeguards human rights in a comprehensive way. It is widely respected by the public authorities; if a violation of the constitution does occur, in individual cases, there are effective remedies enforceable by an independent judiciary. The Supreme Court of Cyprus guarantees that the constitution is respected by all.

The president of the republic is the head of state and has vast executive powers. The president is elected directly by the people and appoints a council of ministers to assist in the exercise of the executive powers. Members of parliament are elected in free, general, and direct elections. A pluralistic system of political parties plays an intense role in political life. Religious freedom is guaranteed, and state and religious communities are separated. The military is subject to the civil government in law and fact.

CONSTITUTIONAL HISTORY

The Republic of Cyprus was established in 1960. The constitutional structure was based on the Zurich and London Agreements of 1959 among Greece, Turkey, and the United Kingdom and was decided without the participation of the people of Cyprus. The Zurich Agreements did not succeed in establishing cooperation between the two communities of the island, and in 1963, there was a constitutional breakdown. Turkish Cypriots vacated their offices in the government, and there followed an outbreak of violence in the island. A United Nations peacekeeping operation entered the island in 1964 and has remained there since.

In 1974, the Republic of Turkey, one of the guarantor powers of the independence, sovereignty, and territorial integrity of Cyprus, invaded the country with its armed forces and occupied the northern part of the island. As a result of the occupation, the Greeks and other Christians of the region fled to the southern part of the island. The

Turks of the southern part of the island were forced to move to the north. In 1983, the Turkish-occupied area declared itself the Turkish Republic of Northern Cyprus, but that entity is recognized only by Turkey.

The Turkish occupation has prevented the Republic of Cyprus from exercising its powers over the occupied territory. A number of constitutional provisions, which refer to the Turkish Cypriot community, are temporarily not in force. Proposals for the solution of the "Cyprus problem" have until now failed. The Republic of Cyprus became a member of the European Union on May 1, 2004.

FORM AND IMPACT OF THE CONSTITUTION

Cyprus has a written constitution, codified in a single document, that takes precedence over all other law. International law takes precedence over all national law as long as it has been ratified by parliament. A doctrine of necessity has been accepted by the Supreme Court of Cyprus so that the House of Representatives may enact laws even contrary to those provisions of the constitution that are temporarily not in force because of the "Cyprus Problem."

BASIC ORGANIZATIONAL STRUCTURE

Cyprus is a unitary state. There is a central government that comprises the two communities of the island. The constitution also provides for two communal chambers, a Greek communal chamber and a Turkish communal chamber, which have legislative powers in educational, cultural, religious, and other matters of a purely communal nature. After the constitutional crisis of 1963, the Greek communal chamber was dissolved, and the Turkish communal chamber does not function. At the present time, all powers belong to the central government.

LEADING CONSTITUTIONAL PRINCIPLES

Cyprus's system of government is a presidential democracy. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is completely independent. Cyprus is a representative democracy, a unitary state, and a republic and is based on the rule of law. The most unique feature of the constitution is its bicommunal nature; all constitutional organs must comprise members of the two communities. Rule of law has a decisive impact. All state actions impairing the rights of the people must have a basis in parliamentary law. The constitution provides for neutrality of the state toward religions, although there are specific issues of cooperation between the state and major religions, such as family law.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the council of ministers; the parliament, called the House of Representatives; and the judiciary, which includes the Supreme Court.

The President

The president is the head of state and represents the republic in all its official functions. He or she belongs to the Greek Cypriot community and is elected for a five-year term directly by universal suffrage and secret ballot. The president appoints and dismisses the members of the council of ministers and has vast executive powers. The constitution also provides for a Turkish Cypriot vice president, who is the vice head of state and has similar powers to the president's. Since the constitutional crisis of 1963, the office of the vice president has remained vacant.

The Council of Ministers

The constitution provides that the council of ministers be composed of seven Greek Cypriots and three Turkish Cypriots, who shall be designated, respectively, by the president and the vice president of the republic. Since the constitutional crisis of 1963, all 10 ministers are Greek Cypriots. An 11th ministry of education and culture has replaced the dissolved Greek Communal Chamber. Ministers are chosen from outside the House of Representatives. The council of ministers exercises the executive power alongside the president.

The House of Representatives

The House of Representatives, with 80 members, exercises the legislative power of the republic. The constitution provides that 70 percent of the representatives shall be elected separately by the members of the Greek Cypriot community and 30 percent separately by the members of the Turkish Cypriot community. Since the constitutional crisis of 1963, the offices of the Turkish Cypriot representatives remain vacant. The representatives are elected for a term of five years in free, general, and direct elections.

The Lawmaking Process

The main duty of the House of Representatives is to pass legislation. The right to introduce bills belongs to the representatives and to ministers. However, bills relating to an increase in budgetary expenses can be introduced only by ministers. Laws are passed by a simple majority vote of the representatives present and voting. Laws become operative on their publication in the official gazette of the republic.

The Judiciary

The judiciary is independent of the executive and legislative bodies and is a powerful factor in both legal and social life. The highest Cypriot court is the Supreme Court of Cyprus, which functions both as the supreme constitutional court and as the supreme appellate court of the republic. Many of the court's decisions have had the highest legal and political impact. The most important decisions relate to the "doctrine of necessity." After the constitutional crisis of 1963 and the Turkish invasion of 1974, it became impossible to follow the most important provisions of the constitution of Cyprus. In order to preserve the republic, the Supreme Court accepted that the executive and the legislature could continue to function despite the absence of the Turkish Cypriot members. The House of Representatives may enact laws, even contrary to those provisions of the constitution that are temporarily not in force because of current conditions. The Supreme Court examines whether the laws can be justified by the situation and whether or not they violate human rights.

THE ELECTION PROCESS

All Cypriots over the age of 18 have the right to vote in elections. Cypriots may not be elected as members of the House of Representatives unless they are at least 25 years old, and they may not stand for president unless they are at least 35 years old.

POLITICAL PARTIES

Cyprus has a pluralistic system of political parties. Political parties are a fundamental element of public life, and their function is an essential element of the constitutional order.

CITIZENSHIP

Cypriot citizenship is acquired by birth, by registration, or by naturalization. A child acquires Cypriot citizenship by birth if one of his or her parents is a Cypriot citizen or if he or she is born in Cyprus. If the child is born abroad, he or she may acquire Cypriot citizenship by registration.

FUNDAMENTAL RIGHTS

The part of the constitution of Cyprus that guarantees fundamental rights and liberties is modeled on the European Convention on Human Rights. However, the provisions of the European Convention have been extended and enlarged in some respects, with a number of social and economic rights added in order to meet the basic requirements of a modern society. The rights are generally guaranteed for every person, but only citizens are protected against extradition or deportation.

Impact and Functions of Fundamental Rights

For Cyprus, human rights are of fundamental importance to legal thinking. Fundamental rights are binding for all public authorities under any circumstances. The courts have the power to declare that any law or action that is contrary to fundamental rights is unconstitutional and invalid.

Limitations to Fundamental Rights

Fundamental rights in Cyprus are not without limits, but no fundamental right may be disregarded completely. The constitution expressly provides that even in those circumstances in which fundamental rights may be limited, such limitations must be prescribed by law. In addition, any limitations to fundamental rights must be reasonably justified and must respect the principle of proportionality.

ECONOMY

The constitution does not specify a specific economic system. However, certain basic decisions by the framers of the constitution provide for a set of conditions that have to be met while structuring the economic system. Among them are the freedom of property, the freedom of occupation or profession, and the right to form associations.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a human right; it also involves rights for religious communities. There is no official or prevailing religion, and the state does not have an official religion. All religions and creeds in Cyprus deal with their own affairs, without any interference in the affairs of the state. The state has recognized broad discretionary powers in their favor and does not have the right to intervene in their religious affairs. Whenever matters of common interest arise, such as religious education or family matters, the state and the five major religious corporations debate on equal terms. These religions are the Christian Orthodox Church, the Islamic religion, the Maronite Church, the Armenian Church, and the Roman Catholic Church.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides that the republic shall have an army of 2,000 men, of whom 60 percent shall be Greek

Cypriots and 40 percent shall be Turkish Cypriots. Such an army never came into being. After the constitutional crisis of 1963, the republic created armed forces called the National Guard, which are composed exclusively of Greek Cypriots. Such armed forces are used only for defensive purposes. It is compulsory for all men over the age of 18 to do military service lasting 25 months. In addition, there are professional soldiers who serve for fixed periods or for life.

The military always remains subject to civil government. The constitution provides for the possibility that certain articles may be suspended for the duration of war or other public danger that threatens the life of the republic. Such articles refer to specific fundamental rights; the limitations are in accord with permissible state action under the European Convention on Human Rights.

AMENDMENTS TO THE CONSTITUTION

A significant number of constitutional provisions are considered to be fundamental and are not subject to change. These articles have been incorporated from the Zurich Agreement and concern the essential bicommunal identity of the constitution. Other articles of the constitution can only be changed if two-thirds of the Greek Cypriot representatives and two-thirds of the Turkish Cypriot representatives vote in favor. Since the constitutional crisis of 1963, these articles can change if two-thirds of the Greek Cypriot representatives vote in favor.

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Achilles Emilianides

CZECH REPUBLIC

At-a-Glance

OFFICIAL NAME
Czech Republic

CAPITAL
Prague

POPULATION
10,230,060 (2005 est.)

SIZE
30,450 sq. mi. (78,866 sq. km)

LANGUAGES
Czech

RELIGIONS
Believers (Catholic 26.9%, Bohemian Brethrens' Protestant Church 1.1%, Czechoslovak Hussite Church 1.0%, Jehovah's Witnesses 0.2%, Christian Orthodox 0.2%) 32.1%, without religion or not specified 67.9%

NATIONAL OR ETHNIC COMPOSITION
Czech 90.4%, Moravian 3.7%, Silesian 0.1%, Slovak 1.9%, other (made up largely of Polish, German, Ukrainian, and Roma) 3.9%

DATE OF INDEPENDENCE OR CREATION
January 1, 1993

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 16, 1992 (approval) / January 1, 2003 (in force)

DATE OF LAST AMENDMENT
March 1, 2003

The Czech Republic is a young parliamentary democracy. Its democratic reconstruction began after the collapse of the communist regime and the so-called Velvet Revolution. Because of the rich heritage of the interwar period of the First Czechoslovak Republic (1918–38), the newly created republic can carry the torch of its former sovereign tradition.

The Czech Republic is defined by division of legislative, executive, and judicial powers, supplemented with the system of mutual checks and balances. The president of the republic is the head of state. The administration is responsible to the Chamber of Deputies, confidence in which is a necessary condition of its political existence. The Parliament has two chambers; the Senate is the weaker of the two but has some significant powers. The Constitutional Court has relatively strong powers to protect constitutional order and human rights.

The political and economic system is characterized by free competition among political parties, free elections to democratically governed institutions, religious neutrality of the state, and the transition from a communist centralized economy to a market economy. The Czech Republic has been a member of the North Atlantic Treaty Organization (NATO) since 1999 and of the European Union since May 2004.

CONSTITUTIONAL HISTORY

The origins of Czech statehood date to the 10th century C.E. From then until the 13th century, the Přemyslovci princes established a political entity called the Lands of the Czech Crown (or simply Czech Lands) that covered approximately the present territory of the Czech Repub-

lic (or its historical parts Bohemia, Moravia, and Silesia). These lands were more or less linked with the history of the Holy Roman Empire (of the German Nation) during the Middle Ages and with the Austrian (1806–67) and Austrian-Hungarian (1867–1918) Monarchy.

There are three main periods in the recent constitutional history of the Czech Republic: the constitutional traditions of the Austrian(-Hungarian) period after 1848, the First Czechoslovak Republic (1918–38), and, in a negative way, the time of the Communist regime (1948–89). The reconstruction of democracy that followed the November events in 1989 (the Velvet Revolution) deepened the crisis between Czechs and Slovaks, and in 1992 the Czechoslovak federation dissolved and two independent states emerged: the Czech Republic and the Slovak Republic.

Political moves after the revolutionary year of 1848 to restrict the absolute monarchy and to establish a constitution were the most important developments in the Austrian monarchy of which the Czech Lands were a part. However, the constitutions that emerged (April 1848, March 1849, February 1861, or December 1867) were imposed by the monarch and were not the result of a democratic process. The establishment of a dual Austrian-Hungarian Monarchy by the constitution of 1867 weakened the position of the Czech Lands.

The territory of Czechoslovakia, created in October 1918 as a result of World War I (1914–18), was made up of the historic Czech Lands, Slovakia, and sub-Carpathian Russia in the east. Formally, it was recognized by several international treaties (e.g., Saint-Germain in 1919 and Trianon the following year) that formed part of the Peace of Versailles that concluded World War I.

The constitutional system of interwar Czechoslovakia was based on the Constitutional Charter of 1920, the first democratic constitution on Czech territory. It was the major source of inspiration for the present Czech constitution. The charter contained the rules of state organization and a list of human rights. As these rights were subject to statutory limitation, they were referred to as "monologues of the legislator." The charter was defined by division of powers, responsibility of the administration to the Chamber of Deputies, and a bicameral parliament. The office of the president of the republic enjoyed great authority, because of the respect held by President T. G. Masaryk.

The underlying principle of Czechoslovakia—and its most problematic issue—was the idea of Czechoslovakism, that is, the existence of the Czechoslovak nation. Nevertheless, Czechoslovakia between the two world wars was one of the most developed economies in the world and formed a democratic island in a region full of destabilized countries. This island of democracy was threatened by the so-called Munich dictate, an agreement among Great Britain, France, Italy, and Germany at the end of September 1938 that resulted in the extinction of the country when German troops created the Protectorate of Bohemia and Moravia in March 1939 and simultaneously declared the puppet Slovak State. In the course of 1940, a provisional government in exile in London was created. The legal nature of the provisional government corresponded to a constitutional state of emergency. Decrees of the president of the republic became the source of law; they were ratified in 1945 by a constitutional act and declared to be law. Decrees of the president regulated not only substantial matters of the state's organization but also some problematic issues such as expatriation of inhabitants of German or Hungarian nationality.

The increasing involvement of the Soviet Union in Central Europe and the increasing influence of the Communist Party within the state were more important than the continuity of the republic and the restoration of the state. The postwar era culminated in the Communist coup d'état in February 1949. The Communist regime underwent its own evolution with constitutions in 1948, 1960, and 1968. However, it was always governed with a mixture of legal and unlawful instruments and practices. The events that followed the Velvet Revolution in 1989 led to the full restoration of democracy in Czechoslovakia. This democratic restoration was accompanied by a deepening crisis between Czechs and Slovaks that resulted in the split up of Czechoslovakia in 1992–93. Entry in NATO in 1999 and in the European Union in 2004 are two milestones of the recent Czech constitutional history.

FORM AND IMPACT OF THE CONSTITUTION

The Czech Republic has a written constitution. The basic constitutional acts are the constitution of the Czech Republic, which was approved at the end of 1992 and went into force on January 1, 1993, and the Charter of Fundamental Rights and Freedoms. This charter was in force at first for the whole of Czechoslovakia and was thereafter promulgated as a constitutional act of the independent Czech Republic. The Constitutional Order as referred to in the 1993 constitution is formed by the sum of constitutional norms; it embraces constitutional acts under the 1993 constitution, the Charter of Fundamental Rights, former constitutional acts concerning state boundaries, and certain constitutional acts regarding the dissolution of the Czechoslovak Federation in 1992. There are also constitutional acts on the security of the Czech Republic, on higher self-governing units, and on the referendum on joining the European Union. Any other statutory or implementation legislation, as well as international treaties, must be in compliance with this constitutional order.

According to Article 10 of the constitution, binding international agreements ratified by the Parliament constitute a part of the legal order. Should an international agreement have a provision contrary to a law, the international agreement is to be applied. From 1993 to 2002, this primacy was confined solely to human rights treaties. Article 10 was amended in 2001 and now includes all international agreements.

BASIC ORGANIZATIONAL STRUCTURE

The Czech Republic is a unitary state in which local and regional governments have limited powers defined by law. Framing public power on three levels of government contributes to greater effectiveness and division of power. The 1993 constitution has embedded the legal existence of municipalities and regions, as provided for in statutory regulations. There are 14 regions charged by law with independent or delegated administrative and legislative powers.

LEADING CONSTITUTIONAL PRINCIPLES

The Czech Republic is a parliamentary democracy with a strong division of the executive, legislative, and judicial powers, supplemented with a system of checks and balances. The constitutional system is characterized by a number of legal principles: The republic is a sovereign, unitary, and democratic law-abiding state, based on respect for the rights and freedoms of all citizens. The state is founded on democratic values and must not be bound either by an exclusive ideology or by a particular religion. Consequently, the Czech Republic is a secular state with very limited cooperation with religious communities. Special attention is paid to human rights and to the principle of the rule of law. The power of the state may be asserted only in defined matters and within the limits set by law and in a manner determined by law. Everybody may do what is not prohibited by law, and nobody may be forced to do what the law does not command.

CONSTITUTIONAL BODIES

The most important constitutional bodies are Parliament, the president of the republic, the administration, and the judiciary, including the Constitutional Court. The constitution also provides for a supreme auditing office, the Czech National Bank, and regional self-government.

Parliament

Parliament consists of two chambers, the Chamber of Deputies and the Senate, but the status of the two chambers is unequal. The Chamber of Deputies plays the predominant role in the legislative process. The administration is responsible to the deputies, who can bestow or withhold confidence, exercise parliamentary inquiry and interpellation (challenging policy), and question ministers. The state budget is also approved only by the Chamber of Deputies. On the other hand, the Senate has exclusive powers to approve candidates for justices of the Constitutional Court and to impeach the president of the republic. Both chambers of Parliament are in permanent session. The Chamber of Deputies can be dissolved by the president of the republic for reasons defined by the constitution. Subsequently, temporary legislative authority vests in the Senate, which cannot be dissolved.

Elections to the Chamber of Deputies follow a system of proportional representation; elections to the Senate take place by the principle of the majority system within electoral districts. The 200 deputies are elected for a term of four years and the 81 senators for a term of six years. One-third of the senators are elected every two years. All representatives exercise their mandate freely and independently.

The Lawmaking Process

Bills are first introduced in the Chamber of Deputies. An initiative for legislation may originate from a deputy, a group of deputies, the Senate as a whole, the administration, or the representative body of a region. The Chamber of Deputies deliberates the bills in three readings. Passage of the bill requires the votes of the majority of voting deputies; a quorum is one-third of all members of the chamber. Subsequently, the bill is submitted to the Senate. The Senate may adopt it, reject it, or return it to the Chamber of Deputies with suggestions for amendment, all within a term of 30 days. The Senate's vote can be overridden in a renewed vote by the Chamber of Deputies with the majority of all members of the chamber. The same majority requirements apply with respect to the president's right to a suspensive veto after a bill passes both chambers.

Any electoral law, or law defining the principles of transactions and contacts between the two chambers, or law containing rules of procedure of the Senate, must be approved by both chambers.

The President of the Republic

The president of the republic is the head of state. He or she is elected at a joint session of both chambers of Parliament for a term of five years. Any citizen who is eligible for election to the Senate may be elected president of the republic. Nobody may be elected president of the republic more than twice in succession. He or she acts for and on behalf of the state with respect to third parties, negotiates and ratifies international treaties in cooperation with the administration, and is the supreme commander of the armed forces.

Some of the president's powers can be exercised only with the approval of the prime minister or of the appropriate member of the administration. These acts are the so-called countersigned acts of the president under Article 63. The president of the republic appoints and recalls the prime minister and other members of the administration and accepts their resignation, convenes sessions of the Chamber of Deputies, and dissolves the Chamber of Deputies. The president appoints justices of the Constitutional Court with prior approval of the Senate, issues pardons and mitigates penalties within the criminal justice system, and exercises a suspensive veto within the legislative process.

The Administration

The supreme executive and political authority of the Czech Republic is the administration. This consists of the prime minister, the deputy prime minister, and other ministers. The administration is accountable to the Chamber of Deputies. The most important expression of this accountability is the rule of confidence. To be in office, the administration needs the confidence of the Chamber of Deputies. The administration helps prepare proposals of laws. In practice, the majority of laws come about at the administration's initiative. This administration's initiative for legislation is exclusive in the case of the state budget bill. The administration is, in general, authorized to enact implementing regulations, not exceeding the limits of the law.

The Judiciary

The independence of the judiciary, of judges and courts, is one of the most important principles for the new Czech democracy. There is a system of general courts on four different levels: the Supreme Court and the Supreme Administrative Court, the High Court, regional courts, and district courts. A judge is appointed for life by the president of the republic with the approval of the prime minister or the minister of justice.

The Constitutional Court is a specialized judicial body charged with the protection of the constitution. It consists of 15 judges who are appointed for a term of office of 10 years by the president of the republic with the approval of the Senate. The jurisdictional powers of the Constitutional Court are enumerated in Article 87 of the constitution. From a practical point of view, the most frequent procedures are those dealing with constitutional complaints of individuals against the public authorities. The decisions of the Constitutional Court declaring laws unconstitutional and void are of foremost importance. The case law of the Constitutional Court, especially in human rights, has had an enormous if indirect impact on the decisions of policymakers.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Article 21 of the Charter of Human Rights and Fundamental Freedoms stipulates general conditions for democratic elections. Accordingly, citizens have the right to participate in the administration of public affairs either directly or through free election of their representatives. They also have access to any elective and other public office under equal conditions.

Elections to both chambers of Parliament are held by secret ballot on the basis of universal, equal, and direct suffrage. Every citizen of the Czech Republic who has attained the age of 18 has the right to vote. Every citizen of the Czech Republic who has the right to vote and who has attained the age of 21 may be elected to the Chamber of Deputies. Every citizen of the Czech Republic who has the right to vote and who has attained the age of 40 may be elected to the Senate and to the office of the president of the republic. The same principles as for the election to the Chamber of Deputies apply to the elections to representative bodies of communities and regions.

Article 2, Paragraph 2 stipulates that a constitutional act may allow the people to exercise state power directly. This provision was the legal basis for the referendum on the accession of the Czech Republic to the European Union. Other forms of direct democracy are confined to local plebiscites on local matters.

POLITICAL PARTIES

The political system of the Czech Republic is based on the free and voluntary formation of and free competition between political parties respecting basic democratic precepts. The system of proportional representation prevailing in the majority of election procedures is restricted by some rules that promote improved effectiveness. One is the obligation for parties to pay a deposit in the course of the nomination procedure. Another is the minimum of votes needed to win representation in the Chamber of Deputies—5 percent for individual parties and 10, 15, or 20 percent of the total number of votes for coalitions of parties, respectively.

Political parties can only be banned by a decision of the Supreme Administrative Court. The Constitutional Court has the final say whether the dissolution conforms to constitutional or other laws.

CITIZENSHIP

Acquisition and loss of citizenship of the Czech Republic are delegated by the constitution to statutory laws, except that nobody may be deprived of his or her citizenship against his or her will. Citizenship arises primarily by birth, adoption, determination of paternity, or naturalization. In general, the principle of *ius sanguinis* is applied: That is, a child is a citizen of the Czech Republic if his or her father or mother is a Czech citizen.

State citizenship ceases for three reasons: at the person's own request, by a court's decision, and by acquisition of foreign nationality at one's own and deliberate request.

FUNDAMENTAL RIGHTS

The Basic System of Human Rights and Fundamental Freedoms

Human rights and fundamental freedoms are guaranteed by the constitution and the Charter of Fundamental Rights

and Freedoms. International treaties also help guarantee these rights, most importantly the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. This convention is one of the most important sources of inspiration for the Czech charter. Other sources are the 1920 Constitutional Charter and a number of contemporary foreign constitutional documents such as the German Basic Law. Human rights are protected by general courts and the Constitutional Court. The protection of human rights and fundamental freedoms is also vested in the office of the public protector of rights, the ombudsperson.

Impact and Functions of Fundamental Rights

The charter distinguishes several groups of rights. There are fundamental human rights and freedoms such as the prohibition of discrimination; the right to life; the right to respect of privacy; the right to personal liberty, to ownership of property, and to freedom of movement and residence; the sanctity of the home; and freedom of thought, conscience, and religious conviction. There are also political rights such as the freedom of expression, the right to associate and to assemble, and the right of petition. Furthermore, there are rights of national and ethnic minorities, and economic, social, and culture rights such as the right to education, the right to free choice of occupation and to participation in a trade union, the right to strike, and the protection of women and children. Finally, there are rights to judicial and other legal protection. The charter and constitution distinguish further between rights that apply to everybody and those reserved for Czech citizens, which apply to some political or social rights.

The primary function of human rights and fundamental freedoms is to create a space of freedom for every individual; that is regarded as their defensive function. However, the state is also obliged to create conditions for implementing these rights and freedoms. The wording of some provisions of the charter and the doctrinal opinions of jurisprudence indicate that some other effects may be derived from or linked with human rights and fundamental freedoms. Nobody denies, for example, that the state has to protect actively some categories of human rights. The direct effect of some special rights among private persons is currently under discussion.

Limitations to Fundamental Rights

The general rule of human rights limitation is spelled out in Article 4 of the charter. Any limits placed on fundamental rights and freedoms must be governed by law under conditions set out by the charter. Any statutory limitation of fundamental rights and freedoms must apply equally to all cases meeting the set conditions. Even when applying limits on rights and freedoms, the government must respect their essentials and substance. Article 41 of the charter stipulates that enumerated rights from the group of economic, social, and cultural rights may be claimed only within the scope of laws implementing them. This means that the margin of application for policy- and lawmakers is broader than in the case of other rights of the charter.

ECONOMY

The constitution of 1993 does not specify any economic system nor contain any guidelines for its establishment. The free market economy is a corollary of transition from communism to democracy. The concrete economic policy of the government is a subject of political competition between political parties. The most important instrument is the state budget act that is approved every year by the Chamber of Deputies. Some essential requirements of economic policy result from membership in the European Union.

RELIGIOUS COMMUNITIES

The law on religion in the Czech Republic is based on the following principles: nonidentification with any ideology or religion, the state's neutrality in religious affairs, equality of religious communities, and constitutionally guaranteed autonomy of religious communities. There is, however, still space for cooperation between the state and religious communities. Therefore, the Czech system of the law on religion ought to be described as institutional separation with cooperative elements.

Religious freedom is protected extensively by Articles 15 and 16 of the Charter of Fundamental Rights and Freedoms. Accordingly, freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change his or her religion or to have no religious conviction at all. Furthermore, everyone has the right to profess freely his or her religion or faith either alone or jointly with others; privately or in public; though religious service, instruction, religious acts, or rituals. Churches and religious communities administer their own affairs. In particular, they appoint their organs and their clergy and establish religious orders and other church institutions independently of organs of the state.

MILITARY DEFENSE AND STATE OF EMERGENCY

The entry of the Czech Republic in NATO in 1999 was a milestone of Czech military and political history. After this accession, the Czech army was reorganized on a professional basis. The president of the republic is formally the commander in chief of the armed forces and appoints and promotes generals, subject to the responsibility of the administration.

Military activities of the Czech army either abroad or on the territory of the Czech Republic are under strong parliamentary control. The parliament may decide to declare a state of war should the Czech Republic be attacked or should international contractual obligations concerning common defense be met. The Parliament must also approve any participation of the Czech Republic in defense systems of an international organization.

Special regulation is envisaged in the Constitutional Act on Security of the Czech Republic for the cases of a nonmilitary state of emergency, such as a natural or technical disaster, or when the sovereignty of the republic is endangered from outside.

AMENDMENTS TO THE CONSTITUTION

According to Article 9, the constitution may be supplemented or amended only by constitutional acts. The provisions that are requisites of a democratic, law-abiding state may not be amended. The approval of a three-fifths majority of all deputies and of a three-fifths majority of voting senators is required to pass a constitutional act. From 1993 to 2004, there were only five important amendments of the constitution. The presidential right of suspensive veto does not apply to constitutional acts.

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Stepan Hulka

DENMARK

At-a-Glance

OFFICIAL NAME
Kingdom of Denmark

CAPITAL
Copenhagen

POPULATION
Denmark: 5,330,000; Faroe Islands: 43,678; Greenland: 56,124 (2005 est.)

SIZE
Denmark: 16,639 sq. mi. (43,096 sq. km), Faroe Islands: 540 sq. mi. (1,399 sq. km), Greenland: 836,330 sq. mi. (2,166,086 sq. km)

LANGUAGES
Danish, Faroes, and Greenlandic

RELIGIONS
Folk Church 84%, Roman Catholic 3.6%, Jehovah's Witnesses 1.5%, Pentecostal Movement 0.5%, Baptist Community 0.5%, Jewish Community 0.3% (43 other registered religious communities, apart from Muslim communities)

NATIONAL OR ETHNIC COMPOSITION
Danish (including Faroe Islanders and Greenlanders) 91.9%, other (largely made up of other Nordic, Turkish, German, Bosnian, Iraqi, Lebanese, Pakistani, Somalian) 8.1%

DATE OF INDEPENDENCE OR CREATION
About 950 C.E.

TYPE OF GOVERNMENT
Parliamentary democracy and monarchy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 5, 1849

DATE OF LAST AMENDMENT
June 5, 1953

Denmark is a parliamentary democracy based upon the rule of law with a clear division of executive, legislative, and judicial powers. It is organized as one state consisting of the mainland European territories bordering Germany and the territories of the Faroe Islands and Greenland in the northern part of the Atlantic, which have a special constitutional position with home rule.

The monarch is formally the head of state but has mostly representative functions. The central political figure is the prime minister as head of the government. Free, equal, general, and direct elections of the members of the parliament are guaranteed. A pluralistic system of political parties has great political impact.

Religious freedom is guaranteed. State and the religious communities other than the Folk Church are separated. The Folk Church, however, has a position as part of the state. The military is subject to the government and parliament.

CONSTITUTIONAL HISTORY

Denmark as a political entity emerged in northern Europe from the 10th century onward. The word *Denmark* (Tanmarker) is known since at least 950 C.E. Denmark has been an autonomous country ever since and is thus one of the oldest states in Europe. It has been a monarchy from its earliest beginnings. The first known kings were Gorm, who died in 958, and his son, Harald I, who died in about 985. The kings were elected by the house of carls, later by the noble knights, on the provincial land stings, the regional assemblies for legislation and jurisdiction. Until 1660, Denmark was legally an elective rather than a hereditary monarchy, but the kings were normally chosen from the old royal dynasty. From 1448, the descendents of Gorm and Harald were succeeded by the related descendents of the house of Oldenburg, which kept the throne until 1863 when descendents from the related house of

Glücksburg took over. The current monarch, Queen Margrethe II, belongs to the Glücksburgian house.

In 1661, the electoral monarchy was changed into a hereditary and absolute monarchy. Danish absolutism (1660–1848) was based upon a written constitution called Lex Regia, proclaimed by King Frederik III (1648–70) in 1665. The constitution had the character of a fundamental or basic law that was difficult to change. It expounded upon the king's sovereignty and his royal rights or prerogatives and prescribed succession rules. The Lex Regia was inspired by political philosophers of the time, among them the French philosopher Jean Bodin.

As a consequence of the revolutionary movements in Europe and especially of political developments in Prussia, provincial consultative assemblies were instituted in 1831 and 1834 in Denmark and in the Duchies of Schleswig and Holstein. Only 3 percent of the population had the right to vote in these provincial assemblies, but they managed to strengthen personal freedoms and property rights, as well as important preparatory work toward a new constitution and the transition to a parliamentary regime.

The new constitution of 1849 (called Danmarks Riges Grundlov) instituted a parliamentary regime, which it styled a restricted monarchical government, but the royal power remained hereditary. The new constitution was based upon the principle of division of the executive, legislative, and judicial powers. Formally, the legislative power was vested with both the king and the parliament, while the king had the executive power alone. However, the king could not act alone, only together with a minister who had to countersign his decisions.

The new constitution gave only 14 percent of the population the right to vote—males above the age of 30 with an independent household could vote for or be elected to the first chamber, the Folketinget, and only males above the age of 40 with a certain income could vote for or be elected to the second chamber, the Landstinget. The parliament, Rigsdagen, was bicameral until 1953.

The ties between Denmark and the Duchies of Schleswig and Holstein created frictions with Prussia when a new common constitution was issued for Denmark and the two duchies in 1854. In 1863, Schleswig and Denmark gained a common constitution. This was contrary to international agreements and caused a war with Prussia and Austria, which Denmark lost in 1864. Denmark had to surrender the duchies to Prussia.

A rather conservative revised constitution, which caused internal political problems, was created in 1866. The government constantly faced majority opposition in Folketinget, which declined to pass the budgets, forcing the administration to rule with the help of provisional acts.

In 1901, the king accepted the "principle of parliamentarism" by which the administration is chosen by the majority of Folketinget and does not remain in office if it loses the support of the majority of the Folketinget. This principle had the character of a constitutional custom until it was formalized by the amendment of 1953 when it was codified in Article 15.

With the amendment of 1915, women and servants received the right to vote and to be elected to both chambers. This amendment was not put into effect until 1918, however, because of World War I (1914–18). The peace treaty allowed the population in the duchies to vote in favor of a reunion with Denmark. Part of Northern Schleswig voted for reunion, and a special amendment to the constitution was passed in 1920.

After World War II (1939–45) and the judicial purge of collaborators and traitors, preparations for a new amendment were made to accommodate new demands: female succession to the throne, a lower voting age, more opportunities for referenda, a change into a unicameral parliament, transfer of limited sovereignty to international organizations, and the institution of an ombudsperson for the control of the administration. These amendments were all accepted, and the new constitution, which is still in force, was approved in 1953.

The constitution is valid for all parts of Denmark's realm. Denmark, the Faroe Islands, and Greenland from a constitutional point of view are one entity, comprising three equal parts. There is not and never was legal uniformity in the three parts. The Faroe Islands was included in the 1849 constitution and was given local self-government in the Act on Home Rule of 1948. Greenland was a colony until 1953 and was given self-government in the Act on Home Rule of 1978. In practice, there no longer exists a constitutional unity but a constitutional community of the realm. The governments of the Faroe Islands and Greenland are, with the cooperation of the Danish government, working for complete independence from the constitutional community. It is legally uncertain whether a formal, constitutional amendment will be necessary to complete this process.

Denmark is a member state of the European Union and a member of the North Atlantic Treaty Organization (NATO).

FORM AND IMPACT OF THE CONSTITUTION

Denmark has a written constitution, codified in a single document called the Basic Law (Grundloven), which takes precedence over all other national law. The Basic Law permits that certain powers exercised by the authorities of the Danish realm may in a limited way be placed in the hands of international authorities such as the European Union. The law of the European Union may have precedence over the Danish constitution in certain subjects as long as it does not contradict the basic principles of the Danish constitution.

The Danish constitution has survived great social changes and political storms in its 150-year history. The catalogue of fundamental civil rights in the constitution of 1953 was only slightly influenced by the United Nations Declaration of Human Rights of 1948 and the European Convention on Human Rights of 1950.

BASIC ORGANIZATIONAL STRUCTURE

The realm of Denmark is one state with different territories: Denmark, the Faroe Islands, and Greenland. The Basic Law covers all three territories, each with its own legal system, but it contains no claims of legal unity of the whole kingdom. In separate agreements with the Faroe Islands and Greenland, the Danish government has made preparations for the two territories to leave this community of the realm in order to be independent sovereign states when they themselves feel strong enough.

The Faroe parliament (Lagtinget) and government (Landsstyret) exercise sovereignty in certain special matters. The extent of sovereignty is expected to increase over the years until complete self-government is achieved. Greenland achieved self-government under similar conditions. The local authorities have legislative and executive powers but until now no judicial ones. The Danish authorities also rule in matters of the realm such as foreign policy and police. Neither the Faroe Islands nor Greenland is a member of the European Union. Greenland was a member from 1973 onward but left the European Communities in 1985. Local municipal communities in Denmark are entities incorporated by the state, whose role is guaranteed in the constitution. They make their own decisions on quite a number of issues. Citizens of the local communities elect mayors and other members of local political boards. The system is currently under reorganization into a smaller number of regional communities and local municipalities in order to provide for bigger and stronger entities.

LEADING CONSTITUTIONAL PRINCIPLES

Denmark's system of government is a parliamentary democracy. There is a clear division of the executive, legislative, and judicial powers. Denmark has no special constitutional court. The Supreme Court is supposed to deal with all types of legal problems, including constitutional issues. A special court, Rigsretten, decides cases against single ministers concerning their discharge of official duties after they are charged by the government or Folketinget.

The Danish constitution is defined by several leading principles: Denmark is a democracy and a monarchy. It is also a social state and is based upon the rule of law, which is not expressed directly but is presupposed indirectly.

Political participation is shaped as an indirect, representative democracy. Direct democracy by means of referendum is possible but is rather rare in practice. There are two forms of referendum: a decisive referendum and a voluntary decisive referendum. Majority decisions of Folketinget may be put to a voluntary decisive referendum, as occurred in 1992 and 1993 concerning the Edinburgh-Maastricht treaty of the European Union because this treaty concerned a question of surrendering Danish sovereignty.

The principle of monarchy is "restricted." The power of the monarch is limited by the three branches of government; the principle of monarchy means only that Denmark shall not be a republic.

CONSTITUTIONAL BODIES

The four bodies are the monarch, the cabinet or administration, the Folketinget or parliament, and the courts.

The Monarch

The monarch appoints and dismisses the prime minister after taking counsel from the political parties represented in Folketinget. The person nominated by the parties representing a majority in parliament is appointed. The monarch has the highest authority in state affairs, but it is executed through the ministers of the government. The monarch promulgates the laws that are countersigned by the relevant minister or ministers. The monarch represents Denmark in international affairs and formally appoints and dismisses civil servants. The monarch has the right to pardon or to grant amnesty to criminal offenders. Yet, the king does not have political importance or influence; the office is largely symbolic.

The royal power is inherited by male and female descendants according to the rules in the Act on Succession to the Throne of 1953. Before his or her accession to office, the monarch must tender a solemn written assurance in the Council Meeting of Ministers of State to keep the Basic Law unbreakable.

The monarch is free from legal liability; the ministers of the cabinet are responsible for all action of the administration. The monarch's person is sacrosanct; therefore, he or she must receive respect and veneration.

The Cabinet

The cabinet consists of all ministers under the leadership of the prime minister. The cabinet serves for the legislative period of Folketinget, unless dismissed during the term via a vote of no confidence. The ministers function in two special bodies: the Council Meeting of Ministers of State with the king, in which royal decrees are ratified through countersigning, and the weekly Meeting of Ministers, in which the practical work is done. The individual ministers head the various ministries or departments of government.

Folketinget

Folketinget consists of 179 delegates, 175 from Denmark, two from the Faroe Islands, and two from Greenland. Its

term of office is four years. The delegates are elected in general, direct, free, equal, and secret elections. The members of Folketinget have the right to put questions to the administration and to any minister who can be called to appear before parliament.

The members have a parliamentary privilege to ensure their independence. They are protected against legal actions or other negative consequences arising from their voting or statements in parliament. Only with permission of Folketinget can a member be subjected to any criminal prosecution, be arrested, or have his or her freedom limited.

The Lawmaking Process

The main duty of Folketinget is to pass legislation. This is done in cooperation with the executive government, which normally introduces the draft bills. Individual members of parliament, alone or as a group from one party or from several parties, may introduce a bill, which is then called a private bill.

A bill has to be passed three times in plenary meetings of the assembly, after which it is sent for the royal assent and countersignature of the appropriate minister. A minority of 60 members of Folketinget may try to have expropriations bills repealed by summoning a referendum.

The Judiciary

The judiciary in Denmark is independent of the executive and legislative branches. There are ordinary lower and higher courts for civil and criminal cases and different courts for special issues: the Tax Tribunal, the Labor Tribunal, and the Maritime and Commercial Court, among others. The Supreme Court is the highest court of appeal. All complaints concerning constitutional questions can be taken before the Supreme Court as well.

Rigsretten is a special court for cases against ministers. It consists of up to 15 judges from the Supreme Court and a corresponding number of persons from outside parliament but chosen by Folketinget. There have been five cases since 1849. The last one concerned a minister of justice, tried in 1995 for his implementation of a law related to reuniting families of Tamil refugees.

THE ELECTION PROCESS

All Danes over the age of 18 have both the right to stand for election and the right to vote in the elections. The election system for parliament consists of two separate votes: election by proportional representation and elections in multimember constituencies (a winner-takes-all majority vote). A political party must win at least one seat in a Folketinget multimember constituency and at least 2 percent of all votes in order to sit in the house. In 2004, eight parties were represented in Folketinget.

POLITICAL PARTIES

Denmark has a pluralistic system of political parties. Political parties are private associations that are primarily self-financing, relying on membership fees, donations, and additional financing from private or public funds. The Basic Law does not expressly mention the existence of political parties; they are presupposed in the internal bylaws of Folketinget. A political party may be banned from exercising freedom of association if the purpose of the party is illegal. The dissolution of an association requires an act of Folketinget or a court decision.

CITIZENSHIP

Danish citizenship is primarily acquired by birth or by naturalization through a special law.

FUNDAMENTAL RIGHTS

The Basic Law expresses the liberal natural-law philosophy of the 1840s. The civil rights or liberties in the first constitution concerned the relation of the individuals to the state. The basic rights are personal freedom and freedom of property, trade, speech, association, assembly, and religion. However, there also was a right to social support. The 1953 constitution was somewhat influenced by the United Nations' Declaration of Human Rights of 1948 and the European Convention on Human Rights of 1950, at least concerning social and economic rights and the right to education.

Civil rights are part of Chapter 8 of the constitution, which also regulates the right to self-government for municipalities; the abolition of all privileges attached to title, nobility, and rank; and the duty for every man to do his military service.

The Danish constitution guarantees the traditional classic set of human rights that express democratic respect for the individual. Social human rights are somewhat underrepresented. For example, the Basic Law does not include an equal treatment clause for women.

Impact and Functions of Fundamental Rights

The human rights guaranteed in the Basic Law apply only to the relations between individuals and the state. International standards of human rights have been observed more seriously by government authorities in the last decade. The Basic Law does not distinguish between fundamental rights for Danes and human rights that apply to every human being.

The European Convention on Human Rights was incorporated as part of Danish legislation in 1992, but it is not part of the constitution. There has been discussion

about whether the Danish courts should follow the decisions of the European Court of Human Rights in Strasbourg concerning the interpretation of human rights and central legal concepts if this interpretation differs from the Danish legal and legislative tradition.

The constitution also guarantees due process. The state must provide appropriate organizational and procedural structures to ensure the prompt and effective protection of fundamental rights.

Limitations to Fundamental Rights

The fundamental rights in the Danish constitution have some limits according to specific needs of public and individual interests. Public encroachment on the fundamental freedoms concerning the security of life and property must follow the due process of law. This necessitates a limitation of the general power of legislation for Folketinget.

If freedom of speech, assembly, or association is abused to undermine the democratic constitutional order, these rights may be put aside. The decision is made by the courts or, in case of illegal assemblies, by the police.

The economic, social, and cultural freedoms included in the constitution do not have the character of special guarantees that limit the legislative power. Instead, they are programmatic goals meant to guide legislation in those areas.

ECONOMY

The Danish constitution does not specify any particular economic system. However, fundamental rights do protect the right to property and the choice of one's profession, general personal freedom, and the freedom to form associations for any legal purpose, including economic and industrial.

The Danish economic system can be described as a social market economy, which combines aspects of social responsibility with market freedom.

RELIGIOUS COMMUNITIES

Freedom of religion involves rights for the religious communities. Before 1849, the Danish Church was a state church; the Evangelical-Lutheran Confession was the only accepted religion in the Absolutist Constitution of 1665. The constitution of 1849 changed the status of the church into a Folk Church, the "people's church" for the majority of the population, and promised that the Folk Church would have its own constitution in order to be autonomous. This promise has not yet been fulfilled.

The Folk Church has a special legal status as a state agency in combination with the Ministry of Ecclesiastical Affairs and Folketinget but with local self-government through parish councils. The constitution declares the Evangelical-Lutheran Church to be the Folk Church and calls for it to be funded by the state. All other churches and religious communities are, from a legal point of view, private associations, which receive no state funding different from that of other private or public utility associations.

MILITARY DEFENSE AND STATE OF EMERGENCY

Apart from defending the Danish realm or Danish armed forces against a military attack, the government cannot use military forces against any foreign state without the consent of Folketinget.

In Denmark, general conscription requires all men above the age of 18 to perform basic military service for four months. In addition, there are professional soldiers who serve for fixed periods. Women can volunteer but are not required to serve.

Conscientious objectors can file a petition to be excluded from military service. If their petition is granted, they are obliged to do alternative service in civil institutions.

AMENDMENTS TO THE CONSTITUTION

The Basic Law is particularly difficult to change. If Folketinget accepts a draft of amendments, there must be a general election. If the new elected Folketinget passes the bill without new amendments, it must be presented to the electors within six months in a direct referendum. If a majority of the voters and at least 40 percent of the total entitled voters vote in favor of the amendment, the draft becomes part of the Basic Law when it has received the royal assent and the ministerial countersignature.

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Inger Dübeck

DJIBOUTI

At-a-Glance

OFFICIAL NAME
Republic of Djibouti

CAPITAL
Djibouti

POPULATION
476,703 (2005 est.)

SIZE
8,880 sq. mi. (23,000 sq. km)

LANGUAGES
French (official), Arabic (official), Somali, Afar

RELIGIONS
Sunni Muslim 99%, Christian 1%

NATIONAL OR ETHNIC COMPOSITION
Somali 60%, Afar 35%, other (French, Arab, Ethiopian, and Italian) 5%

DATE OF INDEPENDENCE OR CREATION
June 27, 1977

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 4, 1992

DATE OF LAST AMENDMENT
February 2, 2006

The Republic of Djibouti is a presidential democracy. According to the constitution, the institutions of the republic are the executive power, the legislative power, and the judicial power. Organized as a unitary state, Djibouti is made up of five districts or cercles.

The constitution provides for far-reaching guarantees of human rights. The state has the obligation to respect and protect them.

The president is the powerful head of both state and administration. The president appoints the prime minister and the cabinet ministers, which are all responsible to the president. Universal, equal, and secret elections are guaranteed. Multiparty elections began in 1992.

The constitution, while declaring Islam to be the state religion, provides for freedom of religion. The economic system can be described as a social market economy. The president of the republic is the head of the armed forces.

CONSTITUTIONAL HISTORY

Djibouti is located at a strategic geographic location at the mouth of the Red Sea. By the year 1862, even before the Suez Canal was opened (1869), France had purchased the anchorage of Obock. Treaties with the sultans of Tadjoura and Gobaad were exchanged. By 1896, the area now comprising the Republic of Djibouti was known as French Somaliland. With a constitutional referendum in 1958, the region opted to join the French community as an overseas territory (1967). This act entitled the region to representation by one deputy and one senator in the French parliament. The name of the region was changed to the French Territory of Afars and Issas. The Afar and the Issa people have strong connections with Ethiopia and Somalia, respectively.

The Issa community strongly favored full independence.

After an overwhelming referendum in favor of independence, the territory became independent on June 27, 1977. Hassan Gouled Aptidon, a senior Issa politician and leader of a unified political movement (Popular African League for Independence [LPA]), became the first president of the republic of Djibouti. He was reelected, unopposed, to a second term in 1987 and to a third term in 1993.

Aptidon's longtime adviser, Ismail Omar Guelleh, won the election to succeed him in 1999. For the first time since independence, no group boycotted the elections.

The 1981 constitution had established a single-party system, which was replaced in 1992 with a multiparty system with a maximum of four political parties. The restriction on the number of parties was lifted only in 2002.

Located in a region of conflict, Djibouti generally pursued a policy of neutrality. It signed separate treaties of friendship and cooperation with Ethiopia, Somalia, Kenya, and Sudan (1981). Internally, it faced a civil war between the predominantly Afar rebel group, the Front for the Restoration of Unity and Democracy (FRUD), and the government from 1991 until 1994. Peace accords were signed in 2001.

Djibouti today is a member of the Arab League and the African Union (AU).

FORM AND IMPACT OF THE CONSTITUTION

Djibouti has a written constitution. The short document consists of 93 articles. Any international pact that contradicts the constitution may not be ratified until the constitution is amended appropriately.

BASIC ORGANIZATIONAL STRUCTURE

Djibouti is a unitary state, made up of five districts called *cercles*.

LEADING CONSTITUTIONAL PRINCIPLES

Djibouti's system of government is a presidential democracy. The institutions of the republic are the executive power, the legislative power, and the judicial power. According to the constitution, the judiciary is independent.

The Djibouti constitutional system is defined by a number of leading principles in Article 1: The state of Djibouti shall be a democratic sovereign republic, one and indivisible. It shall ensure the equality of all citizens before the law, without distinction as to origin, race, sex, or religion. It shall respect all beliefs. Its motto shall be "Unity, Equality, and Peace." Its principle shall be government of the people, by the people, and for the people. Political participation is exercised through representatives and by way of referendum.

CONSTITUTIONAL BODIES

The authority of the state is exercised by the president of the republic and the cabinet (prime minister and cabinet ministers), the National Assembly, and the judicial power, including the Constitutional Council.

The President

The president is both the head of state and head of the executive branch of government. The powerful president designates and can dismiss the prime minister. On the advice of the prime minister, the president also appoints the other cabinet ministers and presides over the Council of Ministers. The president may delegate certain functions to the prime minister or the cabinet ministers, who all are responsible to the president. It is the president who determines and directs the policy of the nation. The president has regulatory powers and must ensure the execution of decisions of the courts.

The president is elected for a six-year term and can be reelected only once. When the office of the president falls vacant, the president of the Supreme Court assumes power as the head of state for a minimum of 20 days and a maximum of 35 days, during which a new president is elected.

The National Assembly (Assemblée Nationale)

Parliament is the legislative body. Its period of office is five years. The number of deputies is determined by an organic law.

The Lawmaking Process

Both the president and the deputies have the right to initiate legislation. The National Assembly generally passes laws by simple majority. The laws that the constitution characterizes as organic (e.g., on the number of deputies, the Constitution Council, and the High Court of Justice) need an absolute majority of members of the national assembly to pass. These laws and the assembly's rules of procedure must be submitted before adoption to the Constitutional Council, which rules on their constitutionality.

The president may, after consultation with the president of the National Assembly and the president of the Constitutional Council, submit any bill to a referendum.

The president promulgates the laws adopted by the National Assembly within 15 days of their transmission, having the right, however, to request a second reading by the assembly. The president notifies the Constitutional Council when considering whether a law is contrary to the constitution. A provision that has been declared unconstitutional may not be promulgated.

The Judiciary

The constitution provides for an independent judiciary. However, in practice, the judiciary has not always been independent of the executive.

The judiciary, based on the French civil law system, is composed of a lower court, appeals courts, and a Supreme Court as the highest ordinary court. The Constitutional Tribunal deals exclusively with constitutional disputes. Laws may be referred to the Constitutional Council before their promulgation by the president, the president of the National Assembly, or 10 deputies within a certain period.

Legislative provisions relating to the fundamental rights of any person may be referred to the Constitutional Council in connection with proceedings that are under way before a court. A provision found unconstitutional on the basis of this article shall cease to be applicable and may no longer be applied in proceedings.

Decisions of the Constitutional Council are binding and may not be appealed. They must be recognized by the executive and juridical authorities and by all people and legal entities.

THE ELECTION PROCESS

All Djiboutians above the age of 18 have the right to vote in the elections. The constitution provides for universal, equal, and secret suffrage.

Parliamentary Elections

Deputies are elected from five multimember constituencies. Voters have only one vote, and the party that wins the most votes takes all the seats in the district (party block vote). All Djiboutians above the age of 23 have the right to stand for elections.

Presidential Elections

The president is elected by direct suffrage and majority vote. If an absolute majority is not obtained on the first ballot, there is a second round open only to the two candidates who have received the greatest number of votes. Candidates for the presidency must be presented by a regularly constituted political party and represented by at least 25 members of parliament.

POLITICAL PARTIES

Djibouti has had a pluralistic system of political parties since 1992. The restriction on the number of parties was lifted in 2002. The following year, eight parties contested the elections in two broad coalitions. The ruling coalition for the presidential majority secured all of the parliamentary seats.

CITIZENSHIP

Birth within the territory of Djibouti does not automatically confer citizenship. A child whose father is a Djiboutian citizen has Djibouti citizenship. The same applies to a child born in Djibouti to a Djibouti mother and an unknown father.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights and duties in Title II, where it lists the traditional set of liberal rights and civil liberties. Taking the sanctity of the individual as its starting point, it goes on to an equal treatment clause and a right against arbitrary detention. The document also cites the duty of Djiboutian citizens to defend the nation and the integrity of the republic.

Impact and Functions of Fundamental Rights

Djibouti acceded to both the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in 2003. According to human rights reports, the government has in practice restricted some rights.

Limitations to Fundamental Rights

Fundamental rights are not without limits in the constitution. For example, the right to property may be restricted in the case of “public necessity” and subject to the prior payment of just compensation. The inviolability of the home may be restricted in the interest of a “common danger.” However, no fundamental right may be disregarded completely.

ECONOMY

The Djibouti constitution does not specify an economic system. It recognizes the right to property, the right to strike, and the right to form associations and trade unions. Taken as a whole, the Djibouti economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

While Islam is declared to be the state religion, the constitution protects freedom of religion as a fundamental right.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is the guarantor of national security as the supreme commander of the armed forces, who appoints the military personnel.

When the institutions of the republic, the independence of the nation, the integrity of its territory, or the fulfillment of its international commitments is "threatened in a grave and immediate manner" and when the regular functioning of the governmental authorities is interrupted, the president may, after consulting the president of the National Assembly and the president of the Constitutional Council and informing the nation in a message, "take any measure" that may reestablish the regular functioning of the government and ensure the protection of the nation.

Martial law and states of emergency shall be decreed in a meeting of the Council of Ministers. Prolongation of martial law or a state of emergency beyond 15 days may not be authorized without the prior consent of the National Assembly.

AMENDMENTS TO THE CONSTITUTION

The president and the deputies have the right to propose an amendment. The constitution can be changed if the majority of the members of the national assembly vote in favor, and if the amendment is approved in a referendum, by a simple majority of the votes cast. To propose an amendment, at least one-third of the members of the national assembly must sign any parliamentary bill for amendment. The president may dispense with the referendum requirement, provided that the assembly approves it by a two-thirds majority of all members.

Certain fundamental provisions are not subject to change. Article 88 reads: "No amendment procedure may be undertaken if it calls in question the existence of the state or jeopardizes the integrity of the territory, the republican form of government or the pluralist character of Djiboutian democracy."

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Michael Rahe

DOMINICA

At-a-Glance

OFFICIAL NAME
Commonwealth of Dominica

CAPITAL
Roseau

POPULATION
69,278 (2005 est.)

SIZE
290 sq. mi. (751 sq. km)

LANGUAGES
English, French patois, Cocoy (English dialect)

RELIGIONS
Roman Catholic 77%, Protestant (Methodist 5%, Pentecostal 3%, Seventh-Day Adventist 3%, Baptist 2%, other 2%) 15%, none 2%, other 6%

NATIONAL OR ETHNIC COMPOSITION
Black 91.0%, Mulatto and Creole 6%, Caribbean Indian 1.5%, small white minority

DATE OF INDEPENDENCE OR CREATION
November 3, 1978

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 25, 1978

DATE OF LAST AMENDMENT
1984

Dominica gained independence in 1978 after being ruled by the British since the 1700s. Since then, it has been an independent republic within the British Commonwealth. Dominica is a full and participating member of the Caribbean Community (CARICOM).

The preamble to the constitution professes faith in fundamental rights and freedoms, respect for the principles of social justice, and belief in a democratic society and the rule of law. The government generally respects fundamental rights and freedoms. The president is head of state, and the prime minister is head of the executive government. The parliament is for the most part elected through popular vote in free, equal, and direct elections. To some extent it is appointed.

Religious freedom is guaranteed. The economic system can be described as an agrarian, market-based economy.

CONSTITUTIONAL HISTORY

The island of Dominica's indigenous Arawak people were expelled or exterminated by the Carib in the 14th century. In 1635, France claimed Dominica. Shortly thereafter, French missionaries became the first European inhabitants of the island. Carib incursions continued, however, and in 1660, the French and British agreed that Dominica should be abandoned. The island was officially neutral for the next century, but rival expeditions of British and French foresters were harvesting timber by the beginning of the 18th century.

In 1763, the British established a legislative assembly, representing only the white population. In 1831, reflecting a liberalization of official British racial attitudes, political and social rights were also conferred on free nonwhites.

In 1865, the colonial office replaced the elective assembly with a new type of assembly—half the members were elected and half appointed. In 1871, Dominica became part of the Leeward Island Federation. Crown Colony government, however, was reestablished in 1896. In the first half of the 20th century, Dominica was transferred from the Leeward Island Administration to be governed as part of the Windward Islands until 1958 when it joined the West Indies Federation.

After the federation dissolved, Dominica became an associated state of the United Kingdom on February 27, 1967, when it formally took responsibility for its internal affairs. On November 3, 1978, the Commonwealth of Dominica was granted independence by the United Kingdom.

FORM AND IMPACT OF THE CONSTITUTION

Dominica has a written constitution, codified in one main document and three separate schedules to the constitution. The constitution is held as the supreme law of Dominica and prevails over other legal provisions. The constitution establishes and defines the powers and authority of the main instruments of the state.

BASIC ORGANIZATIONAL STRUCTURE

The island is a unitary state, divided into 10 parishes with their own governments. Furthermore, there are also special town governments.

LEADING CONSTITUTIONAL PRINCIPLES

Dominica is a democratic parliamentary republic, and its legal system is based on English common law. The judiciary is independent, and the rule of law is manifested in the preamble of the constitution and enhanced by the court's subordination to the Eastern Caribbean Supreme Court.

CONSTITUTIONAL BODIES

The constitution defines the following bodies for Dominica: the president as head of state, a cabinet of ministers headed by the prime minister, and a unicameral parliament. There is also a parliament commissioner.

The President

The president is the head of state. He or she is elected by parliament for a five-year term and can be reelected. Executive authority is vested in the president, but in exercising most of the executive functions, the president is required to act in accordance with the advice of the cabinet or a minister acting under the general authority of the cabinet.

The Parliament

The parliament consists of the president and the House of Assembly, the legislative body of Dominica. The House of Assembly has 30 members. Of these, 21 are elected for a five-year term in single-seat constituencies and nine are appointed senators. In practice, five senators are appointed by the prime minister, four by the opposition leader.

The Prime Minister and the Cabinet

The president appoints the leader of the majority party in parliament to be prime minister and also appoints, on the prime minister's recommendation, members of the parliament from the ruling party to be cabinet ministers. There should be no more than three ministers from among the appointed senators. The cabinet advises the president in the governing function and is responsible to the parliament for any advice given to the president and for every action taken by a cabinet minister in the execution of the office. The prime minister and cabinet can be removed by parliament in a no-confidence vote.

The Parliament Commissioner

The parliament commissioner is not an elected member of the parliament and is appointed by the president for a term of five years. The duties of the parliament commissioner are to investigate any action, decision, or recommendation made by any department or authority of the administration that seemed to be a result of faulty administration or injustice, not including proceedings in a court.

The Lawmaking Process

Lawmaking powers are vested in the parliament. The House of Assembly passes bills that the president assents to and afterward are published in the official gazette as laws.

The Judiciary

Dominica has a multilevel judicial system commencing with the Lower Court or Magistrate's Court. This is the first level of recourse for violators of the country's laws. The Supreme Court serves as the second level in this system. Appeals may be made to the Eastern Caribbean States Supreme Court, which consists of a Court of Appeal and a High Court, the third level in Dominica's court structure. As a last resort, in the event of an unsuccessful appeal, individuals have recourse to the Judicial Commit-

tee of the Privy Council in London, in which decisions of the Supreme Court may be reviewed for a final ruling.

THE ELECTION PROCESS

Universal adult suffrage was introduced in 1951. The electoral system is patterned on the British Westminster system. All Dominicans above the age of 18 have the right to vote in elections. They have the right to stand for elections at the age of 21.

POLITICAL PARTIES

The constitution allows for any citizen of the country who is 18 years of age or over and who is literate and not bankrupt to organize and take part in political activity. The constitution does not make any provisions for political parties, nor is their formation required for participation in elections. The freedom of assembly and association is, nonetheless, named in Section 1 of the constitution's first chapter as a protected right. Candidates may, therefore, stand for election either in association with a party or as independents.

CITIZENSHIP

Citizenship is defined in Chapter 7 of the constitution. Upon the date of independence, November 3, 1978, citizenship was granted to citizens of the United Kingdom and Colonies (UKC) who were born, naturalized, or registered in Dominica. A person born in the territory of Dominica after November 3, 1978, regardless of the nationality of the parents, is also granted citizenship, as well as a child born abroad, before or after independence, at least one of whose parents is a citizen or was eligible for citizenship at the time of independence. It is also possible to request citizenship for those foreigners or Commonwealth citizens who have resided in Dominica for seven years or who are married to a citizen of Dominica, either living or deceased. This request is subject to the approval of the administration. Dual citizenship is recognized. A bill to allow the purchase of citizenship is under discussion.

FUNDAMENTAL RIGHTS

The constitution's first chapter deals with fundamental rights and freedoms. The constitution guarantees a set of liberal human rights and civil liberties but does not address economic and social rights beyond a general statement in the preamble. The combination of an independent press, an effective judiciary, and a functioning democratic political system is designed to ensure respect for civil liberties.

Impact and Functions of Fundamental Rights

As all laws that are contrary to the constitution are void, all laws that violate fundamental rights or freedoms as specified in the constitution are also invalid. Any person who alleges violation of his or her human rights has the right under the constitution to apply to the High Court for redress.

Inheritance laws do not fully recognize women's rights. When a husband dies without a will, the wife cannot inherit his property, although she may continue to inhabit their home. There are no provisions mandating equal pay for equal work for men and women in private-sector jobs. Although sexual harassment and domestic violence are common, there is no family court that specifically deals with domestic violence issues.

Limitations to Fundamental Rights

The fundamental rights specified in Chapter 1 of the constitution are subject to limitations that ensure that the enjoyment of the rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

ECONOMY

The country has always had a primarily agrarian, market-based economy. The government began a comprehensive restructuring of the economy in 2003—including elimination of price controls, privatization of the state banana company, and tax increases. The government has also tried to develop offshore banking businesses.

RELIGIOUS COMMUNITIES

The constitution provides for freedom of religion. The predominant religion is Christianity, and the Roman Catholic faith claims over 70 percent of the population. The government is secular and does not interfere with an individual's right to worship, but it maintains a close relationship with the Christian churches.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Dominica Defense Force was disbanded in 1981 after being implicated in attempts by the supporters of a former prime minister to overthrow the government. Since then, the military of Dominica has consisted of the Commonwealth of Dominica Police Force (including the Special Service Unit and the Coast Guard) as the only security force.

The office of the prime minister oversees the Dominican police, and civilian authority maintains effective control over the security forces.

AMENDMENTS TO THE CONSTITUTION

There are various provisions concerning alterations or amendments to the constitution. The core provisions of the constitution can only be changed by a vote of three-quarters of the members of parliament. An interval of 90 days and a public referendum with a majority of votes cast are necessary before the bill is allowed to be passed to the president for presidential assent. Other provisions can be changed by the votes of two-thirds of the members of parliament.

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Bettina Bojarra

DOMINICAN REPUBLIC

At-a-Glance

OFFICIAL NAME
Dominican Republic

CAPITAL
Santo Domingo de Guzmán

POPULATION
8.95 million (July 2005 est.)

SIZE
18,704 sq. mi. (48,442 sq. km)

LANGUAGES
Spanish

RELIGIONS
Roman Catholic 95%, other 5%

NATIONAL OR ETHNIC COMPOSITION
European descent 16%, African descent 11%, Mixed 73%

DATE OF INDEPENDENCE OR CREATION
February 27, 1844 (from Haiti)

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 28, 1966

DATE OF LAST AMENDMENT
July 25, 2002

The Dominican Republic is a presidential republic. The executive, legislative, and judicial powers are clearly divided. The constitution provides for safeguards against military rule. The Dominican Republic is organized as a unitary state with 31 provinces and a national district. The constitution provides for a set of traditional liberal as well as social rights.

The president is the head of the public administration, who exercises the executive powers with the help of secretaries of state he or she appoints. The parliament is called the National Congress; it comprises a Chamber of Deputies and a Senate. Members of both chambers are elected by direct and universal suffrage for a four-year term. Elections are free and universal and are multiparty.

Freedom of religion is guaranteed. There is no official state religion. No specific economic system is favored by the constitution. The military is subject to the civil government.

CONSTITUTIONAL HISTORY

The Dominican Republic is situated on the central and eastern part of the island of Hispaniola, as well as on a number of adjacent islands. It was Hispaniola where Columbus first touched down on American soil in 1492 C.E. Within a few decades, the Spaniards had reduced the native population to a marginal group, while ever more African slaves were taken to the island.

The Haitians were the first on the island to free themselves from their French colonists. In the early 19th century, they conquered all of Hispaniola. In 1844, Juan Pablo Duarte liberated the eastern part from the Haitians and founded the Dominican Republic. From 1861 until 1865, the Dominicans once more voluntarily became part of the Spanish Empire. The Dominicans speak of that time as of the "restoration." After years of disorder, the republic was occupied from 1916 until 1924 by the United States. For three decades, the dictator Rafael Trujillo ruled over the

country. In the 1960s, several military coups took place. In 1966, Joaquín Balaguer was elected president in free elections. Since that year, the current constitution has been in force. The Dominican Republic has seen many peaceful changes of elected presidents since then. The constitution has been amended several times, most recently in 2002.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of the Dominican Republic consists of one single document with 122 articles. It is a stable constitution existing for almost four decades. Previously the Dominican Republic had seen 29 constitutions in a 150-year period.

The constitution is the most important law. Any law, decree, resolution, or regulation contrary to it is void. The same is true of decisions made during an intervention of the armed forces (Article 99), once the emergency has ended. Norms of international law are recognized and applied by the Dominican Republic.

BASIC ORGANIZATIONAL STRUCTURE

The Dominican Republic is a presidential democracy. It is composed of 31 provinces and a National District. Each province is run by a civil governor appointed by the central executive power.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution allows for a separation of the executive, legislative, and judicial powers. They are independent of each other, and they cannot delegate any of their powers. Key principles are enumerated in Article 4: The Dominican Republic is essentially civil, republican, democratic, and representative.

CONSTITUTIONAL BODIES

The most important constitutional bodies are the president of the republic and the vice president, the secretaries of state, the National Congress of the republic composed of the Chamber of Deputies and the Senate, and the Supreme Court.

The President of the Republic

The president of the republic is the head of the public administration as well as the supreme commander of the armed forces. The president has the power to appoint and remove the secretaries of state. He or she is also the president of the National Council of the Magistrature and thus has influence in appointing judges of the several levels of court up to the Supreme Court. The president also may declare a state of siege or national emergency if the National Congress is not in session.

To become president, a candidate must be Dominican by birth and have attained the age of 30. Most importantly, a candidate must not have been in active military or police service for at least one year before the election. Reelection to a second consecutive term is no longer possible since the 1994 amendment to the constitution.

Jointly with the president, every four years a vice president is elected in the same manner and on the same conditions. The vice president exercises the executive power during the president's incapacity.

The Secretaries of State

Secretaries of state must have attained the age of 25 years and have acquired Dominican nationality at least 10 years before taking office. It is their task to conduct the business of public administration.

The Congress of the Republic

The parliament of the Dominican Republic—the National Congress—comprises two chambers. Both senators and members of the Chamber of Deputies are elected by direct suffrage for four years. A senator represents one province. The number of deputies per province is proportional to its population but in no case fewer than two. Among the many functions of congress are levying taxes, approving the statement of revenue collection, adopting the budget, and creating new provinces.

Both chambers together convene as the National Assembly, which meets at least twice a year, to receive the message of the president of the republic or to examine the president's election.

The Lawmaking Process

The right to initiate legislation lies with the senators and deputies as well as with the president. In addition, the Supreme Court and the central electoral board have the right of initiative in specific matters. A bill has to pass two discussions in one chamber and then pass the other chamber before it is sent to the president. The president may reject the bill, but if a majority of two-thirds of the initiating chamber votes for the bill, the president then must promulgate the law.

The Judicial Power

The judicial power is vested in the Supreme Court, at least nine courts of appeal, lands courts, courts of first instance, and justices of the peace. The legal system resembles the French system. Judges cannot be removed until their terms expire.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Voting is personal, free, and secret. Members of the armed forces and the police are not allowed to exercise their voting rights.

POLITICAL PARTIES

The constitution does not set criteria for the organization of political parties, but parties must conform to the principles of the constitution. There are several major as well as minor parties in the country. Many of them rely more on the personalities of candidates than on a political orientation.

CITIZENSHIP

Dominican nationality can be obtained through birth on the territory of the Dominican Republic or by birth abroad of a Dominican father or mother. Dual nationality is possible since the 1994 amendment of the constitution.

FUNDAMENTAL RIGHTS

In the second section of the constitution, individual and social rights and duties are defined. The effective protection of these rights is recognized as the principal aim of the state. The constitution provides for social as well as for liberal rights.

The Dominican Republic has abolished the death penalty. Individual security is one of the rights that find comprehensive protection in the constitution.

The constitution mandates free elementary and secondary education. It considers the formation of strong families to be of "high social interest."

Impact and Functions of Fundamental Rights

There is no specific mechanism for individuals to enforce their rights against the state. Therefore, some of the rights have the nature of intentions that may be difficult to realize.

Limitations to Fundamental Rights

The rights enumerated in the constitution are not without limits. For example, some may be limited by respect for public order, good morals, or national security. Although the constitution guarantees the right to own property, it also considers the breakup of large landholdings to be an interest of society.

In practical terms, the Dominican Republic has been criticized for a poor human rights record. Among the serious problems reported are extrajudicial killings by the police, the forceful expulsion of Haitian and Dominican-Haitian migrants, and weak discipline among members of the police force.

ECONOMY

The constitution does not specify an economic system. Still, some basic rights set a framework for economic development: the right to own property, freedom of association and of assembly, and freedom of enterprise, commerce, and industry. Special regulations for the frontier area are embodied in the constitution, as this territory is considered to be of supreme and permanent national interest.

RELIGIOUS COMMUNITIES

Freedom of conscience and worship is guaranteed by the constitution. There is no official state religion. However, Roman Catholicism is the predominant religion in the Dominican Republic, and the Roman Catholic Church benefits from some tax exemptions and other special privileges. Bible reading became obligatory in public schools in 2000.

MILITARY DEFENSE AND STATE OF EMERGENCY

Service in the Armed Forces of the Dominican Republic is voluntary. The armed forces are expected to remain apolitical and obedient to the civil authorities. Active military personnel do not have the right to vote.

A state of national emergency can be declared by the National Congress. If congress is not in session, the president of the republic may do the same. During a state of emergency, the exercise of individual rights may be suspended.

AMENDMENTS TO THE CONSTITUTION

A proposal for an amendment to the constitution requires the support of one-third of the membership of both chambers of the National Congress. A meeting of the National Assembly is then ordered. During the voting on the proposed amendment, more than half of the membership of both chambers of the National Congress has to be present. A two-thirds majority is necessary for the proposed amendments to pass.

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Hartmut Rank

EAST TIMOR

At-a-Glance

OFFICIAL NAME
The Democratic Republic of East Timor

CAPITAL
Dili

POPULATION
800,000 (2005 est.)

SIZE
5,794 sq. mi. (15,007 sq. km)

LANGUAGES
Tetum and Portuguese (official); Bahasa Indonesian and English (working languages in the public service); 16 other indigenous languages, including Galole, Mambae, and Kemak

RELIGIONS
Roman Catholic 92%, Protestant 3%, Muslim 1.7%, Hindu 0.3%, Buddhist 0,1%, Animist 2.9%; some degree of animist belief in formal religions

NATIONAL OR ETHNIC COMPOSITION
Austronesian (Malayo-Polynesian), Papuan, small Chinese minority

DATE OF INDEPENDENCE OR CREATION
May 20, 2002 (date of international recognition of independence from Indonesia)
November 28, 1976 (proclamation of independence prior to annexation by Indonesia)

TYPE OF GOVERNMENT
Parliamentary democracy (emerging)

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
March 22, 2002

DATE OF LAST AMENDMENT
No amendment

After 450 years of continuous foreign occupation, the Democratic Republic of East Timor achieved independence in 2002. This made it the first new nation of the millennium. The drafting and adoption of East Timor's first constitution were an important task for this fledgling democracy. The nation's long and, at times, violent struggle for independence is recognized in the opening words of the constitution. It states that the constitution "represents a heart-felt tribute to all martyrs of the Motherland." It is to be a nation under the rule of law "where respect for the constitution, for the laws and for democratically elected institutions constitute its unquestionable foundation."

East Timor is a democratic republic with a president as head of state and a prime minister who leads a parliamentary system of government. The constitution has an extensive section devoted to fundamental rights. Religious freedom is guaranteed, and the contribution of the Catholic Church to national liberation is acknowledged.

Given East Timor's history of occupation and bloodshed and its lack of experience in governance, one of the main difficulties facing the young nation is its ability to build effective legal and administrative institutions in keeping with the requirements of the constitution.

CONSTITUTIONAL HISTORY

In early times, the island of Timor was made up of a number of local kingdoms, each under the control of a king or chief, known as the Liural. The system of customary law emanating from the authority of the Liural continues to have significance today, especially in the villages.

In 1520, the island became a colony of Portugal, and in 1860, the island was divided into East and West Timor. West Timor was part of the Dutch East Indies until 1950, when it became Indonesian. The constitution of Portugal applied to East Timor, which was categorized from 1952 as an overseas province of Portugal.

In 1974, a leftist coup in Portugal resulted in Portuguese withdrawal from East Timor. This was in line with Portugal's policy of immediate decolonization of all overseas territories. While the debate on the country's future was occurring, civil war broke out. A referendum was held in March 1975 to determine this question. Full independence for East Timor, supported by Frente Revolucionária de Timor-Leste Independente, or Revolutionary Front for an Independent East Timor (Fretilin), obtained 55 percent of the vote. Fretilin declared itself the legitimate government of East Timor on November 28, 1975. The current constitution recognizes this date as marking East Timor's proclamation of independence.

Indonesian troops mounted a full invasion of East Timor toward the end of 1975, which led to the formal annexation of East Timor as the 27th province of Indonesia. President Suharto signed the Bill of Integration on July 17, 1976, and the constitution of Indonesia was imposed on the island. The struggle for independence continued. In 1999, the new Indonesian president, B. J. Habibie, agreed to another referendum. The United Nations formed the United Nations Assistance Mission to East Timor (UNAMET) to conduct a fair referendum. An overwhelming percentage of Timorese (78 percent) voted for full independence. Violence erupted once more. The United Nations (UN) Security Council authorized a multinational peace enforcement mission in East Timor (INTERFET) to restore peace and security and to facilitate humanitarian relief efforts. The United Nations also established the UN Transitional Administration in East Timor (UNTAET) to assist the transition to independence.

In August 2001, East Timor held its first democratic elections to establish the initial 88-member constituent assembly. This assembly was responsible for drafting and adopting the first constitution of independent East Timor. The constitution was approved by the assembly on March 22, 2002.

FORM AND IMPACT OF THE CONSTITUTION

East Timor has a written constitution contained in a single document. The state is subject to the constitution and all laws and government actions must comply with it.

The constitution recognizes the traditional norms and customs of East Timor, provided that they are not contrary to the constitution or to any legislation dealing specifically with customary law.

The general and customary principles of international law apply, and the provisions of international conventions, treaties, and agreements apply once they are approved and ratified by the government.

BASIC ORGANIZATIONAL STRUCTURE

East Timor is a unitary state. There are a national administration, national parliament, and judicial system. The country is divided into 13 administrative divisions.

LEADING CONSTITUTIONAL PRINCIPLES

East Timor's system of government is a parliamentary democracy. The president is the head of state, and the prime minister is the head of the administration. The constitution acknowledges the doctrine of the separation of powers and the equality of all before the law.

CONSTITUTIONAL BODIES

The main constitutional organs are the president; the national parliament; the Council of State; the administration, which includes the prime minister; and the judiciary.

The President

The president of the republic is the head of state and the symbol and guarantor of national independence and unity. The president is elected for a five-year term of office, and the term can be renewed only once. The president cannot hold any other public office or undertake private work during the term of office.

The National Parliament

The National Parliament is a unicameral body with legislative, supervisory, and political decision-making power. Its members are elected by universal suffrage and hold office for five-year terms. Although there were 88 elected members in the first national parliament, the constitution provides that thereafter there must be a minimum of 52 and a maximum of 65 members.

When parliament is in recess or has been dissolved, a standing committee of parliament fulfills many of its functions. This committee also has a range of other duties: It coordinates the activities of parliamentary committees, convenes and organizes parliamentary sessions, gives consent to trips taken by the president, conducts relations with other parliaments or institutions in other countries, and authorizes the declaration of a state of siege or state of emergency.

The Lawmaking Process

The national parliament can pass bills on the basic issues of domestic and foreign policy. These become law when approved by the president. Also, parliament can authorize the administration to make laws on a range of matters. The administration has exclusive lawmaking power on matters concerning its own organization, functions, and management of the state. The prime minister and the relevant minister sign these into law.

The Council of State

The Council of State is a political advisory body to the president. It comprises the current president and former presidents, the Speaker of parliament, the prime minister, five citizens elected by parliament, and five citizens appointed by the president. The Council of State advises the president and gives its opinion on major issues, including the declaration of war and peace, dismissal of the administration, and dissolution of parliament.

The Administration

The administration is responsible for policy in the nation and the way the country is administered. It consists of the prime minister, the ministers, and secretaries of state. The members of the administration, other than the prime minister, are nominated by the prime minister and are appointed by the president. The administration is accountable to the president and to parliament. It must act in accordance with the constitution and the law.

Once appointed, the administration has 30 days in which to develop its program, which must set out its aims and objectives and the actions to be taken. The program has to be approved by the Council of Ministers and then submitted to the National Parliament. Parliament can debate the program for up to five days before approving or rejecting it. If a program is rejected for a second consecutive time, the administration is dismissed.

The Prime Minister

The prime minister oversees the way the country is administered. The prime minister chairs the Council of Ministers and coordinates the activities of the ministers. The prime minister is chosen by the political party or the coalition of parties that holds the majority of seats in the parliament. Power to dismiss the prime minister lies with the president, who is required first to consult the Council of State. The grounds for dismissal are set out in the constitution and include a vote of no confidence by an absolute majority of the members of the parliament.

The Judiciary

The constitution states that the courts and judges must be independent of the government. The highest court is the Supreme Court of Justice. It can deal with all legal, electoral, and constitutional matters. However, as this court has not yet been established, the Court of Appeal, which was set up under the UNTAET regulations, continues as the highest court. Regulations require appeals to be heard by a panel of three judges. One must be an East Timorese, and the other two must be international. Because of a lack of available judges, the Court of Appeal did not sit until June 2003. UNTAET regulations also established four district courts as court of original jurisdiction for civil and criminal cases. A special panel for serious crimes was established in 2000 to hear cases involving genocide, war crimes, and crimes against humanity.

The constitution also provides for two other categories of courts to be established: one for administrative and tax matters, the other the military court.

The Superior Council of the Judiciary was established to ensure the independence of the judiciary and to oversee the courts. The council has the task of appointing, transferring, and promoting judges.

THE ELECTION PROCESS

All citizens over the age of 17 are able to vote and to be elected in national elections.

POLITICAL PARTIES

East Timor has a pluralistic system of political parties. The constitution honors the Fretelin Party for its role in bringing about the nation's independence.

CITIZENSHIP

Citizenship is acquired by being born in East Timor. Once he or she reaches 17 years old, a child born to a foreign mother or father can declare his or her will to become an East Timorese national. A child born outside the country to an East Timorese parent can also acquire citizenship.

FUNDAMENTAL RIGHTS

Given the human-rights violations that occurred during the period of occupation, it was seen as important that the new independent East Timor prioritize the protection of human rights. Fundamental rights are to be interpreted in accordance with the Universal Declaration of Human Rights.

Part II of the constitution sets out the fundamental rights, duties, freedoms, and guarantees in the constitution. The first title establishes the general principles of equality and universality. The second title specifies personal rights and freedoms, including the right to a fair trial, due process, freedom of expression, freedom of association, freedom of the press, and the right to political

participation. Title III covers economic, social, and cultural rights and duties, including the right to work, right to strike, right to health and medical care, right to housing, and right to education. Section 61 grants the right to a humane, healthy, and ecologically balanced environment and imposes a duty on the state to protect the environment.

Impact and Functions of Fundamental Rights

Given the new nation's economic difficulties, its lack of experience, and its scarcity of trained personnel, including lawyers and judges, many of these fundamental rights cannot realistically be implemented until some time in the future. For example, the guarantees relating to criminal proceedings, detention, and due process cannot be met until there are the facilities and trained staff to ensure compliance with the constitutional protections. The same limitation applies to the economic and social guarantees.

Limitations to Fundamental Rights

The fundamental rights provisions can be suspended during a state of siege or state of emergency. The declaration of siege or emergency must list the rights that are to be suspended. Even during a state of siege, certain rights cannot be denied. These include the right to life, nonretroactivity of criminal law, freedom of conscience and religion, and the right not to be subject to torture, slavery, or cruel, inhumane, or degrading treatment.

ECONOMY

Section 138 of the constitution states that the economy is to be based on a combination of community forums with free initiative and business management. There is to be a coexistence of public, private, cooperative, and social sectors in ownership of the means of production.

The reality is that East Timor is one of the world's poorest nations. Much of its infrastructure was destroyed by the antiindependence militias and Indonesian troops prior to independence. The economy remains heavily dependent on foreign aid and international financing. Potential investors are wary as East Timor lacks the fundamental institutions of a market economy.

RELIGIOUS COMMUNITIES

Freedom of conscience, religion, worship, and teaching of any religion is guaranteed in the constitution. No one can be persecuted or discriminated against because of his or her religion. The state respects the different religious denominations and will promote cooperation between them.

There is no state church. The constitution does acknowledge that the Catholic Church of East Timor has always been able to "take on the suffering of the people with dignity, placing itself on their side in the defense of their most fundamental rights."

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides that the defense force must be made up exclusively of national citizens. Its role is to guarantee independence, maintain the territory, and ensure the security of the people against external aggression. Internal security is the responsibility of the police force. The military is not permitted to intervene in political matters. There is a consultative body, the Superior Council for Defense and Security, that advises the president on matters of defense and security.

There is no conscription. Both men and women can serve in the defense force.

The administration can propose a declaration of a state of siege or a state of emergency, with the authorization of parliament. Such a state cannot last for more than 30 days unless renewed. Circumstances that allow for a state of emergency or siege include aggression by a foreign force, serious disturbance to the democratic constitutional order, and public disaster. Suspension of fundament rights and freedoms may occur.

AMENDMENTS TO THE CONSTITUTION

Review of the constitution can begin six years after it has entered into force. It also can be revised at any time with the support of a four-fifths majority of the members of parliament. The constitution sets out a list of matters that cannot be revised. These include the separation of powers, independence of the courts, fundamental rights and freedoms, and the election process.

Any amendment that follows a review must be passed by two-thirds of the parliament.

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ECUADOR

At-a-Glance

OFFICIAL NAME
Republic of Ecuador

CAPITAL
Quito

POPULATION
13,212,742 (July 2004 est.)

SIZE
109,483 sq. mi. (283,560 sq. km)

LANGUAGES
Spanish (official), Quechua, Shuar, and other indigenous languages (recognized)

RELIGIONS
Roman Catholic 95%, other 5%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (mixed Amerindian and white) 65%, Amerindian or indigenous 25%, Spanish and other 7%, Afro-Ecuadorian or black 3%

DATE OF INDEPENDENCE OR CREATION
May 24, 1822

TYPE OF GOVERNMENT
Republican presidential system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral congress

DATE OF CONSTITUTION
August 10, 1998

DATE OF LAST AMENDMENT
May 2, 2002

Ecuador is a democracy based on a constitutionally guaranteed rule of law, with a clear division of powers, although a precise, stable division has not yet been delineated. The current constitution recognizes and guarantees ample human rights, but they are only discretionarily respected by the authorities and seldom enforced by the judiciary.

After a long period of military regimes, Ecuador has been struggling during the last 25 years to construct the basis of a real democracy. Political and economic interest groups have designed and redesigned the political system to suit their particular interests and control of all sectors of government. In fact, Ecuador has had more than 17 constitutions over the years, as well as numerous amendments.

The president is both the chief of state and head of the executive administration; however, the current electoral system does not necessarily provide for a strong representation of the president's party in the National Congress. Successive constitutional reforms have diminished the power of congress, thereby inducing parties to choose less and less qualified people to run on their lists. In addition, the many political parties, although deemed desirable in a democracy, often negatively impact the ability of the political sector in Ecuador to reach any long-term agreements. As a consequence, there is little effective governance in Ecuador.

CONSTITUTIONAL HISTORY

The Royal Audience of Quito (Real Audiencia de Quito) was established in 1563 as an administrative dependency of the Spanish Crown; it included the territory of present-day Ecuador. Political instability characterized the colonial period; it was primarily due to the numerous changes of jurisdiction to which the Royal Audience of Quito was subjected. Economic decline marked the sec-

ond half of the 18th century. Historians attribute the fall of the colonial system to various factors, including the decrease of silver production in Potosí (now Bolivia), a substantial decline in textile production in Quito due to legal restrictions limiting their export to other colonies, and the fact that the social elites had attained control over the local economy and were eager to attain political control.

Independence, which was sought between the end of the 18th century and the early decades of the 19th century, was inspired by a number of external factors, one of which was the French Revolution. The first attempt at independence in the region took place in Quito on August 10, 1809; however, the effort did not receive the support of the other territories and resulted in the slaughter of about 100 revolutionaries by Spanish troops. Independence was finally attained in 1822. Later the three most important cities, Quito, Guayaquil, and Cuenca, were incorporated into Grand Colombia, the project of the Venezuelan independence leader Simón Bolívar, to unite the territories of South America into one country. The project failed, and Ecuador was created as a separate republic by local elites on May 13, 1830.

A constitutional assembly enacted the first constitution of the nation on September 11, 1830, when the state was named the Republic of Ecuador. It was a country without a national identity, incorporating three distinct geographical regions with very little in common, as well as a very large indigenous population completely dominated by social elites of Spaniards, descendants of Spanish colonists, and mestizo (mixed Amerindian and Spaniard). This reality very much influenced the content and philosophy of the first constitution as well as many of the subsequent ones.

The constitution called for the separation of powers into three branches of government. Catholicism was recognized as the only religion accepted and protected by the state, thus eliminating by government sanction any other faith.

The current constitution took effect on August 10, 1998, after presidential and parliamentary elections had been held.

FORM AND IMPACT OF THE CONSTITUTION

Ecuador has a written constitution, codified in a single document, that takes precedence over all other national law. International law must be in accordance with the constitution in order to be applicable within Ecuador; once an international instrument is duly ratified, it has the same status as a constitutional norm. The constitution of Ecuador gained more clout in 1996 when a Constitutional Court was created and given the power of judicial review of the constitutionality of all laws and administrative acts of all branches of government.

BASIC ORGANIZATIONAL STRUCTURE

Ecuador is a unitary republic made up of 24 regional departments called provinces, including the Galápagos Islands. Although defined as a republican presidential system with a strong central government, Ecuador is characterized by decentralized provincial and local governments. Provinces differ considerably in geographical area, population size, and economic strength and are themselves divided into municipalities. All municipalities have equal rights and responsibilities; the law provides that the central government may confer increased responsibilities to municipalities that demonstrate sufficient financial and administrative capacity.

LEADING CONSTITUTIONAL PRINCIPLES

Ecuador's system of government is a presidential democracy that abides by the rule of law. The constitution provides for a clear division of powers based on checks and balances, but in practice, the country is still struggling to implement such a system. The independence of the justice system has been an important goal; for some seven years up to December 2004, a certain degree of stability was attained in the judicial system. Unfortunately, that month, congress, with the support of the ruling party, unconstitutionally removed the entire Supreme Court and unlawfully appointed a new group of magistrates. The previous month, they had done the same to members of the Constitutional Court and the Electoral Tribunal. These events have produced the most import institutional crisis of the last two decades. Popular uprisings in the capital forced the president to resign and leave the country in 2005. Since then, a new president has been confirmed and a semblance of stability returned.

CONSTITUTIONAL BODIES

According to the 1998 constitution, the most important government institutions are the president, head of the executive, and the National Congress as the legislative power; as well as the institutions of the judicial system, which include the judiciary, the Constitutional Court, the prosecutor general, the attorney general, the comptroller general, and the Commission of Civil Control of Corruption. Other important institutions are the Superintendencies of Banks, Companies, and Telecommunications.

The constitution contains a number of contradictions regarding the functions assigned to the different institutions that are part of the justice system. The specific attributes, faculties, responsibilities, and interrelations of the entities are not clearly defined and even overlap. Given the constitution's highly political nature, reform of

its problematic aspects has become an almost impossible task. Such reforms affect the balance of power among the executive, legislative, and judicial branches of government and among diverse social and political interests.

The President

The president of the republic exercises the executive powers as head of the state and of the executive administration. The president is elected for a term of four years. Any candidate for the presidency must be Ecuadorian by birth, enjoy all political rights, and be at least 35 years of age. The spouse, father, children, or brothers of the president in office may not run for the presidency; the vice president may run only after having resigned from office. The president and the vice president are elected by majority vote in a universal, direct, equal, and secret balloting process. The president appoints and dismisses the ministers of state.

The National Congress

The legislative power is vested in the National Congress, the parliament. Members of the national congress are elected for a term of four years. They are obliged to comply with a Code of Ethics adopted by congress. In case of violation of this code, they can be sanctioned by a majority vote of the members of congress. Sanction can include loss of membership.

The Lawmaking Process

The lawmaking process is vested in the National Congress. Bills in general need to be approved by the majority of members present.

There is a Commission for Legislation and Codification made up of seven members who are elected by the national congress but may not be members of congress. The commission prepares and drafts bills and publishes laws that have been passed.

The Judiciary

The judiciary is made up of the Supreme Court of Justice, regular courts, and tribunals. A National Council of the Judiciary manages the internal administration of the judiciary. Justices of the peace are charged with resolving conflicts between individuals and neighbors by arbitration and mediation. The judiciary is independent and is subject only to the constitution and the law.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Any Ecuadorian citizen of at least 18 years of age can vote and is eligible to run in the elections. The process for the election and removal of the president, vice president, congressional representatives, and other officials is described in the constitution and detailed in various laws and regulations. The constitution also establishes a Constitutional Tribunal, which approves and registers political parties, organizes and controls the electoral process, and adjudicates all matters related to the electoral system.

In Ecuador, any citizen can run for office without the endorsement of a political party. Even candidates for congress who have party backing may, once elected, distance themselves from their party or political movement without losing their seat. These two facts have harmed the efficient functioning of congress.

POLITICAL PARTIES

The system of multiple political parties that exists in Ecuador impacts the ability of the political sector to reach long-term agreements. The decision-making process is characterized by extreme posturing and strategic positioning, making achievement of consensus almost impossible.

CITIZENSHIP

The current constitution has made great strides in clarifying and defining the concept of citizenship by recognizing that all persons born in Ecuador are citizens who have constitutional rights, regardless of their age. Political rights are granted to citizens at the age of 18, whereas civil rights are granted to any person at birth.

FUNDAMENTAL RIGHTS

Fundamental rights and the mechanisms to uphold them were broadly and thoroughly incorporated into the constitution enacted in 1998. This area of constitutional development is considered the most important achievement of the 1997 Constitutional Assembly.

Impact and Functions of Fundamental Rights

Notwithstanding the importance given to fundamental rights in the 1998 constitution, the chapter defining the Constitutional Court was not changed. In the end, the Constitutional Tribunal has been extremely ineffective in responding to petitions that have been filed in both the quantity and the quality of its rulings.

ECONOMY

Ecuador's economic system is described in the constitution as a social market economy, but, in practice, it is a neoliberal economic system. The instability resulting from

continuous economic crises and the increase in social conflicts between 1997 and 2000 have led to a progressive loss of public support for representative democracy. In the year 2000, the financial system of Ecuador underwent bankruptcy, leading to the political decision to adopt the American dollar as the only local currency. This process, known as dollarization, was adopted de facto and has yet to be incorporated into the constitution, which continues to recognize the *sucre* as the official currency of Ecuador.

RELIGIOUS COMMUNITIES

The 1945 constitution (and the constitutions of 1979 and 1998) firmly established freedom of religion and the separation of church and state.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military falls under the jurisdiction of the civil government, and the president is the official commander in chief of all military forces. Although the military cannot, under the constitution, act unilaterally, at many times of political instability, it has acted on its own, often becoming the arbiter of democracy.

A state of emergency can be declared only by the president and only in cases of external aggression, imminent war, grave internal unrest, or natural disasters. Once a state of emergency has been declared, the president must notify congress within 48 hours of its declaration, at which time congress can nullify the president's declaration if it finds insufficient justification. Under a state of emergency, the president can suspend some fundamental rights, such as freedom of speech, sanctity of the home, right to privacy in postal or electronic communications, right to public assembly, and freedom of movement within the national territory.

Military service continues to be compulsory for all men. Those who declare themselves to be conscientious objectors can, instead, choose to perform an assigned social service to the community.

AMENDMENTS TO THE CONSTITUTION

Several constitutional reforms were introduced in the past decade, mainly in 1992, 1995, 1997, and 1998. Since the implementing legislation for one amendment has not always been enacted before another was adopted, in 1998, a new procedure for reform of the constitution that makes the process much more rigorous and difficult was approved. The new procedure mandates two discussions of the text by congress to take place one year apart, followed by a two-thirds majority vote, for approval. At this point, the president can still exercise the power to veto the proposed reform.

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Valeria Merino Dirani

EGYPT

At-a-Glance

OFFICIAL NAME
Arab Republic of Egypt

CAPITAL
Cairo

POPULATION
77,505,756 (2005 est.)

SIZE
395,793 sq. mi. (1,025,100 sq. km)

LANGUAGES
Arabic

RELIGIONS
Muslim 94%, Christian (Orthodox, Catholic, Protestant) and other 6%

NATIONAL OR ETHNIC COMPOSITION
Egyptian, Bedouin, and Berber 99%; Greek, Nubian, Armenian, other European (primarily Italian and French) 1%

DATE OF INDEPENDENCE OR CREATION
February 28, 1922 (from United Kingdom)

TYPE OF GOVERNMENT
Republic, based on mixed parliamentary and presidential systems

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
September 11, 1971

DATE OF LAST AMENDMENT
May 25, 2005

Egypt is a hybrid of parliamentary and presidential forms of government that endows the president with a wide variety of executive and legislative powers. It is a centralist state, divided into governorates that enjoy very little autonomy. The constitution provides for far-reaching guarantees of both generations of human rights, liberal and social. A rather powerful and quite independent constitutional court is in charge of reviewing the conformity of laws and administrative regulations with the provisions of the constitution.

The head of state is the president, who dominates the entire field of political activity. The head of government enjoys limited internal influence. Members of the lower chamber of parliament are elected, but there have been frequent allegations of fraudulent electoral practices. Pluralism is guaranteed by the constitution, but political parties must be registered and very few have any real influence.

Egypt is an Islamic state, and the principles of the Sharia are to be the main source of legislation, according to the constitution. The constitution also states that the economic system is socialist, but in practice, Egypt is moving more and more toward a market economy and privatization. The military plays an important though informal role in politics, and all presidents so far have been from the armed forces. A state of emergency was proclaimed in 1981 and has not been lifted since.

CONSTITUTIONAL HISTORY

Egypt, home of one of world's earliest civilizations, became a province of the Ottoman Empire in 1516. After the failure of the French campaign led by Napoléon Bonaparte (1798–1801), Muhammad Ali, leader of the Albanian contingent of the Ottoman army, became viceroy of Egypt (1805). He and his successors started the country on the road to modernization.

Starting in 1841, succession to the viceroyalty became hereditary to the oldest surviving male in the Muhammad

Ali family. Given the title of khedive in 1867, they gradually expanded their prerogatives at the expense of the Ottoman sultan and reformed the administrative, legal, and political systems on the European model. In 1866, an Assembly of Delegates was established. Its functions were merely consultative at first, but its establishment marked the beginning of parliamentary life in Egypt. In 1878, Khedive Ismail established a Council of Ministers and entrusted them with some of his executive powers.

A Fundamental Law, adopted in 1882, provided for a parliamentary system with a cabinet responsible to the assembly but with the power to dissolve it. The same year, Egypt was occupied by British troops, and the Fundamental Law was abrogated. An Organic Law was adopted in 1883 that gave only consultative powers to the representative bodies, except in the imposition of new direct taxes, in which its opinion was binding. The Organic Law was amended in 1912 to give members of the legislative assembly the right to interrogate cabinet ministers. It was amended again one year later to create a new representative assembly with increased legislative powers, which met for a permanent annual session and whose proceedings were open to the public. In 1914, Egypt became a British Protectorate and was detached from the Ottoman Empire.

The representative assembly was soon suspended, never to be restored. In 1922, the British abolished the Protectorate and unilaterally proclaimed Egypt's independence, recognizing Sultan Fuad I as king of Egypt. England, however, maintained its own military forces in the country and reserved four questions for future negotiations, namely, the defense of the country, the security of communications of the British Empire, the protection of foreign interests and minorities, and the status of the Sudan. This was a formal independence but not a real one as the British still intervened in Egyptian internal affairs.

In 1923, the first Egyptian constitution was adopted. It set up a parliamentary system of government with a separation of powers, though the king retained extensive executive and legislative powers. Its second section contained an extensive list of civil and political rights, such as freedom of expression, freedom of association, freedom of religion, and independence of the judiciary. The 1923 constitution was abolished in 1930 and replaced by a new one that strengthened the powers of the monarchy. The 1930 constitution was abrogated in 1934, and the 1923 constitution was reinstated the following year; it remained in force until 1952. This was a so-called liberal era characterized by governmental instability. Few cabinets and parliaments completed their constitutional term. The majority party itself (Wafd) did not rule for more than seven and a half years of the 28-year era. The autocratic monarch suspended the constitution several times. Egypt did, however, gain experience with democratic institutions and practices such as political parties, separation of powers, elected assemblies, constitutional protection of human rights, and a fully developed judiciary, all in a country still under foreign military occupation.

In 1936, the Treaty of Independence and Honor, which called on Britain to limit its military presence in the Suez Canal zone and asked for negotiations to end the capitulation system, was signed. The latter was a series of privileges, originally granted by the Ottoman sultan to European heads of state, according to which foreigners were placed under the extraterritorial jurisdiction of their consular courts, which applied their own national laws.

During this period, the judiciary took major steps toward independence. In 1948, the two-year old Council of State, an administrative court, ruled itself competent to exercise judicial review of legislation in the course of deciding a case submitted to it and to refrain from enforcing a law found unconstitutional. In 1952, the Court of Cassation (final appeal) decided to follow the example of the Council of State. After this precedent, Egyptian courts at all levels began to exercise judicial review of legislation. This decentralized review, however, led to legal instability and contradictory decisions among judges since the ruling of a particular court had no binding effect on other courts.

On July 23, 1952, a coup d'état by young army officers overthrew the king and ushered in the July Revolution. On December 10, the constitution of 1923 was abrogated. A three-year transitional period was declared to last until January 16, 1956, during which the Revolution Command Council, consisting of Free Officers, ruled under martial law. A constitutional proclamation of February 10, 1953, organized the basic structure of the transitional government, which was characterized by a strong concentration of power. On June 18, 1953, another proclamation abolished the monarchy and made Egypt a republic.

A new constitution was finally adopted in 1956 and submitted to a referendum after a first draft, deemed too liberal, was rejected in 1955. For the first time, citizens enjoyed not only civil and political rights but also social and economic ones. Candidates to parliamentary elections had to be selected by the one party, the National Union. Women were given political rights for the first time in the history of the country by a law of 1956.

After the union between Egypt and Syria in 1958, a constitution was adopted for the newly created United Arab Republic. After the union was dissolved in 1961, a constitutional declaration was issued in 1962 to organize the structure of the state until another constitution could be adopted. It centralized all powers in the hands of the president. A provisional constitution was adopted in 1964 and submitted to referendum, designed to last until a permanent constitution could be drawn up. The official denomination of the state remained United Arab Republic, though it now applied to Egypt alone. It contained first- and second-generation (liberal and social) rights. In a departure, the new constitution established the principle that half the assemblies' representatives must be workers and peasants.

A 1969 law decree created a Supreme Court entrusted with the exclusive power of judicial review in constitutional issues. Its members served three-year terms and

were appointed directly by the president of the republic, who could also discharge them. After the death of Nasser in 1970, Anwar al-Sadat acceded to power and ordered the parliament to draft a new constitution. The text was adopted on September 11, 1971, by a referendum. The official denomination of the state became Arab Republic of Egypt. The constitution reflected different trends: the socialist values, one-party system (until the amendment of 1980), and Arab nationalism inherited from the Nasser era, juxtaposed with liberal democracy and Islam. It accorded the president far-reaching powers.

FORM AND IMPACT OF THE CONSTITUTION

Egypt's constitution is codified in a single document that is considered to be at the apex of the hierarchy of domestic norms (laws and regulations). International treaties, duly ratified, have "the force of law," meaning that the constitution and most recent laws enjoy a higher rank. The Supreme Constitutional Court, established in 1979, is the guardian of the constitution.

According to Article 2, as amended in 1980, the principles of the Islamic Sharia are the main source of legislation (and no longer *a* main source of legislation, as was stated in 1971). The Supreme Constitutional Court has refused to interpret this provision as giving supraconstitutional value to the Islamic Sharia. First of all, it has ruled that the 1980 amendment has no retroactive effect; the court considers itself incompetent to review the conformity to Article 2 of laws adopted before 1980. In addition, the court believes that only certain principles of the Islamic Sharia can have precedence over domestic laws: those that are from identified sources and have a precise meaning that all religious scholars have always accepted.

BASIC ORGANIZATIONAL STRUCTURE

Egypt is a centralist state with a strong centralization of power. All the main institutions and judicial bodies are based in Cairo, the capital. The territory is divided into 26 governorates headed by governors appointed by the president of the republic. Local councils at the governorate and district levels are elected but enjoy very little power. The decision-making process does not really rely on the principle of public participation.

LEADING CONSTITUTIONAL PRINCIPLES

Egypt is defined as a socialist democracy, based on an alliance of the working forces of the people (Article 1) and an Islamic state (Article 2), based on popular sovereignty (Article 3) and the rule of law (Article 64). Its system of government has elements of both parliamentary and presidential systems. The constitution of 1971 retains strong presidential powers and strengthens the dominant position of the president under exceptional circumstances (Article 74). Article 68 states that no administrative act or decision is immune from appeal to a court. The constitution, for the first time, makes the principles of the Sharia the main source of legislation.

Political participation can be exercised through elections to the parliamentary assemblies, and the people may be consulted directly through referendums in certain cases, such as after a motion of no confidence or during the dissolution of the People's Assembly. This option, however, is rarely used. Workers and peasants must constitute at least 50 percent of parliamentary bodies. Political participation is low.

In practice, the system of checks and balances provided for by the constitution did not lead to a real balance of powers between the executive and the legislative. Only the judiciary, and particularly the Supreme Constitutional Court and the State Council, has succeeded in putting limits on executive power.

CONSTITUTIONAL BODIES

The constitution provides for a president of the republic; an administration consisting of a prime minister and cabinet ministers; a bicameral parliament made of the People's Assembly and, since 1980, a Consultative Assembly; and a judiciary, including a Constitutional Court in charge of reviewing the constitutionality of laws and administrative regulations.

The President of the Republic

The president of the republic is the main figure in the current Egyptian political system. Since the constitutional amendment of 2005, the president is elected by direct secret ballot for a six-year term. Since the amendment of 1980, the president can serve unlimited successive terms. The president must be born to Egyptian parents and be at least 40 years of age.

The constitution gives the president of the republic a wide range of executive and legislative powers. The president appoints and dismisses the prime minister and the cabinet ministers, convokes the cabinet, and presides over its meetings. The president issues regulations for implementing the laws, makes all military and civil appointments, concludes treaties, is the chief of the army, declares war, grants amnesty, and can also proclaim a state of emergency.

The president also has the right to propose and promulgate laws. The president can veto a bill adopted by the People's Assembly; if the deputies approve it again with a two-thirds majority, the president is required to promul-

gate it. It is the president who dissolves the People's Assembly in case of necessity and after a referendum and who can also call a referendum on any important matter deemed to affect the supreme interests of the country. The president can pass legislation by decree laws when special circumstances require urgent measures or after a delegation of powers by the People's Assembly or on the president's own initiative. The president is not accountable to the parliament.

The Administration

The administration (cabinet) consists of the prime minister and other ministers, all appointed and dismissed by the president of the republic. Ministers must be Egyptians, no less than 35 years old. They may be members of the People's Assembly.

The cabinet, with the president, determines the general policy of the state; directs, coordinates, and follows up the work of the ministries; issues administrative regulations; and prepares draft laws and the draft general budget. Ministers are individually and collectively responsible before the People's Assembly.

As a result of the far-reaching powers of the president, the role of the prime minister is secondary, mainly one of coordination and confined to domestic policy. Some ministers have continuously held office for more than 20 years.

The People's Assembly

The People's Assembly is made up of 454 members who serve for a five-year term. They are elected in a general and direct balloting process from two-member districts. At least half of the members must be workers or peasants. Ten members are nominated by the president of the republic. The assembly meets for about seven months a year.

Each member of the assembly has the right to propose laws. The People's Assembly also monitors the work of the administration through questions, interpellations (challenging of government actions), fact-finding committees, and withdrawal of confidence from any cabinet minister. A motion of no confidence may be adopted by a majority of the members of the assembly upon an initiative of one-tenth of them. The president of the republic may approve the assembly's decision and decide to put the subject to a referendum. If the result is in support of the assembly, the cabinet resigns. If the referendum is in favor of the administration, the assembly is considered dissolved.

Membership in the assembly may not be revoked except on specific grounds such as loss of one of the conditions of membership, loss of the member's status as a worker or peasant if he or she was elected as such, loss of confidence, or violation of the mandate. The decision to lift a deputy's immunity must be made by a two-thirds majority of the members. The delegates may not be subject to criminal prosecution without the permission of the assembly except if the member is arrested in the course of committing a crime.

The People's Assembly is dominated by the regime's political party, as the opposition is underrepresented. The assembly exercises no real control of the actions of the executive branch. Cabinet-proposed bills are not rejected or even subject to serious amendments by deputies.

The Consultative Assembly

Established in 1980 after amendment of the constitution, the Consultative Assembly can be regarded as the second chamber of the parliament. It is composed of 264 members, two-thirds of whom are elected by direct secret public balloting and one-third appointed by the president of the republic. Half must be workers and peasants. No one can be member of both the People's Assembly and the Consultative Assembly. The term of office is six years, and half of the members are renewed every three years.

This assembly must be consulted on, among other matters, proposals for the amendment of the constitution, draft laws complementary to the constitution, most important treaties, and draft laws referred to it by the president of the republic. It has no power to monitor the government's work, and ministers are not responsible before it. The assembly can be dissolved by the president of the republic in case of necessity.

The Lawmaking Process

Both the president of the republic and members of the parliament have the right to initiate laws. Draft laws are submitted to one of the 19 permanent committees of the People's Assembly before they are submitted to the assembly and approved by a majority of all members. The laws are promulgated by the president, who has the right of veto. If the People's Assembly approves the draft law again after the veto, the president must promulgate it. Laws passed are published in the *Official Gazette.* In practice, most laws are government-sponsored bills and are adopted with little debate by a large presidential majority.

The Judiciary

The judiciary in Egypt is constitutionally independent of the executive and legislative powers. It follows the civil-law model, with an administrative justice separate from the civil and criminal one. The State Council controls administrative action with regard to laws and regulations, and another set of courts is competent in civil, commercial, and criminal matters as well as for questions regarding personal status. Each set of courts is headed by a supreme court that can rule on points of law only.

The constitution of 1971 was the first Egyptian one to establish a constitutional court in charge of reviewing the constitutionality of laws and administrative regulations. Its justices are nominated through a process of co-optation, and they serve until they retire. Cases can be taken before the Supreme Constitutional Court by a court or

by a party to a court case. The rulings of the constitutional court are binding upon all public authorities and persons. This court has proved to be very active and has developed a jurisprudence supporting the protection of human rights.

The judiciary as a whole is a powerful actor in legal and political life. In many sensitive cases, it has been a real counterpower to the other two branches and a major force in fostering democracy and human rights. This may explain why so many exceptional courts have been set up: to remove the ordinary judiciary from politically sensitive cases. State security courts as well as military courts have been given wide-range jurisdiction during states of emergency. They issue rulings without appeal, after summary procedures.

THE ELECTION PROCESS

Since 1956, all Egyptians over the age of 18, men and women, have the right to vote in elections. Naturalized citizens must wait five years after obtaining nationality to vote. Only Egyptians over 30, born to an Egyptian father, who have completed military service or been exempted and are literate can stand for elections. In 2000, the State Council decided that binationals were not allowed to run for office.

Parliamentary Elections

At one time, Egypt followed proportional representation and a party list system, but this was declared unconstitutional by the Supreme Constitutional Court in 1987 and 1990 because independent candidates could not run for elections. The country has thus resumed elections of individuals by a two-round majority vote. Two candidates, one of whom necessarily is a worker or a peasant, are elected in each of the 222 constituencies. The People's Assembly is the only authority competent to decide upon the validity of the mandate of its members.

Since another decision of the Supreme Constitutional Court in 2000, judges are empowered to oversee elections in all polling stations. Judicial supervision inside the polling stations has helped curtail numerous fraudulent practices of the past. However, judges can still not prevent intimidation and exclusion of voters outside the polls.

Presidential Elections

Since 2005, the constitution provides that the president is popularly elected by direct secret ballot. This reform gives political parties that have five years of existence the opportunity to nominate their leaders as presidential candidates, if the party won a minimum of 5 percent of seats in both houses of parliament. Independent candidates need the combined support of 250 members of the People's Assembly, the Consultative Assembly, and Municipal Councils. In case none of the candidates wins an absolute majority in the first round, a second round of elections between the two top candidates is held.

POLITICAL PARTIES

All political parties were dissolved in 1953 by the Revolution Command Council, and a one-party system was established. Only in 1976 was a multiparty system reinstituted in Egypt. In 1980, the constitution was amended to recognize the multiparty principle. This pluralistic system is limited by a law of 1977 that regulates the formation of parties. Political parties have to meet certain vague and general conditions and be licensed by a special committee in order to operate. This Political Party Committee is headed by the Speaker of the Consultative Assembly and is composed of ministers and members close to the ruling party. The committee can also decide to freeze or dissolve a party. Its rulings can be appealed before a special circuit of the State Council.

In practice, since the reestablishment of a multiparty system, only four political parties have been licensed by the Political Party Committee, all of them after 2000. Other parties have been granted recognition by the judiciary on appeal. The activities of about one-third of the 21 existing parties have been frozen by the committee, mostly because of internal turmoil. The ruling party is the National Democratic Party, led by the president of the republic. The Muslim Brotherhood is not recognized as a political party on the grounds that the 1977 law prohibited parties organized on religious lines. Muslims Brothers nevertheless compete in elections as independent candidates or through alliances with recognized parties. In practice, political parties cannot be considered a dynamic democratic force in Egypt.

CITIZENSHIP

Egyptian citizenship is primarily acquired by birth to an Egyptian father. Until 2004, having an Egyptian mother was not sufficient to confer Egyptian nationality unless the father was unknown or stateless. Under national and international pressure, however, the law was finally amended in June 2004 to allow all Egyptian mothers to transmit their nationality to their children. Nationality can also be granted under certain conditions to foreigners who have resided in Egypt for at least 10 years.

FUNDAMENTAL RIGHTS

The Egyptian constitution devotes Part 3 to public freedoms, rights, and duties, whereby civil and political rights are protected. Among these are the principle of equality, individual freedom, and protection of the rights of detainees; freedom of religion, of expression, of the press, of movement, of assembly, and of association; the principle that crimes and penalties must be defined by law; and the presumption of innocence.

The constitution explicitly guarantees economic, social, and cultural rights in Part 2, Basic Components of Society. Chapter 1 sets forth the social and moral components of society, Chapter 2 its economic constituents. Among the rights guaranteed are the right to work, to health insurance services, to pensions, and to education.

Some human rights provisions are also found in other parts of the constitution. For example, the multiparty system is guaranteed in Part 1, The State and the independence of the judiciary in Part 4, Sovereignty of the Law.

Most of the rights stated in the constitution (e.g., the principle of equality, inviolability of private life, or freedom of movement) apply to "all citizens," meaning Egyptians only. Other rights (e.g., protection against arbitrary arrest or the rights of detainees) apply to "any person," including foreigners.

Impact and Functions of Fundamental Rights

Most fundamental rights guaranteed by the Egyptian constitution were already protected by previous constitutions. First-generation rights (liberal rights) already existed under the constitutions of the monarchy, and second-generation ones (social rights) appeared at the Nasser era, mostly in the 1964 constitution.

The 1971 constitution defines some "positive discrimination" (affirmative action) measures, such as allotting workers and peasants at least half the seats in all representative bodies. This provision is often criticized as contradictory to the principle of equality.

Some provisions also establish duties for citizens. These include defending the homeland, safeguarding national unity and keeping state secrets, safeguarding social gains, working, paying taxes, and participating in public life.

Limitations to Fundamental Rights

The Egyptian constitution specifies possible limitations on fundamental rights. No criteria are specified for limiting rights in general; such limitations are prescribed on a case-by-case basis. Freedom of expression or freedom of assembly, for instance, shall be exercised "within the limits of the law." No rights are stated as never to be limited.

The Supreme Constitutional Court has ruled that no law can deprive any right of its core content. Only limitations necessary for the exercise of the right shall be allowed, and those limitations shall themselves be limited by the principle of proportionality (the limitation should be appropriate to the specific need).

ECONOMY

According to the constitution, Egypt is a socialist state, and socialist gains have to be protected. Public ownership is sacred, and its protection and consolidation are the duty of every citizen. These provisions are a heritage of the Nasser era.

However, since the Sadat era, Egypt has been moving toward an economic system based on capitalism, liberalization of the economy, and privatization of the public sector. One of the objectives of this new policy is to attract foreign investments.

The constitution protects private property, the right to work, and the right to form associations and trade unions. It also guarantees the social function of property. Some economic rights have been inherited from the Nasser era, such as popular control over the means of production or the right of participation of workers in companies' management and profits.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed by the constitution, which also guarantees the principle of equality of all citizens and forbids discrimination on the basis of religion. However, the constitutional text also declares that Egypt is an Islamic state. The norms of the Islamic Sharia still influence the personal status law, but most other branches of law have been secularized.

Fourteen non-Muslim communities are recognized in Egypt. Most of them are Christian: Orthodox (four different communities), Catholic (seven different communities), and Protestants. The Jewish community is divided into two parts. Each community has power to legislate its own personal status law, although courts dealing with these issues have been unified since 1956. Islamic Sharia, as codified by Egyptian law, is applied whenever the two parties to a personal status dispute are not members of the same religious community.

A Muslim man can marry a Christian or a Jewish wife, but a Muslim woman cannot marry anyone but a Muslim. Muslims cannot convert to another religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the supreme commander of the armed forces and has the authority to declare war, with the approval of the People's Assembly. No organization or group may establish military or semimilitary formations such as private militias. According to the constitution (Article 58), the defense of the homeland and its territory is a sacred duty, and conscription is compulsory. All men between 18 and 30 years of age are liable for military service. Conscripts serve three years of active duty. College graduates serve only 12 months. Sons who do not have brothers and family breadwinners are eligible for exemptions. Women can volunteer for the armed forces to perform administrative tasks. Conscientious objection is not allowed.

The constitution of 1971 authorizes the president of the republic to proclaim a state of emergency for a limited period but must notify the People's Assembly within 15 days for their approval. A state of emergency was proclaimed on October 6, 1981, the day President Sadat was assassinated. It has remained in force since. It gives the president of the republic far-reaching powers and places restrictions on many constitutionally guaranteed rights. Special courts have also been established to adjudicate crimes against the internal or external security of the state. The president can refer ordinary crimes to such courts. They judge without appeal, but their decisions can be challenged by the president within 15 days.

The president may also refer to military courts civilians accused of any crimes proscribed by the penal code or any other law. These courts have been used to try Islamists.

AMENDMENTS TO THE CONSTITUTION

Article 189 of the constitution sets out a special and complex amendment procedure. First, the president or one-third of the People's Assembly initiates the procedure. The assembly then approves the principle of the amendment by a majority vote of its members. After two months it resumes deliberation; if the amendment is approved by a two-thirds majority, it is referred to the people for a referendum.

The constitution was amended twice. In 1980, the amendments ended the two-term limits for the president (Article 77); created a multiparty system by ending the exclusive constitutional status of the Arab Socialist Union (Article 5); made Islamic principles *the* principal source of legislation and not *a* principal source of legislation (Article 2); created the Consultative Assembly and a Supreme Press Council to authorize licenses to newspapers and to oversee distribution of foreign publications in the country (Part 7); changed Egypt from "a democratic socialist state" to "a socialist democratic state" (Article 1); and, finally, obliged the state to "narrow the gap between incomes" instead of to "suppress class distinctions in society (Article 4)."

In 2005, Article 76 of the constitution was amended to allow multicandidate presidential elections. The very restrictive conditions set for candidacy, however, make it extremely difficult for independent and even party candidates to run.

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Nathalie Bernard-Maugiron

EL SALVADOR

At-a-Glance

OFFICIAL NAME
Republic of El Salvador

CAPITAL
San Salvador

POPULATION
6,704,932 (2005 est.)

SIZE
8,124 sq. mi. (21,040 sq. km)

LANGUAGES
Spanish, Nahua (among some Amerindians)

RELIGIONS
Roman Catholic 83%, other 17%

NATIONAL OR ETHNIC COMPOSITION
Mestizo 90%, white 9%, Amerindian 1%

DATE OF INDEPENDENCE OR CREATION
September 15, 1821

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral assembly

DATE OF CONSTITUTION
December 20, 1983

DATE OF LAST AMENDMENT
October 15, 2003

El Salvador's system of government is a presidential democracy. The basic branches of the government are the legislature, the executive, and the judiciary.

El Salvador is a unitary state made up of 14 departments. The country has experimented with various constitutional reforms, of which the most relevant is the one adopted in the peace treaties of January 16, 1992, which put an end to the 12 years of internal armed conflict.

The strong president is both the chief of state and the head of the executive branch of government, although the president cannot be elected for a consecutive second term.

According to the constitution, there is a pluralistic system of political parties; in fact, there are two major parties. The traditional set of liberal human rights and civil liberties is constitutionally guaranteed. During the 12-year civil war, human rights violations by both the government security forces and left-wing guerrillas were rampant.

The constitution provides for freedom of religion and specifically recognizes the Roman Catholic Church. After the peace agreements, the constitution was amended to prohibit the military from playing an internal security role except under extraordinary circumstances.

CONSTITUTIONAL HISTORY

The Republic of El Salvador, which became independent of the Spanish Crown in 1821, has had 12 constitutions to today. The first was implemented in 1824 when the country formed part of the Federation of Central American States. In 1841, El Salvador adopted an independence constitution after the breakup of the federation.

A series of failed constitutions followed, most lasting for only a few years. In 1886, the country adopted a constitution that can be regarded as a cornerstone of the constitutional development of El Salvador. It was drafted by a national constituent congress that was strongly influenced by the idea of natural law; it took a highly defined and developed liberal approach.

After decades of constitutional stability, two more constitutions were introduced, in 1939 and 1944. However,

in 1945, the 1886 constitution was reintroduced, with certain amendments.

After World War II (1939–45), the international community was restructured by the rise of new international organizations with a humanist and democratic approach, as typified by the 1948 Universal Declaration of Human Rights. This development was reflected in El Salvador's 1950 constitution, adopted by the historically important constituent assembly. The new document was characterized by a profound social approach and by the preeminence that it gave to the human person. Another constitution was adopted in 1962.

After increasing clashes between the Marxist coalition guerrilla movement of the Farabundo Martí Liberation Front (FMLN) on the one hand and El Salvadoran armed forces (ESAF) and rightist death squads on the other, a full-scale civil war broke out and lasted for 12 years (1980–92). One of the most infamous death-squad assassinations was the murder of the archbishop of San Salvador, Óscar Romero, in 1980. Romero had publicly urged the U.S. government not to provide military support to the El Salvadoran government. A constituent assembly elected during the conflict adopted the current 1983 constitution of the republic.

On January 16, 1992, the government of El Salvador and the FMLN signed the Peace Accords that ended one of the most painful chapters in the history of El Salvador.

In the past, the plethora of new or reformed constitutions had often been imposed as a result of military or civil-military coups d'état, with no regard for the amendment procedures of the existing constitutions. The reforms introduced as part of the negotiations to end the armed conflict of the 1980s were implemented in a legal, constitutional fashion. These amendments, adopted in 1991, 1992, and 1995, constituted a precedent not only in the field of constitutional law of El Salvador but also in the field of comparative constitutional law in general. For the first time, internal peace treaties became a source of constitutional law.

In recent years, as other amendments have arisen to deal with a variety of matters, they too were adopted by parliament at two consecutive ordinary legislative periods, the only procedure allowed by the current constitution for amending the constitution.

To sum up, it is widely believed that the key moments in El Salvador's constitutional history reflected the dramatic changes in the country's economic, political, and social circumstances at three crucial eras. The 1886 constitution established the basis for the liberal, individualistic approach in politics; it was a product of the influential natural law trend in philosophy and stressed individual and property rights. The 1950 constitution was influenced by the social movements of the postwar era, by the development of public international law, and by the adoption of the 1948 Universal Declaration of Human Rights, of which El Salvador was one of the 48 original signatory states. The document recognizes economic, social, and cultural rights and the social responsibility of the state. In the last decade of the 20th century, reforms were adopted as a product of a political treaty between the government and a guerrilla group. These changes transformed the functions of the organs and institutions of the state, limiting deeply rooted institutions such as the police and the armed forces and creating new institutions to help protect human rights.

It is widely believed that the current constitution, while closely reflecting the country's history, suffers from important gaps and deficiencies that require immediate revision and extensive adjustments. The most important constitutional challenges for the country are to complete the democratic transformation and to meet the needs imposed by regional and international integration and globalization, which impact group rights. Some observers argue that a new constitution must provide a constituent assembly path to amendments, to end the monopoly on constitutional reform currently held by the party-dominated legislature.

FORM AND IMPACT OF THE CONSTITUTION

El Salvador has a written constitution, consisting of 11 titles and 274 articles that take precedence over all other national law. International treaties that enter into force in accordance with their own provisions and the constitution become laws of the republic.

BASIC ORGANIZATIONAL STRUCTURE

El Salvador is a unitary state made up of 14 departments called *departamentos* that exercise some limited governmental powers.

LEADING CONSTITUTIONAL PRINCIPLES

El Salvador's system of government is a presidential democracy. There is a division of the executive, legislative, and judicial powers. According to the constitution, the judiciary is independent. El Salvador is a sovereign state. Sovereignty is vested in the people, who exercise it within the limits specified in the constitution. The form of government is republican, democratic, and representative.

CONSTITUTIONAL BODIES

The main constitutional bodies provided for in the constitution are the president, the vice president and the cabinet ministers, the unicameral parliament, and the Supreme Court.

The President

The strong president is both chief of state and head of the executive branch of government. The president cannot be elected for a consecutive second term.

The Administration

The executive branch of the government is further made up of the vice president of the republic, the ministers and deputy ministers of state, and their subordinate officials. Each minister (and one or more deputy ministers) is assigned one of the secretariats of state, which control the various sectors of the administration. The ministers are selected by the president as chief executive.

Parliament (Asamblea Legislativa)

Legislative power is vested in the Legislative Assembly, a unicameral parliament consisting of 84 members. The parliament has the power to levy taxes, to ratify treaties, and to approve the budget. The assembly also has the power to declare war, ratify peace treaties, and grant amnesty for political offenses or ordinary crimes.

The Lawmaking Process

Legislation may be introduced by deputies, the president, the ministers, and the Supreme Court. A presidential veto may be overridden by a two-thirds vote of the Legislative Assembly.

The Judiciary

The judicial power is exercised by the courts. The highest court is the Supreme Court; second instance chambers, first instance courts, and justices of peace complete the judicial hierarchy.

The Supreme Court is itself divided into four chambers: civil, penal, constitutional, and administrative. While the civil and penal chambers deal with appeals, the other chambers deal with original cases related to constitutional guarantees for the protection of civil rights, habeas corpus, and fair administrative procedures.

THE ELECTION PROCESS

Every Salvadorian citizen over the age of 18 has the right to vote in the elections. Voting is compulsory.

Presidential Elections

The president and the vice president are both elected for a five-year term. The president is directly elected by a majority of the people; if no candidate receives more than 50 percent of the votes in the first round, a second round runoff is required.

Parliamentary Elections

Members of the assembly serve for a three-year term. The electoral law provides for a system of proportional representation. Twenty of the 84 deputies are elected on the basis of a single national constituency; the other 64 are elected in 14 multimember constituencies. Every Salvadoran citizen at 25 years of age has the right to stand for elections.

POLITICAL PARTIES

El Salvador has a pluralistic system of political parties. In practice, it is a two-party system; it is extremely difficult for anyone to achieve electoral success under the banner of any other party.

CITIZENSHIP

Salvadoran citizenship is primarily acquired by place of birth: A child acquires Salvadoran citizenship if born in El Salvador, regardless of the citizenship of the mother or father. A child born abroad acquires Salvadoran citizenship if one parent is a Salvadoran citizen. El Salvador recognizes a special citizenship designation for natives of other Central American states.

FUNDAMENTAL RIGHTS

The constitution guarantees the traditional set of liberal human rights and civil liberties. For example, Article 2 states that every person has the right to life, physical and moral integrity, liberty, safety, work, property and possession, and protection in maintaining and defending these rights.

The constitution states that all persons are equal before the law. It prohibits discrimination based on nationality, race, sex, or religion.

Impact and Functions of Fundamental Rights

The rights established in the International Covenant on Civil and Political Rights are included in the constitution and further developed in subsidiary legislation. The constitutional rights laws of El Salvador are characterized by the influence of both current liberal thought and the natural law philosophy of the 19th century. In the past, the oligarchial powers in the country, relying on the armed forces, also influenced the rights regime in order to defend their economic and political interests. More recently, the constitution has been influenced by emerging post–civil-war democratic developments.

During the 12-year civil war, human rights violations by both the government security forces and left-wing guerrillas were rampant. The peace accords established a

Truth Commission under United Nations (UN) auspices to investigate the most serious cases. The commission recommended judicial reform and removal of human rights violators from government and military posts.

According to the 1993 Law of National Reconciliation (Legislative Decree No. 147), a blanket amnesty was granted to all persons responsible for perpetrating violence during the civil war, with the notable exception of those responsible for the killing of Archbishop Romero in 1980.

Limitations to Fundamental Rights

The right to free expression is only guaranteed as long as it "does not subvert the public order." The right to the free exercise of religion is guaranteed as long as it is exercised within the boundaries of "morality and public order." Further rights may be suspended in a state of emergency.

ECONOMY

Title 5 defines the outlines of the economic order. Private property is guaranteed, and its social function is recognized. Taken as a whole, the Salvadoran economic system can be described as a social market economy. It combines aspects of social responsibility with market freedom.

RELIGIOUS COMMUNITIES

The constitution provides for freedom of religion but also specifically recognizes the Roman Catholic Church, which is granted a legal status.

MILITARY DEFENSE AND STATE OF EMERGENCY

According to the constitution, military service is compulsory for all Salvadorans between 18 and 30 years of age. In practice, military service has been voluntary since the end of the armed conflict in 1992.

The legislative and the executive branch both have authority to issue a decree suspending certain constitutional guarantees in the event of war, invasion, rebellion, sedition, catastrophe, epidemic or other general disaster, or serious disturbances of the public order. The maximal period for which constitutional guarantees can be suspended is 30 days. The legislature and the ministers are mandated to restore constitutional guarantees as soon as the special circumstances giving rise to their suspension have ceased to exist.

After the peace agreements, the constitution was amended to prohibit the military from playing an internal security role, except under extraordinary circumstances. The civilian police force, created to replace the discredited public security forces, deployed its first officers in 1993.

AMENDMENTS TO THE CONSTITUTION

Initial approval of an amendment requires a simple majority vote in parliament. However, it must be ratified by a two-thirds majority in the next elected assembly.

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Florentín Meléndez

EQUATORIAL GUINEA

At-a-Glance

OFFICIAL NAME
Republic of Equatorial Guinea

CAPITAL
Malabo

POPULATION
523,000 (July 2004 est.)

SIZE
10,830 sq. mi. (28,050 sq. km)

LANGUAGES
Spanish, French (official languages), aboriginal languages

RELIGIONS
Roman Catholic 87%, Protestant 5%, animist 5%, other (including Muslims and atheists) 3%, in practice many traditional beliefs

NATIONAL OR ETHNIC COMPOSITION
Fang 85%, Bubi 10%, other (consisting of Annobonese, Ndowe, Bisio, others) 5%

DATE OF INDEPENDENCE OR CREATION
October 12, 1968 (from Spain)

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 17, 1991

DATE OF LAST AMENDMENT
January 17, 1998

The Republic of Equatorial Guinea is a presidential democracy. According to the constitution, there is separation among the three branches of government: the executive, the legislative, and the judicial. Organized as a unitary state, Equatorial Guinea is made up of both a mainland region and an island region. The two regions are subdivided into seven provinces.

The president is the predominant figure in the Equatoguinean constitution. This powerful head of state, who has vast authority, is also head of the administration. Furthermore, the president is supreme commander of the armed forces.

Universal, equal, and secret elections are guaranteed. Multipartism, however, was introduced only in 1991.

The constitution provides for liberal as well as social rights. The state has the obligation to respect and protect them. Freedom of religion is guaranteed by the constitution. The economic system with its strong public sector is gradually opening up to private actors.

CONSTITUTIONAL HISTORY

Equatorial Guinea is one of the smallest countries on the African continent. It consists of five inhabited islands and a mainland portion at the Atlantic coast of Central Africa. In 1471, the island of Bioko was discovered by the Portuguese. In 1778, Spain took over control of the island in exchange for territory in South America. As for the mainland territories, they were placed under Spanish rule in 1900 after some territorial disputes. These territories were known then as Spanish Guinea. In 1963, the Equatoguineans were granted limited autonomy. They were also allocated a few representatives to the Spanish parliament.

After pressure from the United Nations, Spain promised to grant independence to Equatorial Guinea. In a referendum held on August 11, 1968, the majority of Equatoguineans voted in favor of the new constitution. The country became independent on October 12, 1968.

The first president, Francisco Macias Nguema, took the title of president for life. Major parts of the constitution were neglected, and huge violations of human rights were reported, including mass killings, slavery, and expulsions. Macias Nguema's rule was ended in a military coup by his nephew, Teodoro Obiang Nguema Mbasogo, in 1979. Obiang Nguema was reelected in 1989, in 1996, and in 2002.

A new constitution took effect in 1982. The current constitution was approved by a national referendum in 1991 and amended in 1995.

FORM AND IMPACT OF THE CONSTITUTION

Equatorial Guinea has a written constitution. It is one single document of 104 articles. It is the fundamental law, and no other law can be contrary to it. Some adjustments to the 1991 constitution were made in 1995. According to the constitution, the parliament has 80 members. However, since the last parliamentary elections in 2004, it has de facto consisted of 100 members.

In a special procedure, the Constitutional Court can declare international treaties unconstitutional.

BASIC ORGANIZATIONAL STRUCTURE

Equatorial Guinea is a centralist state. The country is subdivided into regions, provinces, districts, and municipalities. The mainland region is often called Rio Muni; it has four provinces. The insular or island region consists of three regions. The capital, Malabo, is situated on Bioko island.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution provides for a presidential democracy system of government. The executive, legislative, and judicial powers are separated.

Equatorial Guinea's constitutional system is defined by the following principles: It is a republican, unitary, social, and democratic state. Unity, peace, justice, freedom, and equality are called supreme values.

There is a certain stress on the principle of national unity. This term appears many times in the constitution. Accordingly, political parties must operate nationwide and may not be based on specific districts or municipalities. These provisions were probably designed to counteract localist movements for separation and self-determination, such as movements advocating the separation of the islands from the mainland.

According to the constitution, another key value in Equatoguinean society is the traditional African family. That expression can be found twice in the preamble and in many other articles of the constitution.

CONSTITUTIONAL BODIES

The constitution names the following major constitutional bodies: the president of the republic, the Council of Ministers, the Chamber of People's Representatives and the judiciary with a special constitutional court. Among them, the president is the predominant figure.

The President of the Republic

The president of the republic is the head of state. In addition to this representative function, the constitution allocates vast powers to the office. The president determines the policies of the nation and can make laws by presidential decree. He or she appoints and dismisses the prime minister as well as many other high civilian and military officials and has the right to dissolve parliament. The president commands the armed forces and may declare war and peace. Under special circumstances, the president may even suspend the constitution for three months—or longer, if necessary. Furthermore, the president may negotiate and ratify international treaties. When parliament does not adopt a general budget, it is the president who has the right to institute the budget bill.

The president is elected for a seven-year term directly by the people, with the possibility of multiple reelections. The current president has been ruling the country since 1979. The presidency ends with resignation, death, permanent physical or mental disability, or expiration of the term of office.

The Council of Ministers

The Council of Ministers executes the policies determined by the president. It consists of the prime minister, cabinet ministers, and deputy ministers. Many of its decisions must be approved by either the president or the parliament or both. The prime minister coordinates government activities in areas other than foreign affairs, national defense, and security.

The prime minister is appointed by the president of the republic. The other members of the Council of Ministers are appointed by the prime minister. The members of the Council of Ministers are not individually but jointly responsible.

The Chamber of People's Representatives (Cámara de Representantes del Pueblo)

The 80 members of this unicameral parliament are elected for a five-year term through universal suffrage. The Chamber of People's Representatives is the legislative body in

Equatorial Guinea, but its power is limited. It meets in ordinary two-month sessions only twice a year, in March and September. Extraordinary sessions can be held at the request of the president of the republic or three-quarters of the members of parliament.

Between the two sessions, the president of the republic is authorized by the Chamber of People's Representatives to enact statutory orders. The president may order the dissolution of the Chamber of People's Representatives and call for new elections.

The Lawmaking Process

There are two ways to create new laws in Equatorial Guinea. When parliament is not in session, law is made by presidential decrees, which enter into force upon release. When parliament is in session, it can vote draft laws submitted to it by the administration or from within the assembly. The president can veto the draft law and request additional hearings in parliament. When the president believes a draft violates the constitution, he or she can refer it to the Constitutional Court. Laws that have been adopted by parliament are then promulgated by the president.

The Judiciary

The court system can be described as a combination of traditional, civil, and military justice. It is based on Spanish civil law as well as on tribal custom, and it often operates in an ad hoc manner. The judiciary is formally independent of the other powers; however, the president of the republic appoints all the judges of the Constitutional Court and the Supreme Court, as well as the attorney general.

The Constitutional Court deals with disputes of constitutional bodies and has the authority to declare international treaties and other laws unconstitutional. It has five members, each serving a seven-year term. Supreme Court judges, on the other hand, serve five-year terms.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Suffrage is universal and the minimal voting age is 18. A candidate for the presidency must be Equatoguinean by birth and have lived in the country for at least five years and must be neither younger than 40 nor older than 75 years of age. To be elected, the candidate needs the relative majority of votes cast through direct, equal, secret, and universal suffrage.

Members of the Chamber of People's Representatives are elected for five-year terms by proportional representation in multimember constituencies. Parliament used to have 80 members, but since the 2004 elections, that number has changed to 100.

POLITICAL PARTIES

One-party rule formally ended in 1991. However, in practice, many opposition parties regularly boycott major elections.

The constitution recognizes multipartism in Article 1, which considers parties as the vehicle for the popular will and as the basis for political participation. Thus, the prime minister must be a member of the political party that has the majority of seats in parliament. Parties may not be based on tribe, religion, ethnicity, gender, locality, social condition, or profession.

CITIZENSHIP

Citizenship can be acquired by birth on Equatoguinean territory or by birth to at least one Equatoguinean parent.

FUNDAMENTAL RIGHTS

Fundamental rights and duties are enumerated in the first part of the constitution. The document lists a large number of liberal rights, as well as some social rights. Thus, work is a right. Primary education is obligatory and free. Labor and the family are to be protected. The constitution also contains judicial rights, such as the right to be presumed innocent until found guilty.

Impact and Functions of Fundamental Rights

The constitution reaffirms the country's attachment to the principles in the 1948 Universal Declaration of Human Rights and other international agreements. However, United Nations and U.S. State Department reports list grave shortcomings in protection of human rights. Certain laws and regulations severely restrict political rights. Thus, the authorities have extensive power to restrict media activities. Numerous irregularities, such as evidence of torture, were reported by observers in a 2002 case against some 150 people, including leaders of three opposition parties, accused of attempting a military coup.

Limitations to Fundamental Rights

No fundamental rights named in the constitution's second chapter may be exercised in a manner that infringes upon other people's fundamental rights or other principles stated in the constitution such as human dignity or democracy.

ECONOMY

The constitution of Equatorial Guinea does not favor a specific economic system. However, it does cite the principles of free exchange of goods and services and freedom

of enterprise. The constitution also contains a list of resources and services that are reserved to the public sector. Since 1991, stronger efforts to promote the private sector have been made. In the 1990s, oil exports increased substantially.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom of religion and worship. Religious organizations have to be formally registered with the Ministry of Justice and Religion before their activities are allowed. Religious study is required in schools. Though the state is formally separated from religion, a 1992 law includes an explicit preference for the Roman Catholic Church. Usually, a mass is held as part of major public ceremonial acts.

MILITARY DEFENSE AND STATE OF EMERGENCY

In a state of emergency, the president, who also commands the armed forces, clearly dominates.

Military service is obligatory for all.

AMENDMENTS TO THE CONSTITUTION

The constitution may only be changed via a popular referendum, which is held upon request of the president or of the majority of parliament. The constitution may not be changed during a vacancy of the presidency. No amendment can change the republican and democratic system or the principles of unity and territorial integrity.

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Hartmut Rank

ERITREA

At-a-Glance

OFFICIAL NAME
State of Eritrea

CAPITAL
Asmara

POPULATION
4,561,599 (July 2005 est.)

SIZE
46,842 sq. mi. (121,320 sq. km)

LANGUAGES
Tigrinya, Arabic, English, Tigre, Bilen, Kunama, Saho, Nara, Italian, Afar, Hidarb

RELIGIONS
Christian, Muslim, and animist (very small number of Kunama ethnic group)

NATIONAL OR ETHNIC COMPOSITION
Tigrinya 50%, Tigre and Kunama 40%, Saho 3%, Afar 4%, other (Hidareb, Nara, Bilen, and Reshaida) 3%

DATE OF INDEPENDENCE OR CREATION
May 24, 1991 (de facto), May 24, 1993 (de jure)

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 23, 1997

DATE OF LAST AMENDMENT
No amendment

Eritrea obtained independence in fact from Ethiopia after a 30-year armed struggle on May 24, 1991, and formal independence on May 24, 1993. The 1997 constitution expressly states that Eritrea adheres to constitutional supremacy. The guiding principles are the rule of law, social justice, and democracy. The separation of powers of the executive, legislative, and judiciary is clearly stated. Eritrea is a secular and unitary state divided into units of local government. Currently, it is divided into six local governments. The 1997 constitution has not yet entered into effect.

The president is the head of state and head of government. The president is selected from among the members of the National Assembly, the legislative body.

According to the 1997 constitution, the members of the National Assembly are directly elected by the people. Fundamental freedoms, rights, and duties are guaranteed and safeguarded under the constitution.

The defense forces owe allegiance to and must obey the constitution and the constitutional government.

CONSTITUTIONAL HISTORY

Eritrea is a newly emerged nation in the horn of Africa. The Ottoman Empire, Egypt, Italy, Great Britain, and Ethiopia have all colonized Eritrea, which has been under the sway of colonialism since the 16th century. In 1517, the coastal regions of Eritrea fell under the rule of the Ottoman Empire. At about the same time, kingdoms from present-day Ethiopia and Sudan fought over the rest of the country.

In 1823, Egyptian forces encroached on the Gash Barka or Western Lowland area of Eritrea; by 1840, they controlled the region. In 1872, the Egyptians displaced the Turks and ruled the Eritrean Red Sea coast. During the period of 1872–82, Eritrea was under the colonial rule of Egypt. The Ottoman Empire and Egypt mainly occupied the coastal area of Eritrea and hardly influenced the legal system.

In 1882, Italy occupied the port of Assa, and by 1889 conquered all of Eritrea. In 1890, the Italian king, Umberto

I, officially declared Eritrea an Italian colony. A formal judicial system was established. However, there was no trace of constitution making or constitutional litigation during the Italian colonial period. Native Eritreans were subject to discrimination based on race and color, and the rights to movement, education, and freedom of expression were extremely limited.

A British Military Administration ruled Eritrea between 1941 and 1952. During that period, the Italian laws were applicable with some modification, based on English laws imposed by British administrators. The British introduced political reform, expanded education, and abolished racially discriminatory laws. The Eritrean people for the first time were officially permitted to form political parties. However, they were denied the right to make their own constitution and to decide their destiny.

In 1950, the Eritrean case was taken before the General Assembly of the United Nations to determine the destiny of the Eritrean people. The General Assembly decided to support a federation between Eritrea and Ethiopia. In 1952, this simulated "federation" was proclaimed. In the same year, the democratic constitution of Eritrea was ratified. The 1952 constitution included civil and political rights, the separation of powers, formation of political parties, freedom of expression, and other democratic principles. In contrast, the Ethiopian constitution at the time was based on absolute monarchy. The emperor was compelled to pass a new constitution in 1955 providing for a constitutional monarchy.

On September 1, 1961, the Eritrean Liberation Front (ELF), a guerrilla organization, was established. For the next 30 years, the ELF and later the Eritrean People Liberation Front (EPLF) fought a bitter armed struggle against Ethiopia. In 1994, at the third congress of the EPLF, a National Charter for Eritrea was adopted. The six basic goals stated in the National Charter were national harmony, political democracy, economic and social development, social justice, cultural revival, and regional and international cooperation. It further listed six basic principles: national unity, active participation of the people, decisive role of the human factor, relationship between national and social struggle (struggle for social justice), self-reliance, and a strong relationship between people and leadership.

In 1995, a Constitutional Commission was established to draft a constitution for the State of Eritrea. A document was drafted within two years, and a Constituent Assembly ratified it on May 23, 1997. This constitution has not yet entered into force.

FORM AND IMPACT OF THE CONSTITUTION

Eritrea has a written constitution that is codified in a single document. It is the supreme law of the land; any law or act that contradicts it is null and void.

International laws or agreements are signed by the president and must be ratified by the National Assembly as laws. They become applicable in the legal system of Eritrea after being published in the *Gazette of Eritrean Law* or any other legally recognized gazette in Eritrea.

BASIC ORGANIZATIONAL STRUCTURE

Eritrea is a unitary state divided into units of local governments. The local governments differ in geographic area, ethnic composition, population, and economic strength. However, they all have the same rights, duties, and powers.

LEADING CONSTITUTIONAL PRINCIPLES

The form of the Eritrean government is unique. It is a mix of the presidential, parliamentary, and hybrid forms of governments. As in many presidential systems, the president is the head of state and chief commander of the armed forces as well as head of the administration. However, the president is chosen from among the members of the National Assembly, just as prime ministers are in parliamentary systems. Other ministers may be selected from within or outside the members of the National Assembly; that is, a member of the executive can continue to be a member of the legislature, as in a hybrid systems.

CONSTITUTIONAL BODIES

The basic bodies of the constitution are the parliament, known as the National Assembly; the president, aided by a cabinet; and the judiciary.

The National Assembly

The National Assembly of Eritrea is a single-chamber parliament. Its members are the representatives of the Eritrean people. According to the 1997 constitution, they are elected in general, direct, free, universal, fair, and secret suffrage. The members of the National Assembly have the powers and duties of legislation, control of executive or administrative bodies, hearing of citizens' complaints, and approval of appointments to important public offices such as the presidency. The term of parliament is five years. It may extend its term by vote of not less than two-thirds for a period of six months in a state of emergency. The immunity of a member of the National Assembly may be lifted only if he or she is apprehended while committing a crime.

The Lawmaking Process

The National Assembly is the sole legislative body. However, it may delegate its authority to legislate to any other person or organization. The delegation must be duly authorized and proclaimed in a law that is passed by parliament. The constitution expressly states that only the National Assembly has the power to enact tax laws, approve the national budget, ratify international agreements by law, approve government borrowing, and approve the declaration of peace, war, or emergency. The president must approve legislation passed by parliament within one month and has no veto power. The president continues to serve as a member of the National Assembly; hence, he or she can oppose, support, or abstain on a bill before parliament.

The President

The president is the head of state and government and the commander in chief of the armed forces. He or she is elected for a five-year term and can be reelected only once. The president is elected from among the members of the National Assembly by an absolute majority. A candidate for the office of the president must be a citizen of Eritrea by birth.

The president must ensure respect for the constitution, integrity of the state, efficiency of management, the interest and safety of all citizens, and enjoyment of fundamental freedom and rights of citizens. With the approval of the National Assembly, the president has the power to appoint and dismiss ministers and to appoint commissioners, the auditor-general, the governor of the National Bank, the chief justice of the Supreme Court, and other persons specified by the constitution. The president also has the power to grant pardon or amnesty, establish and dissolve ministries and departments, and preside over and coordinate meetings of the cabinet.

The Judiciary

The courts, in exercising their judicial power, are free of the direction and control of any person or authority. The highest court of Eritrea is the Supreme Court. It has sole jurisdiction to interpret the constitution and the constitutionality of any law or acts of the government or individual. It also has sole jurisdiction to hear and adjudicate charges against an impeached president and appeals from lower courts. A law will determine the cases that can be appealed before the Supreme Court. A law will also determine the tenure and number of justices of the Supreme Court.

Under the constitution, the Judicial Service Commission proposes the appointment of the Supreme Court justices to the president. It also recommends the recruitment, terms, and conditions of service of judges. The Supreme Court is not yet established.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Eritrean citizens 18 years of age or older have the right to vote. The constitution states that the National Assembly shall enact electoral laws that will determine the qualifications and election of the members of the National Assembly. So far, an electoral law is drafted but not yet duly proclaimed; it states that a candidate must be 21 years old by Election Day.

POLITICAL PARTIES

Every citizen has the right to form organizations for political, social, economic, and cultural ends. The constitution and the National Charter for Eritrea expressly proclaim a pluralistic political system in Eritrea. A Proclamation on the Formation of Political Parties and Organizations is drafted but not yet duly proclaimed.

CITIZENSHIP

The constitution states that the National Assembly shall enact laws to regulate citizenship. Currently, the Eritrean Nationality Proclamation of 1992 governs citizenship in Eritrea. It states that citizenship is attained through descent or origin, by birth if the descent of the person born in Eritrea cannot be tracked, and by naturalization.

FUNDAMENTAL RIGHTS

Chapter 3 of the constitution specifies fundamental freedoms, rights, and duties. The constitution in principle guarantees civil, political, and socioeconomic rights. The civil and political rights are enforceable provisions, while socioeconomic rights refer to national objectives and directive principles. The enforcement of socioeconomic and cultural rights is subject to qualifications, such as the "the state shall strive," "use all available resource," "shall encourage," and "shall endeavor." The fundamental freedoms, rights, and duties apply in disputes between state and individuals as well as between individuals.

Limitations to Human Rights and Fundamental Freedoms

Fundamental freedoms, rights, and duties may be limited. The constitution has a general limitation clause and specifies limitations within each specific right. The limitations apply to both the state and individuals.

The general limitation clause states that the fundamental freedoms and rights guaranteed in the constitution may be limited in the interest of national security, public safety, economic well-being of the country, health

or morals, prevention of public disorder, and protection of the rights and freedoms of others. Any limitation of the fundamental freedoms and rights guaranteed in the constitution must be consistent with the principles of democracy and justice, must be of general application, and may not negate the essential content of the rights and freedoms in question. The law that limits any fundamental freedoms and rights must be duly proclaimed and specify the authority for the enshrined limitation.

There are certain fundamental rights that may not be limited under the general limitation clause, such as equality before the law, right to life and liberty, right to human dignity, proscription of ex-post-facto criminal punishment, writ of habeas corpus, presumption of innocence, and freedom of thought, conscience, and belief.

The fundamental freedoms and rights can be suspended during a state of emergency. The president can declare the state of emergency when war, external invasion, civil disorder, or natural disaster threatens the state. The declaration of the state of emergency must be approved by a two-thirds majority of the members of the National Assembly.

ECONOMY

The constitution of Eritrea does not expressly specify the economic system. However, economic policy must take into account the citizens' rights to social justice, the needs of economic development, and balance and sustainability in development. It must also take into consideration the right to property, freedom of occupation or profession, and the right of association for economic ends.

RELIGIOUS COMMUNITIES

Eritrea is a secular state. The constitution guarantees the right to freedom of thought, conscience, and belief of any person. It safeguards the freedom to practice and manifest any religion. There is no state-sponsored church or mosque.

MILITARY DEFENSE AND STATE OF EMERGENCY

The defense and security forces of Eritrea owe allegiance to and obey the constitution. They are accountable to the law. The constitution stipulates that the defense and security forces are an integral part of society and must be productive and respectful to the people. They are dependent on the people and subject to the civil government.

All citizens are obliged to fulfill national service. The National Service Proclamation states that every citizen below 40 years of age is obliged to perform national service of 18 months. The medical board can certify individuals as unfit to serve. Those so certified are obliged to perform the 18-month service in social and governmental institutions.

AMENDMENTS TO THE CONSTITUTION

The constitution of Eritrea is difficult to amend. The president or 50 percent of all the members of the National Assembly can initiate a proposal for the amendment of any provision. For its passage, the proposal requires a three-quarters majority vote of the members of the National Assembly, followed by a one-year deliberation period. After the end of the one-year deliberation, the National Assembly can approve the amendment with a four-fifths majority of its members.

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Muluberhan Berhe Hagos

ESTONIA

At-a-Glance

OFFICIAL NAME
Republic of Estonia

CAPITAL
Tallinn

POPULATION
1,324,333 (July 2006 est.)

SIZE
17,462 sq. mi. (45,227 sq. km)

LANGUAGES
Estonian, Russian

RELIGIONS
Christian churches (Evangelical Lutheran 11%, Christian Orthodox 10%; smaller communities of Roman Catholics, Baptists, Methodists) 23%; Muslims, Buddhists, Jews, and others; large unaffiliated segment of the population

NATIONAL OR ETHNIC COMPOSITION
Estonian 67.9%, Russian 25.6%, Ukrainian 2.1%, Belorussian 1.3%, Finn 0.9%, other 2.2%

DATE OF INDEPENDENCE OR CREATION
February 24, 1918 (from Soviet Union: August 20, 1991)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 28, 1992

DATE OF LAST AMENDMENT
September 14, 2003

Estonia is a politically unitary state. The division of territory into administrative units is established by law—there are currently 15 units. The Estonian system of government is a parliamentary democracy. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances.

The predominant bodies provided for in the constitution are the parliament, called Riigikogu; the president of the republic; the administration; the legal chancellor; and the courts. The Republic of Estonia shapes and develops its statehood on the basis of the principles of social justice, democracy, and the rule of law. Fundamental rights and freedoms form an inherent and central part of the Estonian national legal order.

The Estonian constitution expressly protects freedom of religion for individuals and religious communities. There is no state church, but cooperation between state and religious communities has been accepted in the limits of law.

The national defense of Estonia is conducted on the principles of civilian control, consonant with the democratic organization of the state. By the constitution, Estonia is obliged to protect internal and external peace.

CONSTITUTIONAL HISTORY

The independent Republic of Estonia was born in the aftermath of World War I (1914–18) when it broke away from the Russian Empire. The Proclamation of Independence was followed by the War of Independence in 1918–20.

The first Estonian constitution (ratified in June 1920) was influenced by the liberal thinking prevalent in Europe after the First World War. The 1920 constitution emphasized the principle of a state based on the rule of law. One of its essential components was the acknowledgment of the fundamental rights of the person. As a result, it was one of the most democratic constitutions in Europe of its time.

The 1930s saw significant political changes in Estonia, characterized by the centralization of the state administration, the concentration of power, a decline of

democracy, and the expansion of state control. The second Estonian constitution (1938) introduced a number of amendments on fundamental rights. It stated a new philosophy, according to which the legal rights and duties of an individual emanated from his or her status as a member of a commonwealth. This change reflected the more collectivist orientation of the era.

The outbreak of World War Two disturbed the peaceful development of the country, which was subsequently occupied by the Soviet Union (1940–41, 1944–91) and Nazi Germany (1941–44). After the war, Estonia was formally annexed to the Soviet Union.

A resurgence of Estonian national identity began in the late 1980s, leading to independence in 1991. The constitution of Estonia that entered into force in 1992 is, in a number of ways, a compilation of aspects of Estonia's previous constitutions. It has maintained the democratic spirit of the 1920 constitution, with some added mechanisms to maintain the balance of power of the state. In drafting the document, great attention was paid to fundamental rights. International treaties, the European Convention on Human Rights, and constitutions of other democratic states were taken as models. The constitution of the Federal Republic of Germany has had the greatest influence on the Estonian constitution.

FORM AND IMPACT OF THE CONSTITUTION

Estonia has a written constitution, codified in a single document. The Estonian constitution is named as a Põhiseadus (Basic Law). It has precedence over all other national law. Universally recognized principles and norms of international law are an inseparable part of the Estonian legal system. They are superior in force to national legislation and binding on the exercise of legislative, administrative, and judicial powers. In short, the hierarchy of laws stands as follows: (1) constitution, (2) international law, (3) laws enacted by parliament, (4) administrative regulations adopted by the executive branch including local governments, (5) administrative decisions made by the executive branch including local governments. Estonia joined the European Union on May 1, 2004. The law of the European Union takes precedence over Estonian law, as long as it does not contradict the Estonian constitution's basic principles.

BASIC ORGANIZATIONAL STRUCTURE

Estonia is a politically unitary state with 15 territorial administrative units. All local issues are resolved and regulated by local governments, which operate independently and in accordance with the law. Obligations may be imposed upon local governments only in accordance with the law or with the agreement of the local government. All permanent residents, regardless of citizenship, are eligible to vote in local elections. The constitution provides for another type of government, also with a large degree of autonomy and cultural self-government, or ethnic minorities.

LEADING CONSTITUTIONAL PRINCIPLES

The Estonian system of government is a parliamentary democracy. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances.

The Republic of Estonia shapes and develops its statehood on the basis of the principles of social justice, democracy, and the rule of law. Fundamental rights and freedoms form an inherent and central part of the Estonian national legal order. Estonia is an independent and sovereign democratic republic wherein the supreme power of the state is vested in the people. The constitution has established the principle of legal reservation, pursuant to which an administration is entitled to take action only if the law empowers it to do so.

There is no state church in Estonia. The cooperation between state and religious communities has been accepted within the limits of law.

CONSTITUTIONAL BODIES

The dominant bodies provided for in the constitution are the parliament, called Riigikogu; the president of the republic; the administration; and the judiciary. The constitution also provides for a Bank of Estonia, independent of the government, which operates as the bank of issue; an office of the legal chancellor, whose task is also to be ombudsperson; and the office of the auditor general.

The Parliament

According to the constitution, the supreme power of the state is vested in the people. The people exercise this supreme power in the elections for the Riigikogu by citizens who have the right to vote. The parliament has three main functions: legislation, monitoring of the activities of the executive power, and representation. It has 101 members and is elected for a period of four years.

The Lawmaking Process

Lawmaking is the main task of parliament. In order to pass an ordinary act, a simple majority of members in attendance is required. Article 104 of the constitution lists certain types of laws that can be passed and amended only by a majority of the membership of the Riigikogu. Bills passed by the Riigikogu are presented to the president of the republic for proclamation. The president may use the right of veto and return the bill to the Riigikogu. If the

Riigikogu does not amend it, the president has the right to ask the Supreme Court to declare it unconstitutional. After a bill is proclaimed as law, it is published in the *Riigi Teataja,* the state gazette.

The President of the Republic

The president has mainly representative functions, but the office has a number of executive powers. The president may veto a parliamentary bill and have it sent back for revision, and the president's signature is required for appointment of the ministers of the government. The president is also empowered to present the parliament with nominees for several higher offices.

The president is the supreme commander of the armed forces. He or she is elected for a five-year term by the parliament. If a sufficient majority of votes is not forthcoming, the president is elected by an electoral college, which consists of representatives of local governments and members of parliament.

The Administration

The executive power of the state—the administration or cabinet—consists of a prime minister and other ministers. It is responsible to parliament. Parliament appoints the prime minister and can withdraw its support from the administration. In turn, the administration can dismiss the Riigikogu with the consent of the president and call for new elections if the Riigikogu expresses no confidence in the government.

The Judiciary

The court system is divided into three levels: county and city courts, circuit courts of appeal, and the Supreme Court, which also functions as the Constitutional Court. The Estonian judicial system is based primarily on the German model, especially in the field of civil law, in which there are direct historical links. The courts are independent; judges are appointed for life and may not take up any other appointed public offices.

The Legal Chancellor

The legal chancellor ensures that state agencies guarantee the constitutional rights of individual and reviews the conformity of legislation and executive acts, including those of local governments, with the constitution and the laws. The chancellor also serves as ombudsperson; he or she is independent in all activities.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every Estonian citizen who has attained 18 years of age by the day of the elections has the right to vote (with the exception of those who have been divested of legal competence by a court). Every Estonian citizen 21 or older who is entitled to vote has a right to stand for elections to the parliament. All permanent residents over 18 years old, regardless of citizenship, are eligible to vote in municipal elections.

The electoral system is based on proportional representation by party lists. The Riigikogu is elected for four years. Local governments are elected for three-year terms. Local government also is elected for a term of four years.

POLITICAL PARTIES

Estonia has a pluralistic system of political parties. The multiparty system is a basic structure of the constitutional order, and the political parties are a fundamental element of public life. Political parties whose aims or activities are directed to violent change of the Estonian constitutional system or otherwise violate a criminal law are prohibited. The termination, suspension, or penalization of political parties can only be done by a court in cases in which the law has been violated.

CITIZENSHIP

Estonian citizenship is primarily acquired by birth. This means that a child acquires Estonian citizenship if one of his or her parents is an Estonian citizen. It is of no relevance where a child is born. Any person who as a minor lost his or her Estonian citizenship has the right to have it restored.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights, liberties, and duties in Chapter II, immediately after the seven general provisions listed in Chapter I. The prominence of fundamental rights indicates the society's person-centered attitude.

The catalogue of fundamental rights and liberties includes both liberal rights and social rights. One of the main principles of the constitution postulates the equality of Estonian citizens and citizens of foreign states as well as stateless persons. The constitution has extended fundamental rights to legal persons (i.e., organizations) insofar as these rights are in accordance with the general aims of legal persons and with the nature of such rights.

The rights and freedoms set out in the catalogue of fundamental rights do not preclude other rights and freedoms that arise from the spirit of the constitution or are in accordance therewith, and conform to the principle of human dignity and of a state based on social justice, democracy, and the rule of law.

Impact and Functions of Fundamental Rights

The Republic of Estonia shapes and develops its statehood on the basis of the principles of social justice, democracy, and the rule of law; therefore, fundamental rights and freedoms form an inherent part of the Estonian national legal order. The basic rights of the Estonian constitution have a subjective character in that they grant claims to individuals. Basic rights have fully binding force. The fundamental rights apply in the relation of the individual and the state and have effect among private persons. The fundamental rights affect all areas of the law.

Limitations to Fundamental Rights

The constitution contains four general limitation clauses; Article 11, however, is the central and most important one: "Rights and liberties may be restricted only in accordance with the constitution. Restrictions may be implemented only insofar as they are necessary in a democratic society, and their imposition may not distort the nature of the rights and liberties." Thus, every case of restriction of rights and liberties has to be justified and pass the test of proportionality—the limitation must be proportional to the need. Article 19(2) constitutionalizes the commonsense idea that in exercising their rights and liberties, all persons must respect and consider the rights and liberties of others and observe the law.

ECONOMY

Estonia's annexation by the Soviet Union in 1940 resulted in a forced transformation of its economy from a typical market economy similar to that of neighboring Scandinavian countries to a part of the Soviet centrally planned system. After regaining independence, the primary objective was the development of a Western-oriented economic system.

The transition to a market economy started at the beginning of the 1990s. Estonia is known for its radical free-market policies, liberal trade and tax policies, and stable currency, thanks to the comprehensive reforms that have characterized the Estonian economy since 1991.

Nevertheless, the Estonian constitution does not specify any particular economic system. It does defines the country as a social state. This aspect of the constitution has gradually gained more attention.

The constitution creates the legal preconditions for protection of property rights and economic freedom. Property of all persons, physical or legal persons, is inviolable and equally protected by law.

RELIGIOUS COMMUNITIES

There is no state church in Estonia. The separation of state and church has not been interpreted strictly in practice. A certain degree of cooperation between state and church (religious communities) has been accepted.

Both religious individuals and religious communities enjoy freedom of religion under Article 40 of the constitution and other constitutional provisions. Autonomy of religious communities also entails the right to self-administration in accordance with their own internal laws and prescriptions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Estonian defense forces and national defense are subject to civil control by parliament, the president of the republic, and the administration. The highest leader of the national defense is the president of the republic, advised by the National Defense Council. In addition to defense obligations, the defense forces provide assistance to civilian authorities in cases of national emergency.

The constitution of the Republic of Estonia requires compulsory military service for all physically and mentally healthy male citizens. Women can volunteer. The duration of the compulsory military service is eight or 11 months, depending on the education and the position assigned by the Defense Forces to the conscript. In accordance with Article 124(2) of the constitution, any person who refuses service in the defense forces for religious or ethical reasons is obliged to participate in alternative service. The compulsory alternative service is 16 months.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be offered by one-fifth of the members of parliament or by the president of the republic. Amendments to Chapter I (General Provisions) or Chapter XV (Amendments to the Constitution) may be made only by referendum. The constitution may be amended by referendum, by two successive parliaments, or by parliament in one session in matters of urgency. For example, the change in the terms of local government councils was made by parliament as a matter of urgency.

A proposal to consider a draft law to amend the constitution as a matter of urgency has to win a four-fifths majority. In such a case, the law to amend the constitution has to be adopted by a two-thirds majority of the members of parliament. An amendment to the constitution in relation to accession to the European Union was adopted by a referendum held on September 14, 2003. The law to amend the constitution must be proclaimed by the president of the republic.

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Merilin Kiviorg

ETHIOPIA

At-a-Glance

OFFICIAL NAME
Federal Democratic Republic of Ethiopia

CAPITAL
Addis Ababa

POPULATION
67,851,281 (2004 est.)

SIZE
425,000 sq. mi. (1,100,756 sq. km)

LANGUAGES
Amharic (official), Oromiffa, Tigrigna, Sidama, Afar, Somali, Guragigna, Arabic, English

RELIGIONS
Ethiopian Orthodox Christian 45%, Muslim 40–45%, Protestant 5% (2005 est.)

NATIONAL OR ETHNIC COMPOSITION
Oromo 35%, Amhara 30%, Tigre 6.3%, Somali 6%, Sidama 6%, Gurage 4%, Wolaita 4%, Afar 2%, other nationalities 6.7%

DATE OF INDEPENDENCE OR CREATION
An independent Ethiopian state has existed since early times

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 8, 1994

DATE OF LAST AMENDMENT
No amendment

Ethiopia is a parliamentary democracy, with a federal multiparty system of government. The federal government powers are divided into the legislative, executive, and judicial branches. The president of the Federal Democratic Republic of Ethiopia is the head of state, but this function is mostly representation. The highest executive powers rest in the prime minister and the Council of Ministers. The House of People's Representatives is the federal lawmaking organ. The constitution further provides for an independent judiciary.

The constitution specifically recognizes fundamental human rights and freedoms. It also provides that all laws, customary practices, and decisions that contravene its provisions are of no effect. However, certain unconstitutional practices and laws have yet to be replaced to fill in the gaps of the law.

The constitution clearly stipulates that the state and religion are separate. The economic system can be described as a market economy. The armed forces are obliged at all times to obey and respect the constitution.

CONSTITUTIONAL HISTORY

Ethiopia existed as a state since pre-Christian times. The earliest records of Ethiopian constitutional history go back to 500 B.C.E.

Important legal documents existed in traditional Ethiopia, such as the Fetha Negest (a codex of law providing for secular and religious legal provisions), Kibre Negest (which colorfully weaves the legend of the Solomonic dynasty to serve certain politicoreligious needs of the time), and Serate Mengist (which includes administrative and protocol directives useful to the constitutional process). However, there was no written constitution in the modern sense of the term.

The Ge'ez literary language developed during the first century C.E. when the Axumite Empire was converting to Christianity; both processes were important to the constitutional history of Ethiopia. The advent of Islam before the end of the first millennium also had an impact. The warlike Oromo people of the 16th century, with their effective socioeconomic system and powerful warfare, had a major impact on medieval Ethiopia.

The first written constitution was promulgated by Emperor Haile Selassie I in 1931. It was the result of a strong need to modernize and to convince the world of Ethiopia's modernization. The main internal goal of the constitution, which was modeled after the 1898 Meiji Constitution of Japan, was to make the monarchy the superpower vis-à-vis the church and nobility.

Ethiopia's international standing did improve. In 1945, it became a founding member of the United Nations and, in 1962, the headquarters of the Organization of African Unity in Addis Ababa.

The constitution, however, was not found adequate to internal needs despite a revision in 1955. In 1973, the emperor appointed a Constitutional Commission to review the constitution, but the changes they recommended did not have much impact. In September 1974, the Derg overthrew the emperor and established a military regime with socialism as the guiding ideology. *Derg* means committee and is a short name for the committee of military officers, which then ruled the country. While the takeover was originally peaceful, it soon turned violent, and many years of civil war ensued.

A new constitution promulgated in 1987 emphasized human rights; the regime did not follow through in practice. In July 1991, the Tigrean People's Liberation Front overthrew the Derg and established a transitional government based on a Transitional Charter. The charter was replaced by the 1994 constitution, which provides for a parliamentary democracy and incorporates fundamental rights and freedoms.

FORM AND IMPACT OF THE CONSTITUTION

Ethiopia has a written constitution, codified in a single document that is the supreme law of the land. All international agreements ratified by Ethiopia are an integral part of the law of the land. Any other law, customary practice, or decision that contravenes the constitution is considered to be of no effect. However, many laws still need to be amended or replaced to conform to the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Ethiopia is a federal state, which comprises a federal government and member states or regions. Presently, there are nine member states and two special city administrations that are treated as states. The constitution recognizes the right of other nations, nationalities, and peoples (ethnic groups) within Ethiopia to establish their own states, and it provides a process by which they can exercise this right.

The states of the Federal Democratic Republic of Ethiopia have legislative, executive, and judicial competence. All states have their own constitutions, which enjoy legal supremacy. The legislature, called State Council, is always the supreme political body. The state governor, called president, nominates his or her cabinet from among the council or from without and seeks approval by the council. The president is a member of the council by virtue of popular elections every five years. However, the president is not the Speaker of the State Council at the same time. All powers not given expressly to the federal government alone or concurrently to the federal government and the states are reserved to the states. In practice, the states depend on the federal economy.

The state constitution now recognizes a zonal government, which is an intermediary between the states and the local government unit, called Wereda.

LEADING CONSTITUTIONAL PRINCIPLES

Ethiopia is a parliamentary democracy, which provides for the division of powers into the legislative, executive, and judiciary. It is a federal state and a republic based on the rule of law. The constitution further provides for a multiparty system of government.

One unusual and important feature of the constitution is its ethnolinguistic components, which reflect Ethiopian society. The nations, nationalities, and peoples of Ethiopia form the sovereign power of the country. The constitution even recognizes the right to secession, which is considered the ultimate expression of the right to self-determination.

Yet another feature of the constitution is the right to ownership of rural and urban land, which is exclusively vested in the state and in the peoples of Ethiopia. With regard to language policy, the constitution provides for the equality of Ethiopian languages and for their practical application in government. The constitution further provides clearly that the state and religion are separate.

CONSTITUTIONAL BODIES

The federal government is composed of the legislative, executive, and judicial institutions and powers. The bodies established to exercise these powers at the federal level are the two federal houses; the president; the administration, including a prime minister and Council of Ministers; and the Federal Supreme Court.

The Federal Houses

The legislative institutions of the federal government are the two federal houses, known as the House of People's Representatives and the House of Federation. The House of People's Representatives is the highest authority of the federal government. It is responsible directly to the people. The members are elected for a five-year term on the basis of universal suffrage by direct, free, and fair elections held by secret ballot. The constitution further provides that minority nationalities and peoples shall have "at least 20 seats" in a house whose members shall not exceed 550 seats. The most important function of the House of People's Representatives is to issue laws. The House of People's Representatives nominates the president and shares power with the House of Federation to elect him or her.

The House of Federation, on the other hand, is composed of each nation, nationality, and people of Ethiopia. The members are elected for a five-year term through direct or indirect election, depending on the decision of the councils of member states. Larger nations have greater representation; each nation, nationality, and people is represented by at least one member and by one additional member for every 1 million of its population.

One of the main powers of the House of Federation is to interpret the constitution. The Council of Constitutional Inquiry calls issues of constitutional interpretation to the attention of the House of Federation. The council is an advisory body made up of 11 persons composed of the chief justice and vice-chief justice of the Federal Supreme Court, six legal experts nominated by the House of People's Representatives and appointed by the president of the republic, and three persons designated by the House of Federation from among its members. When an issue of constitutional interpretation is submitted to the council, the latter has the power either to remand the case to the concerned court if it finds that there is no need for constitutional interpretation or to submit its recommendations to the House of Federation for a final decision. A dissatisfied party may appeal the decision of the council to the House of Federation.

The President

The House of People's Representatives has the duty of nominating a candidate for president of the republic. The nominee is elected president at a joint session of the two houses, if supported by a two-thirds majority vote. The president of the republic is the head of state and serves a six-year term. He or she cannot be elected for more than two terms. The most important duty of the president is symbolic representation of the nation.

The Federal Administration

The head of the government is the prime minister, who together with the Council of Ministers has the highest executive powers. The prime minister is elected from among the members of the House of People's Representatives for five years. The minister is the chief executive, the chair of the Council of Ministers, and the commander in chief of the armed forces. Members of the Council of Ministers are nominated by the prime minister and appointed by the House of People's Representatives. The council is accountable to both the prime minister and the House of People's Representatives.

The Lawmaking Process

A draft proclamation may be submitted by a member of either the House of People's Representatives or the Council of Ministers. The plenary considers a committee's proposal and, after debating it, votes to approve, amend, or disapprove the draft law. The approved draft proclamation is then sent to the president for signature and published in the official gazette. If the president does not sign the law within 15 days, it takes effect without his or her signature.

The Judiciary

The constitution provides for an independent judiciary. The Federal Supreme Court is the highest court. The two other courts of the federal government, the Federal High Court and the Federal First Instance Court, may be established countrywide or partially by a two-thirds decision of the Council of People's Representatives, if and when deemed necessary, but they have not yet been created.

THE ELECTION PROCESS

Every Ethiopian has the right to vote and be elected on the attainment of 18 years of age.

POLITICAL PARTIES

The constitution provides for a multiparty system. Every Ethiopian has the right to be a member according to his or her own will of a political organization.

CITIZENSHIP

Ethiopian nationality is primarily acquired by birth. That is, any person either of whose parent is Ethiopian can be an Ethiopian national. Foreign nationals may acquire Ethiopian nationality according to ordinary law.

FUNDAMENTAL RIGHTS AND FREEDOMS

The constitution categorizes fundamental rights into human and democratic rights without giving any further explanation. It recognizes that human rights and freedoms are inviolable and inalienable. All federal and state legisla-

tive, executive, and judicial organs at all levels are bound to respect and enforce these rights. The constitution provides for the establishment of a human rights commission and an ombudsperson.

The right to equality is provided in Article 25, which guarantees equality before the law and effective protection without discrimination on any grounds. Article 41 enumerates the constitutionally recognized economic, social, and cultural rights, while Articles 43 and 44 provide for the right to development and a clean environment, respectively.

Impact and Functions of Fundamental Rights

The constitution provides that fundamental rights and freedoms shall be interpreted in accordance with the principles of the Universal Declaration of Human Rights, international covenants on human rights, and international instruments adopted by Ethiopia. All international agreements ratified by Ethiopia, including international human rights instruments, are an integral part of the law of the land.

Limitations to Fundamental Rights

Fundamental rights may be limited in the interest of public convenience, protection of democratic rights, public morality, and peace. Fundamental rights may also be limited or even suspended in case of a state of emergency. The Council of Ministers may not, however, suspend or limit the rights to equality; the right to protection against cruel, inhuman, or degrading treatment or punishment; the right of nations, nationalities, and peoples to self-determination, including the right to secession; and the right of nations, nationalities, and peoples to speak, write, and develop their own language and to express, develop, and promote their culture and preserve their history.

ECONOMY

The Ethiopian constitution does not provide for a specific economic system. Every Ethiopian citizen has the right to own private property. However, the constitution specifically provides that land is a common property of the nations, nationalities, and peoples of Ethiopia and is not subject to sale or other means of exchange.

The constitution binds the government to formulate national policies to ensure equal opportunity and equitable distribution of wealth and resources among all Ethiopians.

RELIGION

Freedom of religion and belief is recognized as a fundamental human right. The constitution specifically provides that the state and religion are separate and that there shall be no state religion. Education must also be provided without any religious influence.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution requires that the composition of the national armed forces should reflect an equitable representation of the nations, nationalities, and peoples of Ethiopia. The armed forces defend the country and carry out any other responsibilities during a state of emergency, as detailed in the constitution. The minister of defense must be a civilian. The Ethiopian constitution does not provide for mandatory military service.

AMENDMENTS TO THE CONSTITUTION

A formal request for an amendment to the constitution may be made by either the regional or federal legislative bodies. If a regional legislative body has taken the initiative, one-third of the state councils must support the proposal. At the federal level, either of the federal houses may submit a proposal by a two-thirds majority vote.

The constitution provides for stricter requirements for amending provisions dealing with fundamental rights and freedoms. For such an amendment, the federal houses must each support the proposal by a majority vote of two-thirds, in addition to a support by a majority vote of all state councils. On the other hand, amendment of other constitutional provisions requires a two-thirds majority vote in a joint meeting of the federal houses, in addition to support from two-thirds of the states.

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FIJI ISLANDS

At-a-Glance

OFFICIAL NAME
Republic of the Fiji Islands

CAPITAL
Suva

SIZE OF POPULATION
833,000 (2005 est.)

SIZE OF COUNTRY
7,054 sq. mi. (18,270 sq. km)

LANGUAGES
English, Fijian, and Hindustani

RELIGIONS
Christian (Methodist 37%, Roman Catholic 9%) 52%, Hindu 38%, Muslim 8%, other 2%
Fijians are mainly Christian; Indians are primarily Hindu with a Muslim minority.

NATIONAL OR ETHNIC COMPOSITION
Fijian 51%, Fijian Indian 43%, European, other Pacific Islander, Chinese, and mixed race 6%

DATE OF INDEPENDENCE OR CREATION
1970 (Independence Day is second Monday of October)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Sovereign democratic republic

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
July 10, 1997, in force July 27, 1998

DATE OF LAST AMENDMENT
Constitution Amendment Act 1998

Fiji Islands is a sovereign democratic republic and a member of the Commonwealth. It was granted independence by Great Britain in 1970; after time, a constitution was enacted. In 1990, after two military coups in 1987, a new constitution entered into force. The current constitution was enacted in 1997.

The constitution establishes a British Westminster-style system of parliamentary democracy with a separation of powers. Executive power is vested in the president as head of state, acting on the advice of the prime minister and cabinet. The Bose Levu Vakaturaga (Great Council of Chiefs) has an advisory role and, in practice, wields substantial power. There are separate electoral rolls for different ethnic groups and one open roll. A certain number of seats are reserved for each group, the largest number reserved for Fijian candidates. The constitution contains a bill or rights and establishes a human-rights commission. The military is subject to civil authority in law but in the past has taken independent action. The status of the constitution is fragile, and some of its provision have been ignored during recent and past conflicts.

CONSTITUTIONAL HISTORY

In 1865, the indigenous kingdoms on Fiji Islands formed the Confederacy of Independent Kingdoms of Viti, and the country's first constitution was drawn up and signed by seven paramount chiefs. The arrangement collapsed in 1867, and in 1874, Fiji was ceded to Great Britain as a colony. In 1966, Fiji was granted self-government. The country became independent within the Commonwealth of Nations in 1970, as part of the decolonization process. The constitution was appended to the Fiji Independence Order 1970 (U.K.). In 1987, a military coup was led by Sitiveni Rabuka, who objected to Indian domination in government. Fiji became the Republic of Fiji. In late 1987, a civilian government was formed. In 1990, a new constitution, which weighted government representation in favor of Fijians, was put in force. In 1992, Rabuka became prime minister. In 1997, a new Constitution of the Republic of the Fiji Islands, designed to balance the demands of the two major ethnic groups, was introduced.

In May 2000, the Indo-Fijian prime minister and members of Parliament were taken hostage during a session of Parliament in a civilian-led coup. In the same month, an interim military government was formed and revoked the constitution. In July, it established an interim civilian government. In November 2000, the Court of Appeal upheld a challenge to the validity of the civilian government and ruled that the 1997 constitution remained the supreme law of Fiji. The Interim Civilian Government refused to stand down and was confirmed in place by elections held in September 2001.

FORM AND IMPACT OF THE CONSTITUTION

The written constitution is contained in a single document, which is the supreme law. The constitution contains a "compact"—not enforceable in court—that attempts to balance the competing interests of different ethnic groups with principles of freedom and equality. In interpreting the constitution, the courts are to have regard for international law that is applicable to human rights.

The safeguards provided by the constitution proved ineffective in 2000 when the legitimate government was overthrown and its provisions were bypassed. The current government has also shown a willingness to ignore the constitution. Contrary to the power-sharing provisions in the constitution, the prime minister has refused to allow the next largest party, led by the deposed prime minister, a seat in cabinet. A declaration by the Court of Appeal that this is unconstitutional has been ignored.

BASIC ORGANIZATIONAL STRUCTURE

The constitution establishes a central form of government. Regional government is not dealt with in the constitution but is established by legislation on a divisional basis with separate councils for urban areas.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution establishes a Westminster-style system of parliamentary democracy. There is a division of powers among the executive, legislature, and judiciary. The rule of law is enshrined in the constitution but has not prevailed in recent times when ethnic divisions have proved more powerful than national allegiance. Government is responsible to Parliament.

The 1997 constitution removed the preexisting constitutional arrangements that gave indigenous Fijians control of Parliament but still reserves the largest number of parliamentary seats for Fijians. The constitution provides that Parliament must introduce social justice and affirmative action programs designed to give disadvantaged groups equal access to education and training, land and housing, commerce, and all services of the state.

The constitution establishes a code of conduct for constitutional and statutory officeholders. The code seeks to maintain the integrity of public officers by, for example, preventing conflicts between private interests and public duties. It also establishes the office of ombudsperson to investigate complaints about administrative actions by public authorities or officers.

CONSTITUTIONAL BODIES

The most important bodies provided for in the constitution are the president, the prime minister and cabinet, the House of Representatives, the Senate, the Bose Levu Vakaturaga (Great Council of Chiefs), and the judiciary.

The President

Executive authority of the state is vested in the president, who generally acts on the advice of cabinet. The president's role is largely honorific, but there are some powers that may be exercised on his or her own judgment. The president is appointed by the Bose Levu Vakaturaga, after consultation with the prime minister, for a term of five years. Candidates must be citizens who have had a distinguished career in some aspect of national or international life, whether in the public or private sector, and must by qualified to be a candidate for election to the House of Representatives.

The president holds office for five years and is eligible for reappointment for one further term of five years. The president may be removed from office for inability to perform the functions of office or for misbehavior. Removal is by the Bose Levu Vakaturaga after investigation by a tribunal or, in case of incapacity, a medical board established by the chief justice at the request of the prime minister.

The Prime Minister

The prime minister is appointed by the president on the basis of majority support in the House of Representatives. The president may dismiss the prime minister only if the government lacks the confidence of the House of Representatives. The 1997 constitution abolished the requirement that the prime minister must be an indigenous Fijian.

Ministers and Cabinet

The president appoints and dismisses ministers from among the members of the House of Representatives or Senate on the advice of the prime minister. Ministers have such titles, portfolios, and responsibilities as the prime minister determines from time to time. The prime minister must establish a multiparty cabinet reflecting,

as far as possible, the strength of the parties represented in the House of Representatives. More particularly, the prime minister must invite all parties whose membership in the House of Representatives comprises at least 10 percent of the total membership of the house to be represented in the cabinet in proportion to their numbers in the house. The Court of Appeal has declared the current prime minister to be in contravention of this duty to establish a multiparty cabinet. The cabinet is collectively responsible, and a minister is individually responsible to the House of Representatives.

The House of Representatives

There are 71 members of the House of Representatives, elected for a five-year term in single-seat constituencies. There are 23 seats reserved for Fijians, 19 for Indians, one for the Rotuman, and three for other ethnic groups. Twenty-five seats are open to all members of the community. The house is divided into five committees, which are responsible for scrutinizing government administration and examining bills and subordinate legislation.

Senate

The Senate consists of 32 members, appointed by the president on the advice of the Bose Levu Vakaturaga (14 members); the prime minister (nine members); the leader of the opposition (eight members); and the Council of Rotuma (one member). The term of the Senate expires at the same time as that of the House of Representatives unless it is dissolved earlier.

Bose Levu Vakaturaga

The constitution maintains the existence of the Bose Levu Vakaturaga, which was established by the Fijian Affairs Act of 1978, Cap 120. Its membership, functions, operations, and procedures are as prescribed from time to time by or under that act. It is the highest assembly of traditional chiefs and meets at least once a year. Functions of the Bose Levu Vakaturaga include advising the president, making recommendations for the benefit of the Fijian people, and considering draft legislation relating to Fijians.

The Lawmaking Process

The power to make laws vests in a parliament consisting of the president, the House of Representatives, and the Senate. Bills originate in the House of Representatives and must normally pass through both houses and obtain the president's assent.

The Judiciary

Judicial power is vested in the High Court, the Court of Appeal, the Supreme Court, and in any other courts created by law. These include magistrates' courts and a Family Court. The judges are independent of the legislature and the executive.

The common law is developed by the judiciary. In interpreting the constitution, the courts must have regard to the values based on freedom and equality that underlie a democratic society. They must also have regard to the principles of government set out in the compact.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Fiji citizens over the age of 21 and residing in Fiji for two years prior to application are entitled to register to vote. There are five separate rolls of voters: one for Fijians, one for Indians, one for Rotumans, one for other ethnic groups, and an open roll. Only a person who is entitled to register to vote may be nominated as a candidate for election to the House of Representatives. Candidates stand for election by voters on a specific roll and nomination must be by a person registered to vote on that roll.

Elections must be held at least every five years. Voting is compulsory for registered voters. The right to vote and to be a candidate in free and fair elections is a principle of government, set out in the compact.

POLITICAL PARTIES

Fiji Islands has a pluralistic system of political parties. Currently, 10 parties have representatives in the House of Representatives. The right to form and join political parties is a principle of government, set out in the compact.

CITIZENSHIP

Citizenship is acquired by birth in the Fiji Islands, registration, or naturalization. Application for registration may be made by a child born outside the Fiji Islands if either parent is a citizen, by a former citizen who renounces foreign citizenship, or by an adult who marries a citizen and is present in the country for three of five years preceding application. Naturalization requires residence in Fiji Islands for five of 10 years preceding application.

FUNDAMENTAL RIGHTS

The constitution of Fiji Islands incorporates a bill of rights. Exceptions to these rights are described in detail. Exceptions include laws that enshrine customary land or fishing rights and chiefly titles or ranks, which prevail over the right to equality.

The constitution expressly states that human rights provisions bind only "the legislative, executive and judicial branches of government" and persons holding public

office. It specifically provides that constitutional interpretation is to take account of developments in the understanding of the content and promotion of particular human rights.

The constitution also establishes a human rights commission to educate the public about the nature and content of the bill of rights and to make recommendations to the government about matters affecting compliance with human rights provisions.

Impact and Functions of Fundamental Rights

Human rights provisions are at times in conflict with customary law and practices, which are still strong in the Fiji Islands. In particular, the right to equality conflicts with traditional status and patriarchy. This condition has been recognized in the constitution, which validates laws made for the governance of indigenous communities or for the application of customs to questions relating to land, fishing rights, and chiefly rank, even if they discriminate on the grounds of race or ethnic origin.

Superior courts in the Fiji Islands have generally enforced the fundamental rights provisions, but government has, on occasion, shown itself willing to flout both the provisions and the judgments of the courts enforcing them.

ECONOMY

The constitution does not specify an economic system. However, the compact states that the equitable sharing of economic and commercial power is a principle of government to ensure that all communities benefit from economic progress.

RELIGIOUS COMMUNITIES

Freedom of conscience, religion, and belief is protected by the bill of rights. The right to practice religion freely is also a principle of government, set out in the compact.

Religion and the state are theoretically separate, but the constitution contains an acknowledgment that worship and reverence of God should be the source of good government and leadership. In practice, the Methodist Church is a powerful body.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Fiji Islands military forces are governed by the constitution. The president is the commander in chief and appoints a commander, on the advice of the minister, to exercise military executive command. The commander is responsible for appointments to the forces, disciplinary action, and removal of members. There is no conscription.

Emergency powers are exercised by the president, acting on the advice of the cabinet and subject to limitations imposed by the constitution. On proclaiming a state of emergency, the president must summon the House of Representatives to meet. The house may disallow the proclamation.

AMENDMENTS TO THE CONSTITUTION

A bill for the alteration of the constitution must normally be passed by both houses after being read three times in each and passed by a majority of at least two-thirds of the members of each house on the second and third readings. An interval of at least 60 days must elapse between the second and third readings in the House of Representatives, and each reading must be preceded by full opportunity for debate. The third reading in the House of Representatives must not take place until the relevant standing committee has reported on the bill. These procedures may be bypassed in the case of a bill that is certified by the prime minister to be an urgent measure, pursuant to a resolution passed by at least 53 members of the house. In such cases, the amending bill may be passed by a majority of at least 53 members of the house on its third reading. A bill to alter the distribution of reserved seats in parliament requires a special majority.

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Jennifer Corrin Care

FINLAND

At-a-Glance

OFFICIAL NAME
The Republic of Finland

CAPITAL
Helsinki

POPULATION
5,214,512 (July 2004 est.)

SIZE
130,559 sq. mi. (338,145 sq. km)

LANGUAGES
Finnish and Swedish (national languages), Sami (semiofficial language), Romani and Russian (traditional minority languages, subject to limited positive measures)

RELIGIONS
Evangelical Lutheran 84.2%, no religious affiliation 13.5%, Russian Orthodox 1.1%, other 1.2%

NATIONAL OR ETHNIC COMPOSITION
Finnish speakers 92.0%, Swedish speakers 5.6%, small Sami and Russian-speaking minorities

DATE OF INDEPENDENCE OR CREATION
Province of Sweden until 1809, thereafter autonomous grand duchy within the Russian Empire until 1917, declaration of independence December 6, 1917

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
March 1, 2000

DATE OF LAST AMENDMENT
No amendment

Finland is a liberal welfare state. Its constitution is based on democracy, the rule of law, and respect for fundamental rights. It is a unitary state with a republican form of government. Since March 1, 2000, a new constitution is in force. Its Chapter 2 on fundamental rights protects a wide catalogue of fundamental rights, including minority rights and economic and social rights. The practical relevance of the constitution is relatively high in the spheres of legislative power, the operation of the judiciary, and the control of legality.

CONSTITUTIONAL HISTORY

Finland was a province of Sweden until 1809, subject to Swedish constitutional documents. In 1809, and after a war with Russia, Sweden ceded its eastern territories to the Russian Empire. Within the Russian Empire these territories became the autonomous grand duchy of Finland. The representatives of the Four Estates (the nobility, the clergy, the bourgeoisie, and the peasants) were called to the town Porvoo, where Czar Alexander I gave a solemn declaration to respect the religion, the laws, and "the constitution" of Finland. This declaration by the emperor was the starting point for the emergence of Finland as a separate nation and finally, in 1917, as an independent state. While a grand duchy within the Russian Empire, Finland enjoyed considerable autonomy. The Russian Empire was represented through an appointed governor-general, but Finland was nevertheless governed under the Swedish Form of Government Act of 1772 and other Swedish constitutional documents. As a result of this legal framework, Lutheranism was the official religion, and administrative officials and judges had to be Swedish—now interpreted as

Finnish—citizens. Legislative power was exercised jointly by the Four Estates and the monarch. The monarch was now interpreted to refer to the Russian emperor in his capacity of grand duke, and the Four Estates were now interpreted as constituted within the borders of Finland.

Until 1863, the provisions of the Swedish constitution pertaining to the legislative assembly were not relevant in practice, as Swedish laws, supplemented by administrative regulations, were sufficient for running the country, and no new legislation was required. Gradually, however, changes in the economy caused legislation to lag behind. Finally, conditions for revitalizing the legislative assembly ripened; the assembly was called to session by the emperor in 1863 and regularly thereafter.

During the Russian period of 1809–1917, efforts were made to replace the 18th-century Swedish constitutional documents with new ones written specifically for Finland. These efforts were successful in relation to the internal operation of the legislative assembly, which was totally reformed in 1869. Finally, in 1906, this process led to the adoption of a Parliament Act, establishing a unicameral Parliament elected through universal suffrage and replacing the traditional framework of legislative power exercised by the Four Estates. In addition, a separate enactment, of constitutional rank, was adopted in 1905, affording protection to freedom of expression, assembly, and association as fundamental rights.

After the February 1917 revolution in Russia, Finland was on a course to full sovereignty as an independent state. In July 1917, Parliament proclaimed itself sovereign, but it was only after the Bolshevik revolution that an actual declaration of independence was adopted on December 6, 1917. After the Bolsheviks accepted the declaration on December 31, 1917, as Lenin's gesture to demonstrate compliance with the principle of self-determination of peoples, other states recognized the independence of Finland.

After a period of civil war and unrest, a new Constitutional Act was adopted in 1919. This document was largely based on earlier drafts prepared during the Russian period. In the formulation of the final text, the most important controversy concerned the choice between a monarchy and a republic. Largely because of external developments, namely, the defeat of Germany in World War I (1914–18), the decision to invite a German prince to be king was reversed. The Constitutional Act was adapted to include a compromise, a republican form of government with strong and independent presidential powers. In 1928, a new Parliament Act was adopted to replace the 1906.

Between 1919 and 1999, the constitution was subject to several dozen amendments, including gradual reductions in presidential powers, streamlining of the legislative process, and introduction of new institutions into the existing framework. In the fundamental rights reform of 1995, the 1919 narrow catalogue of constitutional rights was replaced with a modern framework heavily influenced by international human rights treaties.

As of March 1, 2000, Finland has a new constitution (Finnish, Suomen Perustuslaki; Swedish, Finlands Grundlag). Although the new constitution builds on the tradition of earlier constitutional documents and the piecemeal amendments made to them, it also includes new elements that establish it as a modern constitutional document of a European parliamentary democracy.

Finland has been a member state of the European Union since 1995.

FORM AND IMPACT OF THE CONSTITUTION

The adoption of a single constitution is a departure from the older tradition in which several enactments with constitutional status existed and operated side by side. While the preceding constitutional instruments were subject to frequent amendment, the new uniform constitution is expected to remain more stable.

International treaties must be separately ratified by Parliament and formally incorporated within Finnish law. All important international treaties, including most human-rights treaties, are formally a part of the Finnish legal order.

One of the first clauses in the constitution, Section 1, Subsection 3, proclaims that Finland works for international cooperation to protect peace and human rights and to develop society. International human-rights norms enjoy semiconstitutional status in various references within the document.

Although the impact of the constitution has been comparatively high in Finland, Finnish courts did not have a mandate to rule on the constitutionality of Parliament's laws until 2000.

BASIC ORGANIZATIONAL STRUCTURE

Finland is a unitary republic, although the autonomous Åland Islands add a dimension of federalism to its organizational structure. The central and regional structures of administration are under the authority of the national government. Local administration is based on self-governing municipalities with their own elected bodies and powers of taxation. Municipalities may form cooperative bodies with one another, thus creating additional regional structures based on self-government.

LEADING CONSTITUTIONAL PRINCIPLES

Chapter 1 of the constitution, entitled Fundamental Provisions, spells out many central constitutional principles.

Finland is sovereign and a republic. The inviolability of human dignity, the freedom and rights of the individual, and the promotion of justice in society are three fundamental values of the constitution. Finland is a liberal welfare state. The principle of internationalism prescribes that Finland participates in joint international efforts to protect peace and human rights and to develop society.

The constitution reflects the principles of democracy, representation through Parliament, and the rule of law. The reference to "the people" in the constitution reflects the idea of a unitary state based on the unity of its people. Nevertheless, the constitution affirms the status of the Sami "as an indigenous people" and uses the expression "Finnish-speaking and Swedish-speaking populations" when addressing the status of the two national languages. Furthermore, the constitution upholds the special status of the Åland Islands, the population of which exercises a high degree of autonomy, including legislative powers, on the basis of the 1991 Autonomy Act. The act cannot be amended without the consent of the Åland Islands legislature.

The constitution incorporates the principles of parliamentarism and the separation of powers. As a logical consequence, it also affirms the principle of the independence of the judiciary.

The Swedish Form of Government Act of 1772 incorporated Christianity as a fundamental constitutional value. While the 2000 constitution of Finland derives its continuity from the 1772 act, the ties between the Finnish state and the Protestant (Lutheran) Church have gradually loosened to the point that religious neutrality is now a constitutional principle.

CONSTITUTIONAL BODIES

The predominant constitutional bodies are Parliament, the Constitutional Law Committee of Parliament, the president and the cabinet, the judiciary, the ombudsperson, and the chancellor of justice.

Parliament

In 1906, Finland became the first country in Europe to introduce universal suffrage for men and women and the first in the world also to accept women as representatives. As did the contemporaneous 1906 Parliament Act, the new 2000 constitution prescribes a unicameral parliament (Finnish, Eduskunta; Swedish, Riksdagen) with 200 members, elected through universal suffrage. Parliamentary elections are based on proportional representation, and the term of Parliament is four years. Parliament exercises legislative power and determines the state budget.

The cabinet, headed by the prime minister, operates at all times under a requirement of confidence of Parliament, which is explicitly tested whenever a new cabinet is appointed. After its appointment, the cabinet must submit its program to a vote of confidence in Parliament. Parliament may at any time express its nonconfidence in the cabinet, or in an individual minister. Thereafter the president is obligated to dismiss the cabinet or the minister, even if no request is made.

The Constitutional Law Committee of Parliament

One of the traditional, distinctive features of the Finnish constitution is a developed system of preview that evaluates the constitutionality of new legislation. Several actors participate in this preview. The Supreme Court and the Supreme Administrative Court may play a role when the president, before her or his decision to confirm an act adopted by Parliament, seeks an opinion from either or both of these courts. However, the key player in the system of preview is the Constitutional Law Committee of Parliament (Finnish, Eduskunnan perustuslakivaliokunta; Swedish, Riksdagens grundlagsutskott). It has a unique role in protecting constitutional rights, other constitutional provisions, and international human rights treaties.

When questions arise as to the compatibility of a bill with the constitution or with Finland's international human rights obligations, the matter is sent to this committee for an opinion. Composed of politicians, the body receives legal advice from constitutional law experts, typically university professors. The opinions of the committee are generally understood as binding. The committee also rules, with legally binding authority, when the Speaker of Parliament refuses to allow voting on a proposal that she or he considers unconstitutional and the plenary contests the Speaker's decision.

The President and the Cabinet

Traditionally, Finland belonged, together with France, to the category of presidential democracies in which an elected head of state exercised real powers apart from the requirement of parliamentary confidence. In Finland, the president of the republic (Finnish, Tasavallan presidentti; Swedish, Republikens president) used to have rather broad powers in international relations, legislation, and appointment of state officials, as well as power to dissolve Parliament.

Throughout the 1980s and 1990s, amendments gradually moved the system in a more parliamentary direction, and the new constitution moves this transformation further. The role of the prime minister and the cabinet (Finnish, Valtioneuvosto; Swedish, Statsrådet; literal English translation, Council of State) is now central. Given that the cabinet must at all times enjoy the political confidence of Parliament, Finland in effect now has a parliamentary type of government.

Under the new constitution, the president "informs Parliament of the nominee for prime minister" after a process of political negotiation. Thereafter, Parliament elects either the nominee or, through a complicated procedure, another person as prime minister and the president makes

the formal appointment to office. The president is constitutionally bound to accept Parliament's choice.

The president is elected by the people through direct elections. If none of the candidates receives a majority of the votes cast, the two candidates who received the most votes compete in a second round. The president must in practice cooperate with the cabinet. All her or his important decisions depend on the presence, preparation, and cooperation of the cabinet. In addition, the chancellor of justice and the parliamentary ombudsperson have the duty to monitor the lawfulness of decisions by the president. The cabinet has the right, and the duty, not to implement unlawful presidential decisions.

The constitution provides that foreign policy is directed by the president of the republic, but even in this field, she or he must act in cooperation with the cabinet. The president makes decisions "in a meeting with the cabinet on the basis of proposals for decisions put forward by the cabinet" (Section 58, Subsection 1). In case of disagreement between the president and the cabinet, the opinion of the latter is decisive in presenting a bill to Parliament, whereas other matters are referred to the cabinet for new preparation.

According to a specific clause in the constitution, Finland's participation in the European Union is in the hands of Parliament and the cabinet. Nevertheless, because of the close linkage between European Union matters and foreign policy and the general role of the president in matters of foreign policy, the president has often participated in meetings of the European Council, with the authorization of the cabinet.

The prime minister has the power to propose early elections, but the president thereafter makes the official decision.

The president, the cabinet, and the ministries all have powers to issue decrees or regulations in their areas of competence. However, the constitution explicitly gives Parliament sole power to issue regulations concerning the rights and obligations of private individuals and other areas that the constitution considers of a legislative nature. The interpretation of this clause has been quite strict. All substantive regulation that affects constitutionally guaranteed fundamental rights must be done in the form of an act of Parliament.

The Lawmaking Process

Constitutionally, individual members of Parliament have equal rights to introduce legislation, but in practice almost all bills are introduced by the cabinet. Such bills and legislative motions by members of Parliament are always sent to one of the standing committees of Parliament, whose report serves as basis for decisions in two plenary readings. In the first reading, each section and subsection of a draft law is approved separately and, if needed, voted upon. In the second reading, which at the earliest takes place on the third day after the conclusion of the first reading, Parliament decides whether to accept the proposal as a whole.

An act adopted by Parliament is submitted to the president for confirmation. If it is not confirmed within three months, it is returned to Parliament for reconsideration. If Parliament again adopts the law without material alterations, it enters into force without presidential confirmation.

The Judiciary

Finland has two parallel sets of courts, ordinary courts that deal with civil and criminal matters and administrative courts. Administrative decisions are subject to appeal, either before a regional administrative court or directly to the Supreme Administrative Court (Finnish, Korkein hallinto-oikeus; Swedish, Högsta förvaltningsdomstolen). The Supreme Court (Finnish, Korkein oikeus; Swedish, Högsta domstolen) is the highest court of appeal in civil and criminal cases. Both supreme courts may handle constitutional issues.

The constitution guarantees the independence of the judiciary. The president appoints tenured judges through a procedure regulated by an act of Parliament; in practice, the judiciary itself takes part in the selection process.

Traditionally, the role of the Finnish judiciary has not been predominant in the protection of the constitution. However, in the 2000 constitution, an explicit provision was introduced according to which a court shall give priority to the constitution in cases in which the application of an act of Parliament would be in "manifest conflict" with the constitution.

The Ombudsperson and the Chancellor of Justice

The parliamentary ombudsperson (Finnish, Eduskunnan oikeusasiamies; Swedish, Riksdagens justitieombudsman) and the chancellor of justice (Finnish, Oikeuskansleri; Swedish, Justitiekansler) play important roles in protecting the rule of law. The former is elected by Parliament, the latter appointed by the president. Both receive complaints from individuals and report annually to Parliament. Both may issue reprimands, propose legislative action, or order criminal charges against any person for unlawful conduct in the exercise of public authority. The chancellor of justice has a special responsibility to oversee the lawfulness of the operation of the cabinet and the president. The ombudsperson, in turn, has in practice a more prominent role in examining complaints from individuals. A distinctive feature of the Finnish system is that the ombudsperson's supervision also extends to the exercise of judicial power.

Charges of unlawful conduct in office against cabinet ministers, the chancellor of justice, the parliamentary ombudsperson, or judges of the two highest courts are dealt with by the High Court of Impeachment (Finnish, Valtakunnanoikeus; Swedish, Riksrätten). The same court also deals with charges against the president in cases of treason, high treason, or a crime against humanity.

Municipal Self-Government

Municipal self-government is protected by the constitution. Although the forms of municipal self-government are determined by an act of Parliament, the constitution secures the right of municipalities to levy municipal taxes and protects municipalities against the executive power by prescribing that only Parliament can establish responsibilities of the municipalities.

The self-government of the Swedish-speaking, demilitarized, and culturally distinctive Åland Islands also enjoys constitutional protection. The arrangement is regulated in a 1991 act, which can be changed only through the constitutional amendment process and only with the consent of the Åland Islands Legislative Assembly.

The constitution also recognizes the linguistic and cultural autonomy of the Sami, the indigenous people of the north. It also grants a certain autonomy to universities and to the Evangelical Lutheran Church.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The minimal age for voting is 18 years. Only citizens of Finland are allowed to vote in parliamentary or presidential elections, but no other earlier restrictions remain. For instance, prisoners and persons in mental health institutions are entitled to vote. Foreigners permanently residing in Finland have the right to vote in municipal elections.

Parliamentary elections are based on proportional representation. Of the 200 seats, one is reserved for the Åland Islands, while the remaining 199 are allotted among the 15 electoral districts in proportion to their populations. The parties draw up lists of candidates in each district; the voter casts his or her ballot not for the party but for an individual candidate. The total number of votes cast for a party's candidates in a district decides the number of candidates from the list who are elected The number of votes each candidate receives decides his or her rank on the party list.

This system gives an advantage to the larger political parties. Since party totals are not consolidated on a national basis, a party could win 3 or 4 percent of the vote in every one of the 15 districts (and even a higher percentage in districts with fewer candidates) and still fail to win a single seat in Parliament.

Everyone who can vote and who is not under legal guardianship can be a candidate in parliamentary elections, apart from military officers and certain other officeholders: the chancellor of justice, the parliamentary ombudsperson, a justice of the Supreme Court or the Supreme Administrative Court, and the prosecutor-general.

The rules regarding the right to vote in the presidential elections follow the rules for parliamentary elections. The president's term of office is six years, with only two consecutive terms allowed. If none of the candidates receives a majority of the votes cast, a second round is held between the two leading candidates.

The president must be a native-born Finnish citizen. To nominate a candidate for president, a party must have won at least one member of Parliament in the most recent parliamentary elections. Any group of 20,000 voters may also nominate a presidential candidate.

Municipal council elections are held every four years. The elections are based on the same principles as parliamentary elections. A citizen of another European Union member state is entitled to vote in the elections for the European Parliament provided that the person has reached the age of 18 not later than the day of the election, that his or her municipality of residence is Finland, and that the person has not lost the right to vote in European elections in the country of which he or she is a citizen.

The constitution allows Parliament to present consultative referendums to the voters. Such a referendum was held before Parliament decided to join the European Union.

POLITICAL PARTIES

There are currently eight political parties represented in Parliament. The state provides funding to the parties in proportion to the number of seats they have in Parliament. Political parties operate both under the 1989 Associations Act and under a separate 1969 Act on Political Parties. If an association wishes to be included in the list of registered political parties, it must collect 5,000 signed declarations of support by persons who are entitled to vote in parliamentary elections. A registered political party loses this status if it does not win at least one seat in Parliament in two consecutive elections. If it wishes to run again, it must once again collect 5,000 membership cards. Once registered, a party may nominate candidates in all parts of the country, irrespective of where its members reside.

A political party can be dissolved by a judicial decision through the application of the relevant provisions of the Associations Act. Largely because of earlier constitutional provisions that made it difficult to carry out a legislative program with only a narrow majority in Parliament, Finland has developed a political culture of broad coalitions. For instance, it is not unthinkable that the political Right (the Coalition Party), the Left (the Social Democratic Party and the Left Alliance), and certain centrist forces (the Green Party and the Swedish People's Party) share governmental power. The three major political parties are the Center Party, the Social Democratic Party, and the Coalition Party. Usually, one of these is in opposition and two cooperate in the cabinet, together with some of the smaller parties.

CITIZENSHIP

The starting point for the rules on citizenship is *ius sanguinis:* Everyone born of two Finnish parents, of a Finnish mother, or of a Finnish father married to the child's

mother becomes a Finnish citizen. In addition, a child born in Finland of any parents who does not become a citizen of another country becomes a Finnish citizen. A foreigner may be granted Finnish citizenship after living in Finland for at least six years. The applicant must have satisfactory oral and written skills in either Finnish or Swedish or analogous skills in sign language. The 2003 Citizenship Act makes dual nationality more easily obtained than the previous one.

As a rule, the constitution since 1995 guarantees constitutional rights irrespective of Finnish citizenship, with the exceptions of freedom of movement across borders and voting rights in national elections. The president of the republic must be a native-born Finnish citizen, and all members of the cabinet must be Finnish citizens. In addition, certain public offices may be reserved to Finnish citizens by an act of Parliament. Only Finnish citizens have a duty to participate in national defense.

FUNDAMENTAL RIGHTS

The constitutional protection of fundamental rights includes both the traditional civil and political rights and economic, social, cultural, and environmental rights. The constitution guarantees rights such as equality and nondiscrimination; the right to life, personal liberty, and integrity; and the right to private life, honor, home, data protection, confidentiality of communication, freedom of religion and conscience, freedom of expression, assembly and association, and protection of property. Also protected is the right to education, minority linguistic rights, the right of minorities to enjoy and develop their own culture, the right to work and the freedom to engage in commercial activity, the right to indispensable subsistence and care, the right to social security and services, the right to housing, and environmental rights and responsibilities. Finland formally incorporates all major human rights treaties in its domestic law.

The Finnish constitution's emphasis on minority rights and the bilinguality of the nation make it distinctive. Finnish and Swedish are the two national languages, and certain individual rights arise from that fact. The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. The Sami have the right to use the Sami language in their dealings with administrative and judicial authorities in matters that emanate from within the so-called Sami homeland (the three northernmost municipalities and a large part of the Sodankylä municipality). In this sense, Sami can be described as a third official language.

Impact and Functions of Fundamental Rights

Constitutional rights are binding with respect to any exercise of public authority, whether legislative, administrative, judicial, or municipal. Furthermore, it is a constitutional duty of all public authorities "to guarantee" the realization of constitutional rights and human rights. This rule forms a constitutional basis for the indirect horizontal effect of constitutional rights: They are not immediately binding on private subjects, but the public authorities must secure that fundamental rights are not violated by private subjects.

Since 1995, the Finnish courts have begun actively to enforce certain of the economic and social rights provisions of the constitution. The Supreme Administrative Court has, on some occasions, based its ruling in social assistance cases on the constitution, which prescribes an individual right to social assistance for those in need. In another ruling, the same court referred to the minority rights clause as grounds to pay proper attention to the higher clothing costs of a Roma woman in determining her right to social assistance. One of the most important Finnish cases in the field of economic and social rights concerned a municipality's having a legal obligation to arrange an opportunity for a long-term-unemployed person to work for six months. As the municipality had failed to comply with this duty, it was ordered to pay damages.

Limitations to Fundamental Rights

There is no uniform procedure in the constitution related to restrictions on fundamental rights, apart from derogations (limitations) during a state of emergency. Some of the rights clauses specifically allow Parliament to pass restrictions. For example, Parliament may pass laws barring people from leaving the country during legal proceedings or as a way to escape punishment or to avoid the duty of national defense.

No restriction that extends to the core of a constitutional right may be made through an ordinary act of Parliament. Restrictions must comply with the requirement of proportionality—a restriction may not extend further than what is justified, taking into account the weight of the societal interest in relation to the right being restricted.

ECONOMY

Since World War II, Finland has developed itself as a Nordic welfare state while upholding the constitutional protection of the right of private property. Everyone has the right to earn his or her livelihood by the employment, occupation, or commercial activity of his or her choice. The provision has been interpreted as setting constitutional limits to licensing requirements for businesses.

The idea of a welfare state has been constitutionalized. Everyone is guaranteed the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider. The clause has been understood as barring any moves toward a totally insurance-based system of social security. For example, the constitution guarantees a basic-subsistence-level old-age pension for persons who

were never gainfully occupied and secures that unemployed persons receive unemployment benefits until they either obtain work or become eligible for another form of basic-subsistence-level support.

RELIGIOUS COMMUNITIES

Although freedom of religion is one of the fundamental rights protected by the constitution, historically the Evangelical Lutheran Church has been in the position of a state church. Since the time that Finland was an autonomous part of the Russian Empire, the Orthodox Christian Church has also enjoyed official status through specific legislation. Gradual steps have been taken toward religious neutrality of the state, and the 2000 constitution reflects this development. The old connection between the Lutheran Church and the constitution remains visible, however.

The constitution notes that the Church Act governs the organization and administration of the Evangelical Lutheran Church. The special legislative procedure for changing this act is set forth in the act itself.

Both the Lutheran and Orthodox Churches receive tax revenues through the state, which collects church taxes from the members of these communities. In addition, they enjoy a certain percentage of taxes paid by juridical persons, such as business corporations. Other religious communities depend on voluntary contributions by their members.

The 2003 Freedom of Religion Act removed certain restrictions that previously governed the establishment of new religious communities. Religious communities are recognized as a special category of juridical persons, different from ordinary associations governed by the Associations Act.

The rules on religious education in public schools have been amended. Schools still teach the religion of the majority of the pupils of a school—in practice always Lutheran Christianity—but no longer with the aim of strengthening the belief of the pupils, only of providing knowledge of the religion. Nevertheless, pupils who do not belong to the Evangelical Lutheran Church are fully exempted from this education. Pupils thus exempted receive teaching in their own religion, either in the school or within their community or in ethics.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president decides on matters of war and peace with the consent of Parliament. He or she also decides, on the proposal of the cabinet, whether to mobilize the defense forces. If Parliament is not in session at that moment, it is summoned at once. Thus, civilian state organs retain power during armed conflict.

The president of the republic is the commander in chief of the defense forces. However, on the proposal of the cabinet, the president may relinquish this task to another Finnish citizen, that is, to a military officer. The primacy of civilian rule is reflected in the fact that the president appoints the officers of the defense forces.

Finland retains conscription as the foundation of its system of defense. Every Finnish citizen is obligated to participate or assist in national defense, as provided by law. The Conscription Act of 1950 prescribes mandatory military service for men. Women may perform voluntary military service. Persons who have the right of domicile of the Åland Islands are exempt from conscription.

The constitution provides for the right to exemption, on grounds of conscience. The term of the alternative civilian service is 395 days, compared with either 180, 270, or 362 days for regular military service.

The constitution allows for certain derogations (limitations) of constitutional rights in situations of emergency. Such derogations must be temporary, necessary, and compatible with Finland's international obligations concerning human rights. Rights that according to international law are nonderogable, such as the right to life, the prohibition against torture and any other form of inhuman treatment, and the requirements of legality and nonretroactivity of criminal law, are also nonderogable under the constitution. Derogations to derogable rights are permitted only in the case of an armed attack against Finland or similar emergency.

AMENDMENTS TO THE CONSTITUTION

There are two alternative methods for amending the constitution. An ordinary amendment proposal, once passed by a majority of the votes cast in Parliament, is left in abeyance until a new Parliament is elected. It then requires a second vote, this time with a majority of two-thirds of the votes cast. Alternatively, Parliament may, by five-sixths of the votes cast, declare an amendment proposal to be urgent. It can then be adopted by the usual two-thirds vote. As referendums are only of consultative nature, they do not play a role in the procedure for amending the constitution.

Finnish constitutional law provides for exceptive enactments—laws that contradict the constitution and can only be passed by using the same procedures required for amending the constitution. This kind of law was developed when the country was an autonomous grand duchy within the Russian Empire (1809–1917). The old pre-1809 Swedish constitution was still in effect, and there was no way to amend it, other than by exceptive enactments. After independence, the institution continued to be used, this time to amend the 1919 Constitution Act. The special procedure has been used more than 1,000 times, and many of the exceptions are permanent in nature. However, since the fundamental rights reform of 1995 and the adoption of the new constitution in 1999, there has been

a strong tendency to avoid the use of exceptive enactments. The new constitution states that any such exception must be of a "limited" nature.

Exceptive enactments have been used to incorporate international treaties that are in conflict with the constitution. For example, Finland's membership in the European Union was decided by a majority of two-thirds in Parliament, without the need to amend the constitution itself.

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Martin Scheinin

FRANCE

At-a-Glance

OFFICIAL NAME
French Republic

CAPITAL
Paris

POPULATION
61,005,600 including overseas territories (2005 est.)

SIZE
342,686 sq. mi. (551,500 sq. km)

LANGUAGES
French

RELIGIONS
Catholic 83–88%, Muslim 5–10%, Protestant 2%, Jewish 1%, unaffiliated or other 4%

NATIONAL OR ETHNIC COMPOSITION
French 97.65%, Portuguese 0.92%, Algerian 0.88%, Italian 0.32%, Belgian 0.11%, German 0.12%

DATE OF INDEPENDENCE OR CREATION
Clovis (481–511 C.E.), king of the Franks

TYPE OF GOVERNMENT
Semipresidential

TYPE OF STATE
Decentralized unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
October 4, 1958

DATE OF LAST AMENDMENT
March 1, 2005

France is a parliamentary and presidential democracy based on the rule of law, with a clear division between the executive and legislative powers. There also is a judiciary authority. France has been a unitary state; decentralization has increased since the constitutional law of March 28, 2003. The constitution guarantees human rights, per the 1789 Declaration of the Rights of Man and of the Citizen, which has constitutional force. The constitution must be respected by the public authorities. The Constitutional Council ensures this respect, although individuals cannot appeal to it. The council has seen its role strengthened since the 1970s, although it is still not a true Supreme Court.

The president is head of state but also exercises important executive powers. The prime minister's powers depend largely on the will of the president. In a period of "cohabitation" (when the president and the prime minister belong to opposing political sides), the prime minister makes use of all the powers attributed to this office by the constitution. In this case, the prime minister and not the president directs the politics of the nation.

The prime minister is responsible only to the Assemblée Nationale, the Parliament, and not to the president. In practice, the system is developing from a semipresidential one to a parliamentary government. The elections for Parliament are by secret, free, equal, general, and direct ballot, contested by multiple political parties.

Religious freedom is guaranteed, and church and state are separated. The economic system can be described as a market economy with a certain degree of government intervention that is becoming blurred under the influence of European integration. The military is by law and in fact subordinate to civil government.

France is a member of the United Nations and a permanent member of its Security Council. It also is member of the North Atlantic Treaty Organization (NATO).

CONSTITUTIONAL HISTORY

France is a political entity that emerged gradually in history. In the fifth century C.E., the Franks, a Germanic tribe,

settled in the territories of today's France. The Frankish king, Charles the Great, or Charlemagne (742–814), established a European empire, which was divided in the 843 Treaty of Verdun. The western part of the Frankish realm (Francia occidentalis) eventually became France.

After the decline of Charles's dynasty, Hugh Capet became king of France in 987. The monarchy rapidly became hereditary, but in the beginning, the Capetian dynasty remained weak against powerful feudal lords. Soon, however, the Capetian monarchy became stronger by securing the help of the church and by progressively enlarging its property. Philippe IV the Fair defended the independence of the Crown against the pope and convoked the first Estates General (1302), the representative body of the nobility. The growth of Capetian power was, however, halted in its progress by the Hundred Years' War (1337–1453).

In the 16th century, religious wars between Catholics and Calvinists produced new crises. King Henry IV reestablished religious peace by the 1598 Edict of Nantes and restored royal authority. The Frondes, a series of civil disturbances that lasted from 1648 to 1653, were suppressed by King Louis XIII, who, assisted by Cardinal Richelieu, established an absolutist monarchy. His successor, King Louis XIV, was the absolute ruler of France.

Enlightenment philosophy combined with bad harvests and financial crises forced King Louis XVI to convoke the Estates General in 1789. This resulted in the French Revolution and the end of the *ancien régime*, as the traditional monarchy was called. The Declaration of the Rights of Man and the Citizen was proclaimed in 1789. From then on, there were no more subjects, only citizens. Jews and Protestants became citizens with equal rights. Feudal rights were abolished on August 4, 1789, and civil equality was proclaimed. The constitution of September 3, 1791, introduced a constitutional monarchy, in which the king had only limited powers. In 1792, a decree abolished the monarchy altogether and proclaimed Year I of the Republic. From then on, and particularly during the 19th century, France experienced long years of constitutional instability.

The constitution of the Year I (June 24, 1793) was inspired by democracy and decentralization; it was, however, never implemented. The leading revolutionary, Robespierre, presided over the Reign of Terror that lasted until 1794. A new constitution passed in 1795 only lasted until 1799, when General Napoléon Bonaparte took power in a coup d'état and imposed the 1799 constitution. Strengthened by military victories, Napoléon transformed the regime into an empire through the 1804 constitution, which was ratified by plebiscite. The empire centralized administration and introduced an important series of laws (Civil Code, Penal Code, etc.) that are extant today. Military defeats led to Napoléon's fall in 1815.

The Restoration (1814–30) saw the birth of a parliamentary regime. The 1814 Constitutional Charter, imposed by King Louis XVIII, established a monarchy checked by parliament. The Charter of 1830, negotiated between the king and parliament, installed the July Monarchy (1830–48). It instituted a parliamentary monarchy founded on national sovereignty. The 1848 revolution put an end to this regime. A provisional government convoked a constituent assembly that adopted the 1848 constitution, forming the Second Republic.

After a coup d'état in 1851, the princely president, Louis-Napoléon Bonaparte, won the support of the French people to adopt a constitution in 1852 that installed the Second Empire. Defeat in the Franco-Prussian War of 1870 put an end to this empire.

After a transition period, the Third Republic gradually took shape. The constitutional laws of 1873–75 organized a parliamentary regime. The Third Republic passed laws that strengthened public freedoms: freedom of the press, freedom of assembly and of association, union rights, separation of church and state, and secular and compulsory education.

After liberation from German occupation in World War II (1939–45), the Fourth Republic was established. Voting rights for women were acknowledged in 1944 by an ordinance of General de Gaulle. The 1946 constitution opened with a preamble affirming the principles of the Declaration of 1789, as well as proclaiming new economic and social rights, especially the recognition of the right to strike.

The Algerian crisis that marked the end of French colonialism caused the fall of the Fourth Republic. The new 1958 constitution founded the Fifth Republic. Created under the inspiration of General de Gaulle, it revived the authority of the executive and especially of the president of the republic.

The French republic is a founding member of the European Union. It participates in the process of European integration and tries to develop peace, stability, and prosperity all over the world. France, along with the other member states, transfers a degree of sovereignty to the union, whose law has increasing impact on its member states.

FORM AND IMPACT OF THE CONSTITUTION

France has a written constitution—the Constitution of October 4, 1958, or Constitution of the Fifth Republic. It incorporates the preamble of the 1946 Constitution of the Fourth Republic as well as the 1789 Human Rights Declaration. These different texts have constitutional force and are ranked above ordinary laws. International law must be in conformity with the constitution in order to be applicable in France. European law also prevails over ordinary laws. If European law is in contradiction with the constitution, the constitution must be amended to make it applicable.

The French constitution is binding on all the branches of state power, and it is the source of fundamental principles of constitutional value. In principle, laws

must be in conformity with the constitution, but appeals to the Constitutional Council, which can declare laws unconstitutional, were limited in the past. Since 1971, the Constitutional Council has bit by bit confirmed its jurisdiction and has developed a certain number of fundamental principles that pervade all branches of law. It particularly monitors respect for fundamental rights.

BASIC ORGANIZATIONAL STRUCTURES

France is a decentralized unitary state. It is divided into regions, departments, *arrondissements,* cantons, and communities. The regions, departments, and communities are territorial entities whose existence and powers are recognized by the constitution. The entities are very different in size and population. Until recently their structure was uniform (apart from that of the overseas territories), but recent constitutional amendments have given them room for greater diversity.

A strong centralism has been characteristic of France since the days of the Capetian monarchy. The movement toward decentralization did not really begin until the 1960s, and the process has not been finalized because problems remain. Among these problems is the insufficient financial autonomy of the local communities, despite some progress, at least on paper. Another problem is that the size of the regions is very unequal; many of them are considerably smaller than the European average: There are more than 36,700 communities for a population of just above 60 million.

LEADING CONSTITUTIONAL PRINCIPLES

The French system of government is midway between a parliamentary and a presidential regime. The Fifth Republic of 1958 was meant to be a rationalized parliamentary system. However, the introduction in 1962 of presidential elections by universal suffrage and the operational style of President de Gaulle made it more like a presidential system.

There is a division between the executive and the legislative powers with a certain predominance of the executive. The independence of the judicial power was strengthened by a number of constitutional reforms, as were the powers of the Constitutional Council.

The French constitutional system is based on a number of constitutional principles: France is a democracy, a decentralized unitary state, a republic, a state with strong social security and the rule of law. The preamble of the constitution of October 27, 1946, carried over into the constitution of 1958, proclaims a certain number of social rights: the right to strike, union rights, the right to work and to vocational training, health protection, and rights of workers in old age. It recognizes the equal rights of women and proclaims that "every human being without difference of race, religion or belief, has inalienable and holy rights." The right to asylum is recognized.

France is a representative democracy. The people elect representatives to Parliament who decide on political questions. Direct democracy, whereby the people decide directly, exists on the national level.

The principle of republican government is underlined in Article 89 of the constitution, which states that "the republican form of government shall not be the object of an amendment." Freedoms are guaranteed by the constitution as well as by the Constitutional Council.

The basic structural principles are found in Article 1: "France shall be an indivisible, secular, democratic, and social republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."

The republic participates in the European communities and in the European Union and agrees to transfer those powers necessary for the establishment of a European economic and monetary union.

CONSTITUTIONAL BODIES

The main organs of the constitution are the president of the republic; the executive administration, consisting of a prime minister and Council of Ministers; the Parliament, in which the National Assembly is largely predominant (the Senate, which represents the territorial entities, has a clearly less important role); and the judiciary, which includes the Constitutional Council.

The President of the Republic

The president of the republic is the head of state. According to Article 8, the president has the power to nominate the prime minister. Political practice allows the president to depose the prime minister if the two are members of the same political camp. The president does not have this power during periods of "cohabitation" in which they belong to rival camps.

The president of the republic must ensure that the constitution is observed. The president is the guarantor of national independence, territorial integrity, and observance of treaties.

The president is elected for a period of five years by direct and universal suffrage and can be reelected indefinitely. The president approves legislation. He or she has 15 days either to sign a law, submit it to the Constitutional Council for review, or demand a second reading of the law; the latter course is rarely taken. The president can refuse to sign ordinances; this sometimes does occur in periods of cohabitation.

The president represents France in international affairs alone in normal political times, together with the prime minister in periods of cohabitation. The president

presides over the Council of Ministers and signs its decrees, accredits ambassadors, is commander in chief of the armed forces, and has the right of pardon. The president guarantees the independence of the judiciary.

These powers depend on countersignature—they can only be exercised if the prime minister approves. Other important powers of the president do not depend on countersignature. These powers differentiate the French president from heads of state in other parliamentary democracies. Besides appointing the prime minister, the president has the power to dissolve the National Assembly, has full powers in case of emergency, and has access to the Constitutional Council, three of whose members he or she appoints. The president may also, on a proposal of the Council of Ministers or on a joint motion of the two chambers of the legislature, submit to a referendum any bill that deals with certain topics, such as the organization of public authorities.

The president cannot be charged with criminal offenses while in office except high treason, which is defined in the constitution. In that case, both chambers of the legislature must approve identical charges by a majority vote of their members. In case of vacancy of the office, the president of the Senate exercises the president's functions. Past presidents belong to the Constitutional Council for life.

The Executive Administration

According to Article 20 of the constitution, the administration (prime minister and cabinet) determines and conducts the policy of the nation. It is in charge of the executive and the armed forces. The prime minister directs its actions. In exceptional cases, the prime minister can also represent the president of the republic in presiding over the Council of Ministers if there are both an explicit delegation and a fixed agenda.

The prime minister is responsible for national defense, ensures the execution of the law, and appoints civil and military officers except those appointed by the head of state. The prime minister can delegate certain of these powers to cabinet ministers.

When the two heads of the executive belong to the same political camp, the president can replace the prime minister, who thus appears as a lieutenant or chief of staff charged with implementation of policy. In this system, the prime minister can be removed by the president as well as by the National Assembly. In practice, the risk of being replaced is small because there has almost always been a stable political majority and the prime minister is usually the leader of that bloc. In a period of cohabitation, however, the president and the prime minister are political adversaries. The prime minister conducts a policy in opposition to that of the president, except, usually in matters of foreign affairs and defense.

In times of cohabitation, the president cannot remove the prime minister, who is in that case responsible only to the National Assembly. In fact, in such a situation, the president has to choose the prime minister from among the opposition. The cabinet ministers are appointed by the president of the republic on the advice of the prime minister. They can be removed in the same way. Below the cabinet ministers are secretaries of state. Their number varies between 30 and 40, depending on the administration.

The constitution allows for cabinet responsibility to the president, but it only institutionalizes its responsibility to the National Assembly. Article 49 requires the prime minister to present the administration's program before the National Assembly, which can vote its confidence by a simple majority. The same article gives the assembly the power of censure. A censure motion can be proposed by one-tenth of the members. After a reflection period of 48 hours, members can adopt the motion by an absolute majority. The administration can also test its political strength by offering its own "provoked motion of censure." If a motion of censure passes, the administration must resign.

Ministers cannot simultaneously serve in Parliament and engage in any other professional activity. A member of Parliament who becomes a cabinet minister is replaced by his or her alternate.

The National Assembly

The National Assembly is the central representative organ of the people on the national level. As a legislative body, it cooperates with other constitutional organs, in particular with the Senate, which represents the local communities. The National Assembly can express its confidence in the administration or can remove it by a vote of censure. Assembly members have the right to pose oral or written questions to the administration. Commissions of inquiry about the functioning of the administration can be installed.

Votes in the assembly are generally taken by the simple majority of the members present. However, certain decisions need an absolute majority, such as the first two rounds in the election of the assembly president or a motion of censure. Decisions of particular importance require a stronger majority of three-fifths or, alternatively, a national referendum.

Members of Parliament are not legally obligated to follow the instructions of their political party; they are only bound by their conscience. They are also not bound by their electors: "All imperative mandate is void" (Article 27). Each member is seen to represent the whole nation and not just the constituency where he or she was elected. In practice, the members depend on their parties in ways that narrow their maneuvering space, especially if they wish to be nominated in future elections.

The members of Parliament enjoy certain rights, to ensure their independence. No member can be searched, questioned, arrested, imprisoned, or sentenced because of opinions expressed or votes casts in exercising his or her functions. No member is subject to criminal or correctional

sanctions, arrests, or any other deprivation of liberty except under the authorization of the office of the assembly of which he or she is a member—unless the member is caught in a criminal act. Detention, prosecution, or any measures depriving of liberty or limiting liberty of a member of Parliament are suspended for the duration of his or her sessions if the assembly so requires.

The National Assembly consists of 577 deputies. The normal duration of the legislative period is five years, but it may be dissolved before that time. The deputies are elected by universal, direct, free, equal, and secret suffrage. The deputies receive substantial remuneration in addition to funds for expenses and payment of parliamentary assistants and a secretariat. Parliament assembles for one ordinary session each year, beginning the first working day of October and ending the last working day of June. The president of the republic can convoke an extraordinary session at the request of the prime minister or the majority of members of the National Assembly. The members of the administration have the right to address either chamber. The sessions of the two assemblies are public.

The Lawmaking Process

The right to initiate a bill belongs to the members of Parliament and to the prime minister. In practice, the majority of adopted laws have their origin as bills of law submitted by the cabinet.

Article 37 deals with regulations, which do not belong to the field of law. The administration can also issue ordinances when Parliament authorizes it to do so.

A bill of law is debated in the chamber where it was introduced, using the text drawn up by the administration. The other chamber debates the text passed by the originating chamber. In principle, texts are sent to one of the six permanent committees. The two chambers must agree on an identical text. In case of disagreement, the prime minister calls a mixed commission of seven deputies and seven senators. If this commission does not reach a compromise, the administration can ask the National Assembly to decide definitively. However, there is a special regime for organic laws—those that expand upon the constitution. Organic laws require a period of reflection of 15 days, and they must be submitted for review by the Constitutional Council (submission is optional for ordinary laws). Once adopted, the law must be signed by the prime minister and by the cabinet ministers concerned. The president of the republic has 15 days to publish them.

The Senate

The Senate represents the territorial entities of the republic. French residents abroad are also represented by the Senate. The Senate is called an Upper Chamber and has fewer powers than the National Assembly. It cannot remove the administration. Even in legislation, the prime minister can give the last say to the National Assembly, which can pass a law without the consent of the Senate. Originally created to assist the president of the republic and his or her assembly majority, it has often found itself in the opposition. The two chambers are equal in their powers to amend the constitution: Constitutional amendments require the consent of the Senate, except if passed by national referendum.

The Senate is elected in a universal and indirect ballot. The senators, therefore, are not elected directly by the people. The electoral body is essentially composed of locally elected representatives.

The Judiciary

It is the president of the republic who guarantees the constitution, with the help of the Superior Council of Magistracy. The latter is made up of two branches, one comprising judges, the other public prosecutors.

For historical reasons, there are two branches of jurisdiction in France: the administrative jurisdiction, which rules on administrative matters, and the judicial branch, which resolves litigation between private individuals and cases submitted by the public authorities to the Superior Council of the Magistracy. The administrative branch comprises the first instance administrative tribunals, the administrative appeal courts, and in final resort the Council of State. The judicial branch consists of first instance cantonal courts and district courts, courts of appeal, and in final resorts the Court of Cassation. There are specialized jurisdictions as well: labor courts, commercial courts, and, in penal matters, police tribunals for offenses, and special courts for crimes and misdemeanors.

The 1958 constitution established a Constitutional Council. It is not a true supreme court, but its decisions are not subject to any further legal remedy. The decisions of the Constitutional Council are binding for all public authorities. The council has nine members with a term of nine years that cannot be renewed. Every three years one-third of the members are replaced. Three members are appointed by the president of the republic, three by the president of the National Assembly, and three by the president of the Senate. Former presidents of the republic are members for life. The president of the Constitutional Council is appointed by the president of the republic and has the decisive vote in case of ties.

The Constitutional Council above all decides on the constitutionality of laws. Laws can be submitted to the court before their promulgation by the president of the republic, the prime minister, the president of the National Assembly, the president of the Senate, 60 deputies, or 60 senators. The council has one month to make a decision, eight days in case of urgency. A provision declared unconstitutional must not be promulgated or applied.

The jurisprudence of the Constitutional Council has gradually consolidated. In the early days of the Fifth Republic, the council exercised great restraint because of a French tradition hostile to constitutional control. More recently it has become a defender of public freedoms by giving constitutional force to the principled language of the preamble to the constitution.

The Constitutional Council functions also as an election court for presidential and parliamentary elections and referendums.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every French citizen above the age of 18 years has the right to vote. He or she can lose this right for a limited period because of certain crimes or misdemeanors, for example, electoral fraud. One can stand for election at age 18 in general or age 23 for deputies to the National Assembly and the president of the republic.

The citizens of the European Union have the right to vote and be elected in local elections in the member state where they reside.

Referendums can be initiated by the president on the recommendation of the cabinet on matters that affect the functioning of government institutions. Referendums are also possible on alterations of French territory and on amendments of the constitution.

Parliamentary Elections

The deputies are elected by universal, direct majority suffrage. The costs of the electoral campaign are partially reimbursed under certain conditions, as long as the candidate submits full accounts. Each political party that receives public aid must also offer an equal number of women and men candidates, with no less deviation than 2 percent. If the deviation is higher, the public aid is reduced.

Senators are elected by indirect universal suffrage. Candidates must reach the age of at least 35 years.

POLITICAL PARTIES

France has always enjoyed a large number of political parties competing for votes. The constitution recognizes political parties in Article 4 as contributing to the exercise of suffrage. They emerge and exercise their activities freely, as long as they respect national sovereignty and democracy. There is a system of public financing of political parties, based largely on the number of votes obtained in assembly elections, on condition of their being obtained in at least 50 constituencies.

Political parties under the Fifth Republic are organized in a system of two great coalitions, one on the Right and one on the Left, alternating in power. On the Right are the Union for a Popular Movement (UMP) and the Union for French Democracy (UDF), and on the Left the Socialist Party (PS), the Communist Party (PC), and the environmentalists (Les Verts). The extreme Right (National Front) and the extreme Left (Workers Fight; Revolutionary Communist League) also represent a sizable number of voters.

CITIZENSHIP

French citizenship is acquired by birth and based on the principle of *ius sanguinis*. This means that a child acquires French citizenship if one of his or her parents is a French national, even if he or she is not born in France. *Ius soli* also applies: Children born in France whose parents are not French can become French on application.

FUNDAMENTAL RIGHTS

The 1958 constitution does not directly contain a catalogue of fundamental rights, but its preamble refers to the 1789 Human Rights Declaration and to the preamble of the 1946 constitution. Both have constitutional rank, as the Constitutional Council recognized in its landmark decision of July 16, 1971. The preamble of the 1946 constitution enumerates the political, economic, and social principles "particularly necessary in our times," such as the right to strike and union rights. The 1789 Declaration of the Rights of Man and the Citizen expresses traditional principles such as individual freedom, equality before the law, nonretroactivity of penal laws, and the right of property (inviolable and sacred). The 1789 principles are sometimes in opposition to the socially inspired principles of 1946. It is up to the Constitutional Council to reconcile the two.

A certain number of rights and freedoms are guaranteed in the 1958 constitution itself. Article 1 covers equality before the law, secularity of the republic, and freedom of conscience; Article 3, the right to suffrage and equal access to electoral mandates; and Article 4, freedom of speech and of political party activities. Article 66 states that "no one shall be arbitrarily detained. The judicial authority, guardian of individual liberty, shall ensure the observance of this principle as provided by statute." Article 72 guarantees self-government of territorial entities.

Impact and Functions of Fundamental Rights

The continuous emergence of principles and rights expressed in successive constitutional texts (for example, the 1789 Declaration of the Rights of Man and Citizen and the Preamble to the 1946 constitution) has led to the application of a number of rules by the Constitutional Council in evaluating the constitutionality of laws. These rules form the constitution in a larger sense.

The Constitutional Council has also recognized the constitutional rank of a number of public freedoms adopted as ordinary law under the Third Republic. A landmark 1971 decision applied this principle to freedom of association; the council understood these laws to be an essential part of the republican system. It has formed a list of such principles in the process of its jurisdiction.

Some critics consider the list to be somewhat arbitrary and speak of a "government of unelected judges."

The Constitutional Council has also developed certain constitutional objectives that define the reach and the limits of certain rights. For example, the protection of the public order is a constitutional objective that allows limits on the right to strike. Also, the right of a person to have decent housing is an objective that can override the principle of self-administration of territorial entities when local communities are forced to finance dwellings. The constitutional law of public freedoms has an impact on legislation in other fields of law, such as criminal or civil law.

While applying the law an ordinary judge is bound by the interpretation given by the Constitutional Council. The legislator and the executive are also obliged to respect the jurisprudence of the council and have in fact developed self-restraint to prevent negative rulings.

Limitations to Fundamental Rights

The fundamental rights recognized by the constitution are not without limits. The freedom of one person ends where the freedom of another begins. The needs of the public can also serve as a limit. Article 16 of the 1958 constitution allows the president of the republic to exercise full powers in case of emergency when there is a grave and immediate threat to the institutions of the republic, the integrity of the territory, national independence, or the international obligations of France.

Finally, certain freedoms are limited by other freedoms or powers that can oppose them. The jurisdiction of the Constitutional Council aims at reconciling these different freedoms such as the right to property with the power of expropriation.

ECONOMY

The French constitution does not impose any particular economic system. However, the 1789 declaration that has constitutional rank supports certain economic principles. Its Article 2 states: "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression." Article 17 states: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified."

On the other hand, the 1946 preamble, which also has constitutional rank, proclaims economic and social principles that can be contrary to the right of property. It recognizes that everybody has the duty to work and the right to obtain employment (which in practice is far from fulfilled, with more than 2 million unemployed in the early 21st century). It also recognizes union rights and the right to strike and gives every worker the right to participate through his or her representatives in the collective determination of working conditions and the running of enterprises. Furthermore, "Any property or undertaking which, in the course of its business, possesses or acquires the characteristics of a national public service or a de facto monopoly, shall come under collective ownership." Expropriations therefore are possible, though they must not endanger the right of property. In its jurisprudence, the Constitutional Council has been careful to uphold a just balance.

The 1946 preamble also recognizes the right to health, to material security, to rest, and to free time. Every human being who is not able to work has the right to receive sustenance from the community.

The liberalism of 1789 is thus strongly tempered by the social and workers' rights recognized in 1946. However, the state-directed economy that existed after World War II has been liberalized under the influence of European integration and the principle of free and equal competition.

RELIGIOUS COMMUNITIES

Freedom of religion and belief is guaranteed by the constitution. Article 10 of the 1789 declaration specifies that "no one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law."

Article 1 of the 1958 constitution says that "France shall be an indivisible, secular, democratic, and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis."

The *laïcité* (secular nature) of the republic was enshrined in the law of separation between church and state of December 9, 1905. It is associated with the principle of equality of all citizens without distinction in relation to religion and liberty of conscience. This principle has again become highly topical with a 2004 law prohibiting wearing of Muslim headscarves in public schools.

Despite the principle of separation between church and state, there are areas in which the two cooperate, for example, in optional religious instruction in public schools by school chaplains. Private religious schools, often Catholic, can negotiate the provision of public services.

Church buildings constructed before the separation of church and state belong to the local communities (churches) or to the state (cathedrals) with the duty to maintain them. Religious structures built after that date must be maintained by those churches themselves.

The minister of the interior is also in charge of the state-owned churches and maintains relations with the authorities of the chief religions. Recently, the minister of the interior has taken steps to implement a national

institution for the Muslim religion to foster integration into the state and society.

The main religious groups are Catholics, Protestants, Christian Orthodox, Jewish, Muslim, and Buddhist. A growing number of people declare themselves to be atheists.

MILITARY DEFENSE AND STATE OF EMERGENCY

Article 15 of the constitution states that the president of the republic is the commander in chief of the armed forces, a role established by the practice of the first president, General de Gaulle. The president chairs the higher councils and committees of national defense. The High Council of Defense is composed of persons charged with advising the president. The Committee of Defense comprises the relevant cabinet ministers.

The power to appoint the most important military officials lies with the president according to Article 13. The president can proclaim a state of war, which allows the suspension of certain freedoms and the temporary transfer of the power to uphold public order to the armed forces.

Article 21 assigns the prime minister responsibility for national defense. Nevertheless, the domain of defense, as that of diplomacy, appears to be reserved in practice to the president. For example, the abolition of compulsory military service in February 1996 was a presidential decision that was supported by the administration. Since that date, the armed forces have become progressively professionalized. The head of state is in charge of nuclear weapons.

France is a member of the North Atlantic Treaty Organization (NATO). Its armed forces participate in peacekeeping operations all over the world, increasingly within the framework of the United Nations.

The president can declare a state of emergency after consultation with the two chambers, the prime minister, and the Constitutional Council and inform the nation by a message. The president cannot dissolve the National Assembly and must consult the Constitutional Council about every measure taken. However, the presidential powers in this case are without true control, as the Constitutional Council does not specifically control the application of the relevant Article 16.

The proclamation of a state of war, which transfers powers to a military authority, can suspend the exercise of certain freedoms, but this has never been established. The state of emergency can also lead to restrictions on public freedoms, but the civil authorities retain their powers over the police.

AMENDMENTS TO THE CONSTITUTION

The constitution of the Fifth Republic is a supple document that has been frequently amended in recent years. Article 89 states that an amendment needs the consent of both chambers of Parliament. Afterward, the text is normally presented to a referendum. However, the president can bypass this step and ask the two chambers to meet in joint session, when they can finalize the amendment by three-fifth of the votes cast.

With the exception of the amendment of October 2, 2002, all recent amendments have been adopted by the latter procedure. In 1962, General de Gaulle used the referendum procedure to amend the constitution to permit the election of the president of the republic by universal and direct suffrage. On the other hand, he avoided that procedure when pressing for regionalization and Senate reform.

Article 89 expresses three limits to amendments: First, no amendment may damage territorial integrity. Second, the office of the president of the republic cannot be eliminated. Finally, Article 89 holds sacred the republican form of government. Historically that provision was intended to bar the reintroduction of monarchy. Under the Fifth Republic, it is seen as a safeguard against dictatorship.

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Jean Pierre Lay

GABON

At-a-Glance

OFFICIAL NAME
Gabonese Republic

CAPITAL
Libreville

POPULATION
1,389,201 (2005 est.)

SIZE
103,346 sq. mi. (267,667 sq. km)

LANGUAGES
French (official), Fang, Myene, Nzebi, Bapounou/Eschira, Bandjabi

RELIGIONS
Christian 55–75%, animist 4%, Islam less than 1%

NATIONAL OR ETHNIC COMPOSITION
Bantu tribes (including four major tribal groups: Fang 33%, Sira, Nzebi, and Mbete 50%), others 17%

DATE OF INDEPENDENCE OR CREATION
August 17, 1960 (from France)

TYPE OF GOVERNMENT
Semipresidential

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
March 26, 1991

DATE OF LAST AMENDMENT
August 19, 2003

The Gabonese regime is characterized by the dominant position of the president of the republic (the head of state). Gabon's current president, Albert Bernard Bongo, has been in office since 1967. The constitution of 1991 legalized opposition parties. Gabon is officially a representative democracy, a democratic and social republic that respects the principle of the separation of the powers. The Gabonese constitution includes a long list of fundamental rights and principles and refers to human rights declarations. The Parliament is bicameral, with the lawmaking process predominantly carried out in the National Assembly. The Constitutional Court plays an essential role.

CONSTITUTIONAL HISTORY

Interest in the lucrative slave trade attracted Europeans to Gabon from the 15th century. The French eventually won a dominant position, notably with the agreement of the Mpongwe ruler in 1839. From 1910 to 1957 Gabon was part of French Equatorial Africa. After World War II (1939–45) it became an overseas territory of France.

Gabon declared its independence from France on August 17, 1960, and Leon Mba became its first president. Albert Bernard Bongo succeeded him in 1967. The following year, Bongo declared Gabon a one-party state under his new party, the Gabonese Democratic Party. Bongo was returned to office in every subsequent presidential election.

The 1988 election was followed by a period of major political and civil discontent. A transitional constitution in May 1990 legalized opposition parties, and multiparty legislative elections were held for the first time in 22 years. The ruling Gabonese Democratic Party won the elections, but the opposition accused them of electoral fraud. The constitution of March 26, 1991, replaced the interim arrangements of 1990. The new constitution aimed to give more transparency to the electoral process and also to reform governmental institutions. Bongo won the first

presidential election under the new constitution in 1993; he was again accused of fraud.

The constitutional reform of 1995 tried to reduce election fraud, while introducing major reforms, such as the creation of a bicameral parliament (the National Assembly and the newly created Senate). The constitutional reform of 1997 created the office of vice president of the republic and increased the presidential term of office from five to seven years. The last reform of the constitution in 2003 allowed the president to be reelected several times.

FORM AND IMPACT OF THE CONSTITUTION

The Republic of Gabon has a written constitution contained in one single document with 120 articles. The structure of the Gabonese constitutional text corresponds to the structure of the current French constitution.

The Gabonese constitution refers in its preamble to the 1789 French Declaration of the Rights of Man and the Citizen, the 1948 Universal Declaration of Human Rights, the 1981 African Charter of the Rights of Man and the Rights of Peoples, and the 1990 National Charter of Liberties. These texts have constitutional force.

BASIC ORGANIZATIONAL STRUCTURE

Gabon is a unitary state. The country is divided into nine provinces, which are subdivided into 36 prefectures and eight separate subprefectures. The president of the republic appoints the provincial governors, the prefects, and the subprefects.

LEADING CONSTITUTIONAL PRINCIPLES

The predominance of the president of the republic is characteristic of the Gabonese regime. The constitution proclaims Gabon to be a democratic and social republic. It affirms the principles of national sovereignty; separation of the executive, legislative, and judicial powers; and a state of laws.

The principle of republican government is delineated in the Gabonese constitution as an untouchable principle. It cannot be the object of any constitutional amendment.

Finally, Gabon is a representative democracy. The possibility of referendums does exist for the revision of the constitution, for the "referendum laws," and for any modifications of Gabonese territory.

CONSTITUTIONAL BODIES

The predominant constitutional body in Gabon is the president of the republic. The other important bodies are the administration, consisting of the prime minister and the Council of Ministers; the bicameral Parliament; and the judiciary, including the Constitutional Court. The constitution also provides a National Council of Communication and an Economic and Social Council, which is to be consulted in all economic, social, and cultural development issues.

The President of the Republic

The president of the republic is the head of state and the most powerful figure in Gabon. The president is elected by direct universal suffrage for a seven-year term and can be reelected many times. Since independence in 1960 only two autocratic presidents have ruled the country. Gabon's current president, Bongo, has dominated the country since 1967.

The president is the supreme holder of the executive power, which the president shares with the prime minister. A vice president of the republic, whom the president appoints, assists the president. The president appoints the prime minister and, upon the latter's advice, appoints or dismisses all the other members of the executive administration. The president also chairs the Council of Ministers. The president promulgates the adopted laws and may submit to referendum any bill of law touching certain topics.

The Gabonese constitution provides for the dissolution of the National Assembly by the president of the republic after consultation with the prime minister and the presidents of the two chambers of the Parliament.

The Executive Administration

The prime minister and the cabinet ministers compose the executive government, which administers the policy of the nation. The prime minister is responsible to the president of the republic and to the National Assembly. The prime minister heads the executive government, directing its actions and ensuring the execution of the laws. The executive government meets in the Council of Ministers, which is chaired by the president of the republic.

The Parliament

The Gabonese Republic has a bicameral legislature with a National Assembly and a Senate. The National Assembly is the central representative organ of the people on the national level. Its members are elected for five years by direct universal suffrage. Currently it has 116 members. The National Assembly can adopt a motion of censure or deny its confidence to the prime minister, who must then submit the cabinet's resignation to the president.

The Senate is the chamber of representation of the local communities It currently has 91 members. The senators are elected for six years by indirect universal suffrage.

The Parliament's main activity is making laws. It meets by right in the course of two sessions per year, and in extraordinary session by request of the president of the republic or the absolute majority of its own members.

The Lawmaking Process

The constitution distinguishes between laws and regulations. Parliament can pass laws only in the areas determined in Article 47—for example, the exercise of fundamental rights and duties of citizens or the organization of the civil state. Parliament and the administration can both initiate legislation. Any bill must be examined successively by the National Assembly and the Senate, which must adopt identical texts. In case of disagreement between the two chambers, the prime minister may summon a mixed commission composed of deputies and senators. If the disagreement persists, the administration presents the bill to the National Assembly for a final decision. Thereby, the administration has an active role during the lawmaking process.

Legislative matters that do not belong to the field of law have the character of regulation. These regulations are adopted by decree of the president of the republic.

The Judiciary

According to the constitution and the separation of powers, the judiciary is independent of the legislative and executive branches. The president of the republic guarantees this independence with the assistance of the Superior Council of the Magistrature.

The judicial system is composed of two high courts, the Judicial Court and the Administrative Court, each with tribunals and courts of appeal below it. The Judicial Court has jurisdiction in civil, commercial, social, and penal matters; the Administrative Court deals with administrative matters and is consulted during the lawmaking process.

There are also a Constitutional Court, a Court of Accounts (for the control of the public finances), a High Court of Justice (for violation of oath or high treason by the president of the republic), and other special jurisdictions.

The Constitutional Court

The Constitutional Court is the highest court of Gabon on constitutional issues. Its decisions are not susceptible to any review. The court judges the constitutionality of laws and international treaties and guarantees fundamental human rights and public liberties. It also guarantees the regular operation of public institutions.

The Constitutional Court must rule before certain laws are promulgated, for example, organic laws. Any law can be submitted to the court by the president of the republic or by any citizen or legal person aggrieved by the law or contested act. Further, any person subject to trial before an ordinary tribunal may raise an objection of unconstitutionality against a law or act on grounds of violation of fundamental rights.

THE ELECTION PROCESS

All Gabonese of both sexes over the age of 18 are electors if they are registered on the electoral roll.

POLITICAL PARTIES

President Bongo has been in office since 1967 and his Gabonese Democratic Party has always won the parliamentary elections. Some observers believe Gabon will again become a one-party state.

CITIZENSHIP

Gabonese citizenship is primarily acquired by birth, if either parent is a citizen of Gabon regardless of the country of birth. Birth within Gabon does not automatically confer citizenship except for a child of unknown parents. Naturalization is possible on condition of 10 years of residence and renunciation of former citizenship. Dual citizenship is not recognized in Gabon.

FUNDAMENTAL RIGHTS

The Gabonese constitution includes a long preliminary title concerning fundamental rights and principles. Furthermore, its preamble refers to various international human rights declarations as having constitutional force. Gabon has ratified most international human rights treaties.

Impact and Functions of Fundamental Rights

The Ministry of Justice and Human Rights is obliged to protect and promote human rights. In addition, a National Commission on Human Rights was created in 2000. Nevertheless, the government continues to restrict freedom of press and movement. In criminal procedures there are still torture of prisoners and detainees, arbitrary arrests or detentions, and harsh prison conditions. Violence and societal discrimination against women are still problems. Finally, forced labor and child labor still exist in Gabon.

Limitations to Fundamental Rights

Fundamental rights can be limited by law. For practical purposes, in many areas there remain problems and limitations to fundamental rights.

ECONOMY

The Gabonese constitution does not impose any particular economic system. It affirms the individual and collective right to property, the right to work and to obtain employment, and the right to form associations.

RELIGIOUS COMMUNITIES

According to the constitution, Gabon is a secular republic. It affirms the separation of state and religions, provides for freedom of religion, and recognizes all beliefs. For practical purposes, the government generally respects these principles.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic appoints high civil and military offices, such as army generals. The president is the supreme chief of the armed forces and of security. The National Assembly by a two-thirds majority of its members authorizes the declaration of war by the president of the republic.

The president has full powers in cases of emergency. Before taking the necessary measures, the president must consult the prime minister and the presidents of the National Assembly, the Senate, and the Constitutional Court. During the emergency the president cannot dissolve the National Assembly, and the constitution cannot be amended.

AMENDMENTS TO THE CONSTITUTION

The president of the republic or the members of Parliament may take the initiative in constitutional amendment. The Constitutional Court must also be consulted. The amendment is adopted either by the citizens in a referendum or by the Parliament in a two-thirds majority of voting members.

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Christine Schmidt-König

THE GAMBIA

At-a-Glance

OFFICIAL NAME
Republic of The Gambia

CAPITAL
Banjul

POPULATION
1,641,564 (July 2006 est.)

SIZE
4,363 sq. mi. (11, 300 sq. km)

LANGUAGES
English (official), Mandinka, Wollof, Fula, Jola, Serahuleh

RELIGIONS
Muslim 90%, Christian 9%, indigenous beliefs 1%

NATIONAL OR ETHNIC COMPOSITION
African (Mandinka 42%, Fula 18%, Wolof 16%, Jola 10%, Serahuleh 9%, others 4%) 99%, non-African 1%

DATE OF INDEPENDENCE OR CREATION
February 18, 1965

TYPE OF GOVERNMENT
Republic under multiparty democratic rule

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral national assembly

DATE OF CONSTITUTION
January 16, 1997

DATE OF LAST AMENDMENT
June 4, 2001

The Gambia is a parliamentary democracy that has an executive president who is directly elected by the population for a term of five years. The constitution requires that governmental functions be carried out on the basis of a separation among the executive, legislative, and judicial powers subject to appropriate checks and balances. For administrative purposes, the country is divided into a capital city, one municipal area, and five administrative divisions.

The constitution guarantees fundamental human rights and freedoms and empowers the judiciary to hear and determine alleged violations of constitutional norms. However, since the military takeover in 1994, and despite the conversion of the military junta into a civilian democratic regime in 1997, there have been increasing incidents of human rights abuses including arbitrary arrest and detention without trial, torture, intimidation of journalists and political opponents, arson, and murder. In many cases, the lack of investigation by state authorities has resulted in speculation that some of these violations might have occurred with the active or tacit support of some quarters of the government.

The constitution guarantees freedom of conscience and religion. There is a large degree of religious tolerance, and the various religious groups (Muslims, Christians, and traditional believers) have lived together peacefully throughout the country's history.

CONSTITUTIONAL HISTORY

The territory that comprises present-day Gambia has, from about the fifth and eighth centuries to the arrival of the first Europeans in the 15th century, been inhabited by members of several ethnic groups, including the Serahuleh, Mandinka, Wollof, and Fula. At various times before colonialism, these people were subject to the influence of the great African empires, including Ghana, Mali, and Songhai. British rule was established over parts of the country in the 17th century, and by the middle of

the 18th century, the rest of the country was declared a protectorate to be administered by Britain. The queen of England was represented by a colonial governor.

The Gambia attained full internal self-government in 1963 and won independence from Britain on February 18, 1965. Alhaji Sir Farimang Singhateh was appointed as the first indigenous governor-general to represent the queen as head of state. Sir Dawda Jawara was elected prime minister. The pioneers of The Gambia's struggle for self-determination included the trade unionist Edward Francis Small in the 1920s and J. C. Faye, Ebrahima Garba Jahumpa, and Pierre S. Njie in the 1950s. The first political parties were formed between 1951 and 1954, including the Democratic Party led by Faye, the Muslim Congress led by Jahumpa, and the United Party led by Njie. The Protectorate Peoples Party (PPP), to be called the People's Progressive Party after independence, was formed by Dawda Jawara in 1959. In 1970, The Gambia adopted its first republican constitution. This constitution was set aside in 1994 after a military takeover. In 1996, with the planned return of the country to civilian democratic rule, the population approved the constitution of the second republic by referendum, and it took force on January 16, 1997.

FORM AND IMPACT OF THE CONSTITUTION

The Gambia has a written constitution, codified in a single document called the Constitution of the Republic of the Gambia, 1997. The constitution is the supreme law of the land and any law that is found to be inconsistent with the constitution is to be considered void to the extent of the inconsistency. The constitution states that the laws of The Gambia include acts adopted by the National Assembly; orders, rules, and regulations adopted by other bodies under authority granted by the National Assembly; the laws existing in the country at the time the constitution entered into force; the common law and principles of equity; customary law; and Islamic law on marriage, divorce, and inheritance among Muslims. While the constitution is by and large respected by the majority of the population, there have been instances of human rights abuses by the government and security forces.

BASIC ORGANIZATIONAL STRUCTURE

The Gambia is a unitary state under an executive presidency. There is a national judiciary with power to administer law throughout the country.

The country is divided into Banjul, the capital city, which is administered by a mayor and an elected city council; Kanifing Municipal Area, which is headed by a chairperson and a municipal council elected by the population; and five administrative divisions, each of which is headed by a divisional commissioner selected by the minister of local government. Each division is further divided into districts headed by elected chiefs, and villages headed by Alkalos or headmen, who are elected by local landowners.

LEADING CONSTITUTIONAL PRINCIPLES

The Gambia operates a liberal democratic style of government under a system of checks and balances. Lawmaking power is conferred on the National Assembly, whose bills have to be signed into law by the president. The president has the power to veto bills sent from the National Assembly. Judicial power is vested in the courts of law, and the Supreme Court has the power to interpret the constitution and can declare acts of the National Assembly and the actions of the executive inconsistent with the constitution.

The constitution guarantees equality before the law and equal protection of the law. It requires state action to be anchored on the rule of law and good governance.

CONSTITUTIONAL BODIES

The constitution establishes the offices of president of the republic, a cabinet of secretaries of state, a National Assembly, and the judiciary.

The President

The president of the republic is both head of state and head of the executive administration. The president holds executive power in the country and is also the commander in chief of the armed forces. The president is elected for a term of five years and is eligible for reelection. There is no limit on the number of terms that a person can seek reelection to the office of president.

The Cabinet

The constitution provides for a cabinet composed of the president, the vice president, and secretaries of state selected by the president. The role of the cabinet is to advise the president on government policy. The president selects the vice president and the cabinet, which is collectively responsible to the National Assembly for the advice they give the president.

The National Assembly

The National Assembly is made up of members elected by universal adult suffrage to represent electoral constituencies. Each member is elected for a term of five years and

can run for reelection. The National Assembly holds the power to make law for the governance of the whole of the Gambia. This lawmaking power is exercised by adopting bills, which are then assented to (signed) by the president. A bill becomes law once it is signed by the president.

The Lawmaking Process

The constitution designates the president and National Assembly as the lawmaking organs of the country. The National Assembly has power to adopt bills on any subject of national interest. The bill becomes law upon its signing by the president. The constitution provides that the National Assembly cannot adopt a bill that introduces a one-party state, establishes any religion as a state religion, or alters the decision or judgment of a court.

The Judiciary

The constitution establishes a hierarchical court system with power to administer justice in the country. The highest court of the land is the Supreme Court. Between five and seven justices sit on each case, depending on the issue being judged. The Supreme Court has the power to interpret provisions of the constitution.

The Court of Appeals is made up of three judges, who hear appeals from judgments of the High Courts in criminal and civil cases. The High Courts are each composed of a single judge who decides both criminal and civil cases. In criminal cases, the constitution gives the accused the right to choose to be tried by jury instead of by a judge alone, but most accused persons do not choose this option because of the small size of the population and the difficulty of finding impartial juries in such a closely knit society.

The Judicial Service Commission is empowered by law to appoint judges and magistrates. In practice, they recommend candidates for appointment by the president. While the law provides that judicial officers should hold office during good behavior and can be removed from office only for good cause, the executive government has on several occasions summarily dismissed judges and magistrates. This state of affairs reflects poorly on the assertion of independence of the judiciary.

THE ELECTION PROCESS

Every citizen of The Gambia who is 18 years of age or older has the right to vote in national and local elections and referenda. The constitution creates an Independent Electoral Commission with the responsibility to register voters and conduct all elections in the country.

POLITICAL PARTIES

The Gambia is by law a multiparty state. The constitution prohibits the passing of any law that would limit the number of political parties and empowers every citizen of The Gambia to join a political party of his or her choice. The Independent Electoral Commission has responsibility to register or cancel the registration of political parties. Currently, the Alliance for Patriotic Reorientation and Construction (APRC) of President Yayha Jammeh holds power, since winning presidential and National Assembly elections in 2001. The main opposition party, the United Democratic Party (UDP), boycotted the 2001 National Assembly elections, claiming unfair voter registration processes. The other opposition parties are the National Reconciliation Party (NRP), the Peoples Democratic Organization for Independence and Socialism (PDOIS), the Gambia Peoples Party (GPP), the People's Progressive Party (PPP), and the National Convention Party (NCP). In January 2005, the UDP, NRP, PDOIS, GPP, and PPP formed a national coalition with a view to contesting the 2006 presidential and National Assembly elections on a single ticket. The new opposition coalition has been named the National Alliance for Democracy and Development (NADD).

CITIZENSHIP

Every person born in The Gambia becomes a citizen if either one or both of his or her parents are Gambian. Children born outside The Gambia to parents who are Gambian citizens become Gambian citizens by descent. It is also possible to acquire Gambian citizenship by marriage or by naturalization.

FUNDAMENTAL RIGHTS

Chapter IV of the constitution guarantees a number of fundamental rights and freedoms to every person in The Gambia. The notion that fundamental rights are applicable to all persons in the country, as opposed to merely citizens or Africans, derives from the belief that human rights relate to the human person as such, irrespective of race, nationality, ethnic origin, or sex. The constitution guarantees the right to life, to liberty (especially freedom of movement, assembly, and association), freedom of speech and publication, the right to secure the protection of the law, and equality before the law. In addition to these general rights, the constitution guarantees special rights for women, children, and the disabled.

Impact and Functions of Fundamental Rights

In theory, respect for fundamental rights and human dignity should form the cornerstone of all governmental action; in practice, there have been many problems. Despite the fundamental rights guaranteed under the constitution, there have been many instances of blatant

violations of the rights of citizens by the government and security forces. There have been regular incidents of arrest and detention of political opponents, journalists, and students in breach of fundamental human rights provisions. Some media firms viewed as critical of the government have been either closed down, threatened with closure, or violently attacked and destroyed.

In 2003, unknown assailants attempted to assassinate a leading human rights lawyer by shooting him several times; he is now in self-imposed exile in the United States. In December 2004, the editor of one of the country's independent newspapers was shot to death as he drove home from his office. While the government has said it is investigating, many observers believe that these were incidents of state-sponsored violence and that they were politically motivated.

Limitations to Fundamental Rights

The only limitations on the enjoyment of fundamental rights under the constitution are respect for the rights and freedoms of other persons and the public interest.

ECONOMY

The constitution does not specifically provide for an economic system for The Gambia. In practice, however, the country operates a liberal, market-based economy, the main features of which are subsistence agriculture, reexport trade, low import duties, a fluctuating foreign exchange system, and a vibrant services sector, especially tourism and banking. There is a significant government stake in many public enterprises so as to balance market outcomes with the government's development and welfare objectives.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom of thought, conscience, and belief and proscribes the imposition of any state religion. Muslims, Christians, and traditional believers have lived together in harmony throughout the country's history, and there is a marked absence of religious fanaticism. In a move criticized by many observers in the late 1990s, the current president, Yahya A. J. J. Jammeh, built a mosque on the premises of State House, the official residence of the president. This was viewed by many as a deliberate association of state and religion in violation of the spirit of the constitution.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides for an armed force comprising the army, navy, and air force. These bodies are staffed entirely by volunteers, as there are no military draft and no requirement for compulsory military service. All persons above 16 years of age may volunteer to join the armed forces.

The armed forces have responsibility to secure the defense and territorial integrity of the state, to provide disaster relief and assistance to civil authorities, and to engage in such productive activities as the civil authorities determine are necessary for the development of the country. The armed forces operate under the overall command of the president as commander in chief and of the Armed Forces Council.

The president has power to declare a state of emergency in the country. That declaration must be approved by a resolution of the National Assembly.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed only by a bill supported by three-quarters of all the members of the National Assembly and signed by the president. Certain provisions, such as those relating to fundamental human rights, the judiciary, and some fiscal matters, cannot be changed except by referendum.

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Alhagi Marong

GEORGIA

At-a-Glance

OFFICIAL NAME
Georgia

CAPITAL
Tbilisi

POPULATION
4,695,000 (2005 est.)

SIZE
26,911 sq. mi. (69,700 sq. km)

LANGUAGES
Georgian, Abkhaz

RELIGIONS
Georgian Orthodox Christian 70%, Muslim 11%, Armenian Apostolic 8%, unaffiliated or other 11%

NATIONAL OR ETHNIC COMPOSITION
Georgian 73.1%, Armenian 8.1%, Azeri 6.7%, Russian 4.3%, Ossetian 3%, Abkhaz 1.8%, other (largely Greek, Jewish, Kurdish, Ukrainian, Chechen) 3%

DATE OF INDEPENDENCE OR CREATION
April 9, 1991

TYPE OF GOVERNMENT
Semipresidential democracy

TYPE OF STATE
Unitary state with autonomous regions

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
August 24, 1995

DATE OF LAST AMENDMENT
December 27, 2005

Georgia is a semipresidential democracy based on the division of executive, legislative, and judicial powers. Organized as a unitary state with a strong central government, Georgia is in the process of becoming an asymmetric decentralized state (different units at the same level have different degrees of power), with three autonomous entities and approximately 10 administrative regions.

The place of honor in the constitution is its second chapter, which provides far-reaching guarantees of fundamental rights and freedoms as directly applicable legal norms. In case of violations of these rights and freedoms, a citizen can directly apply to the constitutional court, which can overrule unconstitutional decisions of all government bodies.

The president is the head of state and has considerable power over the executive branch. The president is elected by direct popular voting and is the central political figure in the country. The parliament of the country is relatively weak vis-à-vis the executive branch.

Religious freedom is guaranteed and state and religious communities are separate. However, the Georgian Orthodox Christian Church enjoys exclusive constitutional guarantees.

The economic system can be described as a transitional market economy bearing the heavy burdens of the communist past.

Two breakaway regions at the border with Russia, Abkhazia and South Ossetia, are governed by separatist regimes; this condition imposes considerable difficulties for the political and economic development of the country.

CONSTITUTIONAL HISTORY

The Georgian Kingdom, which declared Christianity as state religion in the fourth century C.E., reached the highest level of its economic and cultural develop-

ment during the 11th and 12th centuries. Georgia was absorbed into the Russian Empire in the 19th century. Independent for three years (1918–21) after the Russian revolution, it was forcibly incorporated in the Union of Soviet Socialist Republics (USSR) until the Soviet Union dissolved in 1991.

During the short period of the first independence, Georgia had a social-democratic government, which adopted the first constitution of the country in 1921. According to this constitution, Georgia was a parliamentary democracy, a unitary republic, and a social state. During the Soviet period, the Georgian Socialist Republic had several constitutions. The last one was adopted in 1978 and was based on principles of Marxism-Leninism: a one-party system and centrally planned economy.

The first government of independent Georgia removed all these principles from the constitution in 1991 but did not have enough time to produce a new constitution before its overthrow in early 1992. In January 1992, the military government abolished the 1978 constitution and reestablished the 1921 text. However, this was a political and symbolic move only; the law on state power played the role of supreme law until 1995.

The constitution of 1995 established a U.S.-style presidential democracy and, because of the de facto separated regions, left the question of the administrative territorial arrangement of the country open. The document underwent major changes after the Rose Revolution of November 2003. In February 2004 the legislative and executive powers were reorganized, to yield a much stronger president and a weaker parliament. Political debates about other important amendments to the constitution are permanent in the country, which is still far from constitutional stability.

FORM AND IMPACT OF THE CONSTITUTION

Georgia has a written constitution that takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Georgia. Human rights and freedoms guaranteed by international documents are applicable within the country even if the constitution does not directly mention such rights and freedoms. Constitutional laws defining the status of autonomous regions are adopted separately but become part of the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Georgia is a unitary state in the process of decentralization. Governments of the two breakaway regions do not recognize the jurisdiction of the Georgian constitution and are seeking to be incorporated into neighboring Russia. One other politically separated region (Ajaria) was reincorporated into the Georgian state in 2004 with the status of an autonomous republic. The rest of the country is divided into several big cities and about 60 small regions, which are in the process of being consolidated into 10 to 12 larger regions.

LEADING CONSTITUTIONAL PRINCIPLES

Georgia is a democratic republic based on the rule of law. Its system of government is a semipresidential democracy. There is a division of the executive, legislative, and judicial branches, but the predominance of power is held by the executive.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the parliament; the president; the administration, made up of prime minister and cabinet of ministers; and the judiciary, including the constitutional court.

The Parliament

The parliament of Georgia exercises legislative power, determines the main directions of domestic and foreign policy, approves the prime minister and his or her cabinet, and monitors the administration and other executive agencies. Its period of office is four years. The 235 members of Parliament are elected in a direct, free, equal, and secret balloting process through a mixed proportional and majoritarian electoral system. In certain circumstances prescribed by the constitution, the president may dismiss the parliament.

The constitution envisions a division of parliament into two chambers—Council of the Republic and the Senate—after reintegration of the two de facto separated regions of the country.

The President

The president is the head of state and is at the same time responsible for and carries out the domestic and foreign policy of the country. The president is the supreme commander in chief of the armed forces. The president nominates the prime minister and other ministers and can dismiss the administration. The president can call and chair cabinet meetings. The constitutional powers of the president make the president the dominant figure in Georgian politics. The president is elected by the citizens of Georgia by direct voting for a five-year term and can be reelected only once.

The Administration

The administration is accountable to the president and to the parliament at the same time. The administration consists of the prime minister and ministers. The prime minister, under the leadership of the president, is responsible for setting and implementing the administration's policy.

The Lawmaking Process

Draft laws can be initiated by members of the parliament, by the president, by the administration, or by 30,000 voters. Adoption of organic laws, which regulate the most important issues, requires support of an absolute majority in parliament. The president may veto a law, which enters into force only if parliament overrules the veto by a three-fifths majority of the members of parliament.

The Judiciary

The judiciary consists of the constitutional court and general courts. The constitutional court, consisting of nine judges, deals exclusively with constitutional disputes. The system of general courts consists of the Supreme Court, four appellate courts, and about 70 lower courts. The Supreme Council of Judiciary led by the president of Georgia regulates the selection of judges, initiates disciplinary actions against judges, and deals with other administrative issues within the judiciary.

THE ELECTION PROCESS

All Georgian citizens over the age of 18 have the right to vote. Only citizens over the ages of 21 and 25 have the right to stand for local government and parliamentary elections, respectively.

POLITICAL PARTIES

Georgia has a pluralistic system of political parties; so far, at least two or three parties have always been represented in parliament. The multiparty system as a basic structure of the constitutional order is still in the process of formation; the ruling party still plays a dominant role in public life. Political parties can be banned only by a decision of the constitutional court.

CITIZENSHIP

A child of a Georgian citizen acquires Georgian citizenship. A citizen of another country can acquire Georgian citizenship after living in Georgia for at least 10 years. A citizen of Georgia may not be at the same time a citizen of another country. The president may grant citizenship of Georgia to a citizen of another country who has made a special contribution to Georgia.

FUNDAMENTAL RIGHTS

The constitution recognizes and defends universal human rights and freedoms as eternal and supreme values. These rights and freedoms, as directly applicable law, have binding force for the state and for the people. When relevant, the rights and freedoms provided in the constitution apply to corporate bodies as well. The protection of human rights and freedoms is supervised by the public defender, who is elected for five years by parliament.

Impact and Functions of Fundamental Rights

Constitutional rights and freedoms are essential tools for building a democracy in postcommunist Georgian society, which suffered from a totalitarian regime for decades. Many of these rights face frequent resistance from different elements of society. However, liberal democratic values are spreading in Georgian society, while the legal mechanisms and remedies for protecting fundamental rights are becoming more and more effective.

Limitations to Fundamental Rights

Fundamental rights may be limited only in specific circumstances precisely prescribed by the constitution and laws. Certain rights, such as the protection against torture and inhumane, brutal, or degrading treatment or punishment, are declared absolute rights and cannot be limited.

ECONOMY

Many principles included in the constitution are attempts to exorcise the fears of the Communist past. The constitution does not specify a specific economic system, but it does provide a set of individual rights and state obligations that must be met when structuring such a system. The state is obliged to foster conditions for the development of free enterprise and fair competition. The Georgian economic system is still in the process of transition with the clear tendency toward deregulation and limited involvement of the state in the economy.

RELIGIOUS COMMUNITIES

The constitution of Georgia declares complete freedom of religious beliefs and confessions, as well as independence of the church from the state, but simultaneously recognizes the special role of the Georgian Orthodox Church in Georgian history. This special recognition led to the con-

clusion of a constitutional agreement between the state and the Georgian Orthodox Church. This agreement does not give the church the status of a state church, but it does provide some exclusive tax and property privileges. Adoption of a special law on religious organizations is planned to guarantee independence and self-determination for all religious communities.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides that Georgia has the right to wage a defensive war. General conscription requires all men over the age of 18 to perform basic military service of 18 months. Women can volunteer but are not required to serve. Conscientious objectors are obliged to perform service in social institutions.

Apart from defending the country against a military attack, the armed forces may be used only for emergencies such as natural disasters or civil unrest. Such use of armed force requires parliamentary approval, as does their dispatch abroad in fulfillment of international obligations. The president may declare a state of emergency by a special decree, which loses its force if parliament does not approve it within three days.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed only by two-thirds of the members of parliament. The president, half of the members of parliament, or 200,000 voters can initiate amendments. Before parliament votes, the draft amendment must be published for public debate for a period of at least one month.

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David Usupashvili

GERMANY

At-a-Glance

OFFICIAL NAME
Federal Republic of Germany

CAPITAL
Berlin

POPULATION
82,536,700 (2005 est.)

SIZE
137,821 sq. mi. (357,021 sq. km)

LANGUAGES
German

RELIGIONS
Catholic 32%, Protestant 32%, Muslim 3.9%, Jewish 0.24%, Christian Orthodox 1.3%, unaffiliated or other 30.56%

NATIONAL OR ETHNIC COMPOSITION
German 91.5%, Turkish 2.4%, other (largely Serbo-Croatian, Italian, Russian Greek, Polish, Spanish, Wend, Danish, Sinti, and Roma) 6.1%

DATE OF INDEPENDENCE OR CREATION
January 18, 1871

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
May 23, 1949

DATE OF LAST AMENDMENT
July 26, 2002

Germany is a parliamentary democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. Organized as a federation, Germany is made up of 16 federal states and a strong central government. The federal constitution provides for far-reaching guarantees of human rights. It is widely respected by the public authorities; if a violation of the constitution does occur in individual cases, there are effective remedies enforceable by an independent judiciary, which includes a strong and visible Federal Constitutional Court. The constitution also has become a centerpiece of German self-understanding.

The federal president is the head of state, but his or her function is mostly representative. The central political figure is the chancellor as head of the administration. The chancellor depends on the Parliament as the representative body of the people. Free, equal, general, and direct elections of the members of Parliament are guaranteed. A pluralistic system of political parties has intense political impact.

Religious freedom is guaranteed and state and religious communities are separated. The economic system can be described as a social market economy. The military is subject to the civil government in terms of law and fact. By constitutional law, Germany is obliged to contribute to world peace.

CONSTITUTIONAL HISTORY

Germany as a political entity emerged in central Europe in the 10th century C.E. It called itself the Holy Roman Empire, claiming continuity with the imperial and religious authority of ancient Christian Rome. It was an electoral monarchy; the ruler of the empire was chosen by a small number of nobles, called the prince electors,

and then crowned as emperor. The emperor shared power with the Imperial Diet (Reichstag), in which the prince electors and the high nobility had seats and voting rights together with representatives from autonomous cities.

The Protestant Reformation, which began in the early 16th century, led to deep changes in the basic constitutional structure of the empire. Together with the power struggle between regional monarchs and the emperor, religious disputes caused devastating wars, culminating in the Thirty Years' War of 1618–48. The Peace of Westphalia of 1648 laid the basis for peaceful coexistence between Catholics and Protestants. The Jewish minority, after the Europe-wide pogroms in the Middle Ages, enjoyed some, often unstable autonomy.

The wars led by the French emperor Napoléon I (1769–1821) after the French Revolution of 1789 put an end to the German Empire in 1806. Austria, which had been a central part of Germany during the past several centuries, established itself as an independent empire. From 1815 onward, Austria, together with the sovereign kingdoms of Prussia, Bavaria, and Hanover and the 37 other now-independent German states and cities, formed the German Confederation (Deutscher Bund). Many of these German states had constitutions guaranteeing fundamental rights, providing for shared powers between the monarch and parliament, and creating an independent judiciary. Many cities kept their centuries-old republican system. Yet people's sovereignty was not generally recognized since sovereignty rested with the monarch.

During the Revolution of 1848, a constitution was drafted for a newly united Germany under the king of Prussia as the German emperor. This constitution provided for far-reaching and modern human rights, democratic parliamentary institutions, and a strong judiciary. Although the revolution failed, the draft constitution had strong influence on later German constitutions.

The German Confederation lasted until 1866, when Prussia, under its prime minister, Otto von Bismarck (1815–98), founded the North German Federation (Norddeutscher Bund), which was constituted as a strong empire with a centralist structure. After the Franco-German war of 1870–71, the South German States, with the exception of Austria, acceded to the North German Federation, thus creating the German Empire (Deutsches Reich) of 1870/71, the so-called Bismarck Empire. Its constitution was based in large part on that of the North German Federation. It was a federal state and had a relatively strong central government with the king of Prussia as hereditary German emperor. The emperor was the head of state and appointed the administration of the empire. Laws were enacted by parliament together with the Federal Council, in which the federal states were represented. Ordinary law provided for a strong judiciary and rights for citizens. Laws were also enacted to improve social security, in large part to counteract the rise of left-wing political parties and trade unions.

After World War I (1914–18), monarchy was abolished, and a democratic constitution was adopted in 1919 for the new Weimar Republic. Under the republic, equal voting rights were enjoyed by men and women, and extensive fundamental rights were guaranteed in the national constitution. The administration was led by the chancellor and was responsible to parliament. The president of the republic was head of state and commander in chief of the military. He was elected directly by the people for a seven-year period. The president chose and appointed the chancellor.

A number of provisions, however, were not favorable to political stability: The government could be removed by parliament even in the absence of a replacement majority. Furthermore, the president of the republic and the administration had far-reaching authority during a state of emergency, including the power to suspend fundamental rights. These shortcomings of the constitution later helped the National Socialists to overthrow the republic in 1933.

The complete moral breakdown of Germany under the Nazi terror regime led to the murder of millions of Jews and other people, the bloody suppression of opposition and resistance, and World War II (1939–45), during which tens of millions died. The shock over this suffering and this disruption of culture and history deeply influenced the drafters of the current constitution of the Federal Republic of Germany, which was enacted on May 23, 1949. The framers of the constitution tried to ensure that nothing like the Nazi regime would ever happen again. Referring to Germany's responsibility for the crimes committed under National Socialist rule, the Preamble to the Constitution also contains a promise for the future: "Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law."

The constitution of 1949 follows in the footsteps of the 1848 and 1919 constitutions and is rooted in old German constitutional traditions, such as the rule of law, people's sovereignty, and human rights. New measures were introduced to improve the stability of democratic institutions. Among them are the prohibition of constitutional amendments that adversely affect the protection of human dignity, basic constitutional structures such as the rule of law, and the principle of federalism.

After World War II, Germany was divided into the Federal Republic of Germany and the German Democratic Republic. The latter remained until 1990 under the influence of the Soviet Union and Communist rule. Its constitutions of 1949 and 1968 (substantially amended in 1974) contained human rights and democratic institutions. Yet these provisions were never particularly relevant, since the Communist Party always had final and arbitrary decision-making power. The German Democratic Republic ceased to exist after it joined the Federal Republic of Germany in 1990 after the breakdown of the Communist bloc. Reunified Germany amended its constitution to ensure that the unification process was complete and no territorial claims persisted.

The Federal Republic of Germany is a member of the United Nations and of the North Atlantic Treaty Organization (NATO), and a founding member of the European Union. As a member of the European Union, it participates in an increasingly intense integration process that seeks to ensure peace, stability, and prosperity across the continent. As have the other members, Germany has transferred extensive sovereign rights to the European Union. The law of the union has a tremendous and increasing impact on German law.

FORM AND IMPACT OF THE CONSTITUTION

Germany has a written constitution, codified in a single document called the Basic Law (Grundgesetz), which takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Germany. The law of the European Union generally has precedence over the German constitution, as long as it does not contradict the constitution's basic principles.

All laws must comply with the provisions of the Basic Law. The Federal Constitutional Court is strict and powerful in implementing constitutional law. However, the constitution is significant not only for the legal system of the country but also as a source of values. It has helped shape the way Germans think of themselves as a people.

BASIC ORGANIZATIONAL STRUCTURE

Germany is a federation made up of 16 federal states, called *Länder*. Each of the *Länder* has a state constitution modeled in part on the Basic Law while establishing an identity of its own. The *Länder* differ considerably in geographic area, population size, and economic strength. All have identical legislative, administrative, and judicial powers, making the federal states essentially equal from a constitutional point of view.

The historical origins of the federal structure reach back to the beginnings of the Holy Roman Empire. The central imperial authority and the individual territorial governments have coexisted throughout the history of Germany, sometimes in cooperation and sometimes in conflict.

The states of the Federal Republic of Germany have sovereign status, as does the federation itself. However, the *Länder* cannot leave the federation. The constitutional status of the *Länder* is strong, but the federal government has far greater political impact today.

The powers of the federation and the states are interrelated in many fields. Those powers reserved to the states are their sole responsibility, except as limited by the federal constitution, as is often the case. The starting assumption is that legislation is the task of the states.

However, numerous important issues are subjected to the legislative authority of the federation. In some fields, such as international relations, defense, citizenship, and the regulation of currency, the federation has exclusive authority. In others, such as civil law, criminal law, the structure and procedures of the courts, the law relating to foreigners, and commercial and labor law, the states have concurrent legislative authority only as long as the federation does not step in; for most of these fields, the federation has indeed enacted legislation. In the course of the history of the Federal Republic of Germany, many legislative powers have passed from the states to the federation by constitutional amendments.

The administration of the law is in principle the business of the states, even of laws passed by the federation. True, the Basic Law assigns significant administrative functions to the federal government regarding the armed forces, the foreign service, and numerous other areas, but in general the states provide the administrative apparatus. Thus, even in fields within the exclusive legislative competence of the federation, citizens generally deal with the administrative officials of the *Länder*.

Local government is strong in Germany. The local communities are incorporated into the state administrative structure, but they make their own decisions on many issues, including construction and development policies and local economic development. The citizens of the local communities elect mayors and other members of local political bodies.

LEADING CONSTITUTIONAL PRINCIPLES

Germany's system of government is a parliamentary democracy. There is a strong division of executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent and includes a constitutional court.

The German constitutional system is defined by a number of leading principles: Germany is a democracy, a federation, a republic, and a social state, and it is based on the rule of law. Article 28 of the constitution extends these principles to the states: "The constitutional order in the Länder must conform to the principles of a republican, democratic, and social state governed by the rule of law, within the meaning of this Basic Law."

On the federal level, political participation is shaped as an indirect, representative democracy: The people elect delegates to Parliament, who then decide on the political questions. Direct democracy by means of a referendum is very limited on the federal level. The constitutional law of the states allows for more direct democracy, but it is rarely invoked.

According to the principle that the Federal Republic of Germany is a social state, government must take action to ensure a minimal standard of living to every resident of Germany. It binds public authority to the general welfare. Rule of law is of decisive impact. All state actions impairing the rights of the people must have a basis in parliamentary law, and the judiciary must be independent and effective.

Further structural principles are implicitly contained in the constitution, such as religious neutrality and the commitment of the state to the support of culture. The preamble of the constitution commits Germany to promoting world peace. Protection of the environment and of animals ranks as a constitutional principle as well. The constitution obliges Germany to take an active part in European integration.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the federal president; the chancellor and cabinet ministers; the Federal Diet, or Federal Assembly, called the Bundestag; and the Federal Council, called the Bundesrat, which functions as the representative organ of the states. Often, Bundestag and Bundesrat are seen as two chambers of Parliament, but the constitution sees them as separate bodies. The judiciary, which includes the Federal Constitutional Court, and the Joint Committee, which functions as a representative body when Parliament is unable to convene.

The Federal President

The federal president is the head of state. He or she formally appoints and dismisses the chancellor after the latter has been elected or deposed by Parliament. The federal president promulgates the laws, but before signing a law he or she must decide whether it is constitutional. This task frequently puts the president at the center of political issues; historically, the federal president has in a number of cases withheld his or her signature and thus prevented a bill from becoming law. The president also represents the federal republic in international affairs and formally appoints and dismisses the civil servants, soldiers, and judges of the federation. The federal president also has the right to pardon criminal offenders.

Still, the office consists largely of representative functions. The president is neither the commander in chief of the armed forces nor the head of government. In general, all official activities of the president must be countersigned by the chancellor. The president's political impact depends largely on personal charisma. Indeed, the relative lack of political power enables the president to be representative of the whole German nation and play an integrative role in society.

The president is elected for a five-year term and can be reelected only once. He or she must be at least 40 years old and may not hold any other office nor exercise any other profession. Electing the federal president is the sole and exclusive function of the Federal Convention. It is made up of all the members of the Bundestag and an equal number of representatives elected by the parliaments of the states. There is no election campaign; normally, the candidates are presented by the political parties and elected according to the existing majorities in the parliaments. The federal president can be deposed only by the Federal Constitutional Court, if it finds him or her guilty of a willful violation of the Basic Law or of any other federal law.

The Federal Administration

The federal administration is the political nerve center of Germany. It consists of the chancellor (*Bundeskanzler*)—its head—and the federal ministers. He or she is nominated by the federal president and elected by the Bundestag. The president usually nominates the leading politician of the strongest party in the Bundestag. The federal ministers, who make up the cabinet, are appointed and dismissed by the president on the advice of the chancellor. Each minister directs his or her department independently and is responsible for its actions. However, the chancellor has the authority to set government policy. All ministers are bound by his or her decisions on broad, fundamental issues of policy and, sometimes, specific questions of particular importance.

The federal administration has the authority to define each minister's responsibilities, with the exception of certain functions defined in the Basic Law. For example, the finance minister's consent is required for any extraordinary or additional expenditure; also, the defense minister is commander in chief of the armed forces in times of peace.

The goal is to assure a strong, stable administration responsible to the Bundestag. To that end, the Bundestag can dismiss a chancellor only by way of electing a new one with the votes of more than half of its members. The chancellor can also initiate a vote of confidence. If he or she does not win a majority, the chancellor can ask the president to dissolve the Bundestag. The Bundestag can, however, prevent its dissolution by electing a new chancellor.

The chancellor and the federal ministers serve for the legislative period of the Bundestag, unless dismissed early in a vote of confidence. Each newly elected Bundestag must go through the process of electing a chancellor.

The chancellor is generally the dominant figure in German politics, with the power to set policy guidelines and choose the ministers. Ministers cannot individually be dismissed by a vote of no confidence. The role of the Bundestag is thus somewhat weakened, and its independence is further limited by the dominant role of the political parties. In general, the majority in the Bundestag backs the administration.

The German Bundestag (Parliament)

The German Bundestag is the central representative organ of the people at the federal level. As a legislative body, it

cooperates with a number of other constitutional organs, especially the Federal Council (Bundesrat), in which the states are represented. In terms of the legislative process but not in strictly legal terms, Bundestag and Bundesrat can be regarded as two chambers of parliament. The Bundestag also elects the chancellor and monitors the administration and civil service. Members of the Bundestag have the right to put questions to the administration, and any federal minister can be cited to appear before the body.

Decisions in the Bundestag are generally made by a simple majority of the members present, as long as a quorum is achieved. Some decisions, such as choice of a chancellor, require an absolute majority, that is, more than half of all members. Particularly important decisions, such as amendments to the constitution, require a two-thirds majority.

Members are not legally bound to follow instructions from their party leadership, as they all represent the whole nation and are bound only by their own consciences. In practice, members depend on the party in ways that often limit their independence. Delegates have a duty to disclose to the president of the Bundestag any activities they undertake on behalf of groups or organizations and any financial contributions they receive from such sources.

Members enjoy parliamentary privilege, which confers far-reaching protection against legal action arising from their vote or statements on the floor. Parliamentary privilege also serves to protect their personal freedom. Only with the permission of the Bundestag may a member of Parliament be subjected to any criminal prosecution, arrested, or restrained, unless the member is arrested in the course of committing a crime or on the following day.

The Bundestag consists of 598 delegates (slight variations are possible because of complicated electoral procedures). Its period of office, the legislative term, is four years, unless it is dissolved early. The legislative term ends when the newly elected Bundestag assembles for the first time. The delegates are elected in a general, direct, free, equal, and secret balloting process.

The Bundesrat (Federal Council)

The Bundesrat allows the states (*Länder*) to participate in legislation and administration at the federal level. It can play an important role, especially when a minority party in the Bundestag hold a Bundesrat majority.

The Bundesrat consists of members of the state administrations. Depending on the size of its population, each state has a minimum of three and a maximum of six votes. These must always be cast en bloc.

The members of the Bundesrat are appointed and dismissed by the administration of the state they represent, and they are bound to vote in accordance with the directions the administration gives them. There are some exceptions to this rule: For example, it does not apply to votes in the Mediation Committee, which resolves differences in bills passed by both houses.

The main business of the Bundesrat is to participate in the federal legislative function. Certain important ordinances promulgated by the federal administration that are specifically listed in the Basic Law also need the consent of the Bundesrat, giving the body an administrative role as well. The Bundesrat also influences federal policy on the European Union.

The Lawmaking Process

A bill may be introduced by the federal administration, by a group of members representing not less than 5 percent of the Bundestag, or by the Bundesrat. If the Bundestag passes a bill, the bill then goes to the Bundesrat, whose assent is needed in the case of certain types of legislation enumerated in the Basic Law—mostly those laws that would have a significant impact on the states. In other cases, the Bundesrat may raise objections but cannot block passage.

In case the Bundestag and the Bundesrat disagree over a draft law, the Mediation Committee can negotiate a compromise. This body is made up of 16 members of each chamber. The committee's compromise wording is then once more put through the legislative process.

Once the bill has been passed by the Bundestag and, if necessary, by the Bundesrat, it must be countersigned by the chancellor and the responsible minister. For the law to take effect, the president needs to assent and promulgate it.

The Judiciary

The judiciary in Germany is independent of the executive and legislative branches and is a powerful factor in legal life. Its structure is somewhat complicated as a result of historical developments and the federal nature of Germany. Federal and state jurisdiction may overlap.

There are five different sets of courts, defined by the matters they adjudicate: civil and criminal courts, administrative courts, labor courts, revenue courts, and finally courts for social law. In general, the courts of first instance and appeal are on the *Länder* level. Each branch also has a supreme court, residing at the federal level.

The highest court in Germany is the Federal Constitutional Court. It ranks above the supreme courts of the five different branches and deals exclusively with constitutional disputes. It has often proved difficult to decide whether a question is of constitutional or of ordinary law nature.

The Federal Constitutional Court consists of two senates of eight judges each. Half of the candidates are chosen by the Bundesrat, and half are chosen by an electoral committee consisting of 12 members of the Bundestag. The candidates are presented by the political parties represented in Parliament. Since the candidates need a two-thirds majority of the votes in the respective electoral body to be elected, the judges of the federal constitutional court enjoy a broad basis of trust.

The importance of the court arises from the fact that all state actions must be in compliance with the constitution. Its decisions are binding not only in the particular case before it, but also for the future. The court has often declared acts of Parliament void on constitutional grounds. A constitutional complaint can be taken before the Federal Constitutional Court by any person who claims the state has infringed one of his or her fundamental rights. Before doing so, the plaintiff must have tried all other legal remedies without success.

The Federal Constitutional Court, as is any other court in Germany, is obliged to make a decision on any case before it. It has no discretion in accepting or rejecting cases on political grounds. The court's decisions have often managed to bridge deep political divisions; many decisions have had great legal and political impact. It enjoys a high level of public esteem.

For example, some of the many important, and highly controversial, decisions it has taken relate to the question of abortion. The basic ruling has been that in general abortion is illegal. However, neither the mother nor the medical personnel performing the abortion can be punished if the mother has undergone a formalized process of advice on the pros and cons of the intended abortion, and the abortion is performed within the first three months of pregnancy. The constitutional court decided that the unborn child should be protected by the state but that this protection can only be successful in full cooperation with the mother and in respect to her personal situation.

THE ELECTION PROCESS

All Germans above the age of 18 have both the right to stand for election and the right to vote. Only in very limited circumstances, for example, when someone has been convicted of certain criminal offenses, can these rights be taken away, and then only for a limited period.

Parliamentary Elections

Half of the number of members of the Bundestag are elected according to a winner-takes-all majority vote. The remaining delegates are elected on the basis of proportional representation. Every voter, therefore, has two votes.

Germany is divided into constituencies of approximately the same number of voters. In each constituency, candidates stand for election and each voter casts his or her first vote for the preferred candidate. The candidate who wins the most votes in the constituency wins a seat.

Each voter casts his or her second vote for a list of candidates. The lists of candidates are submitted by the political party of each state, who determine the candidates and their rank on the list by internal party elections. In each state the number of votes cast for a particular party's list are totaled. The proportion of the total votes won by each list determines the number of the candidates on a particular list who are elected.

Subject to certain exceptions (for example, to provide for national minorities) a party must win at least 5 percent of all second votes if it is to gain seats in the Bundestag by means of the state lists. The aim of this rule is to prevent splinter groups from obstructing the work of the Bundestag or gaining excessive influence when no single party wins a majority.

POLITICAL PARTIES

German democracy has always given rise to many different political parties. The multiparty system is a basic structure of the constitutional order.

The Basic Law covers the parties' roles and responsibilities in Article 21. The constitution acknowledges that the political parties play a role in forming the political will of the people. Their internal structure must be in accordance with democratic principles. They must be primarily self-financing, relying on membership fees and donations. Additional financing from public funds is possible to a limited extent.

Political parties can only be banned by a decision of the Federal Constitutional Court. This has happened only twice and in the very early days of the Federal Republic. The Socialist Imperial Party, a successor party to the National Socialist Party, which had been disbanded by the Allied forces immediately after the Second World War, was itself banned in 1953. In 1956 the Federal Constitutional Court also prohibited the Communist Party of Germany as unconstitutional. A political party is unconstitutional only when the party or its adherents aim to impair or do away with the free democratic basis of the country, or threaten the existence of the Federal Republic of Germany. The provision is rooted in the experience of the overthrow of the democracy of the Weimar Republic by the Nazi party. At the same time, such limits to political freedom are intended to be highly exceptional, and only the highest court can impose them.

CITIZENSHIP

German citizenship is primarily acquired by birth. The principle of *ius sanguinis* is applied; that is, a child acquires German citizenship if one of his or her parents is a German citizen, wherever the child is born.

A foreigner can also acquire German citizenship if he or she legally resides in Germany, has a clean criminal record, has been able to find a residence, and is in a position to support his or her dependents. It is easier for the spouse of a German citizen to acquire citizenship than for a person not attached to a German citizen. There are also more lenient rules for foreigners who have legally resided

in Germany for longer periods. It is still German policy to prevent dual citizenship, although exceptions to this rule have been made in the past few years.

From a constitutional point of view, the decisive factor regarding fundamental rights is not citizenship but the concept of being a "German." A German, in terms of the Basic Law (Article 116), is any person who has German citizenship or who is of German origin and, as a refugee or expellee, has taken refuge in the area of the German Empire as defined by the borders of December 31, 1937, which is the territory that belonged to Germany before the Nazis began to occupy neighboring states. Certain rights that tend to be reserved for citizens in other countries, such as voting rights, are assigned to all "Germans" by the German constitution.

FUNDAMENTAL RIGHTS

The Basic Law defines fundamental rights in its first chapter. They are the foundation of the German state and constitution. They encompass both human rights and citizen or "German" rights.

The German constitution guarantees the full traditional set of human rights. Social human rights, such as the right to work or the right to an education, are somewhat underrepresented; they are explicitly guaranteed, however, in a number of state constitutions.

The starting point is the guarantee of human dignity. Article 1 says: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world."

Taking human dignity as its starting point, the Basic Law guarantees numerous specific rights. These rights have binding force for the legislature, the executive, and the judiciary as directly applicable law.

The rights guaranteed by the constitution can be classified either as freedom rights or as equality rights. Article 2 protects the free development of the personality. To some extent it is a catch-all right that operates whenever the numerous individual freedom rights do not apply.

The equal treatment clause is contained in Article 3, which guarantees that all persons are equal before the law. This fundamental right is fleshed out with a number of specific provisions such as equality for men and women and the equality of voting rights. Another special equality right is provided for in Article 3(3): "No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavored because of disability."

The Basic Law distinguishes between human rights, which apply to every human being, and those reserved for Germans in the sense of Article 116, the so-called Germans' rights. Examples of general human rights are freedom of belief or opinion. Examples of Germans' rights are freedom of assembly and association, freedom to choose one's career, and the right to vote in national elections. Germans' rights tend to relate to the national political or social system. As part of the process of European integration, these rights are increasingly being applied to citizens of the European Union.

Foreigners living in Germany are protected by the human rights specified in the constitution, including the right to the free development of personality stated in Article 2. These rights can, however, be limited somewhat more easily than the more specific Germans' rights.

Impact and Functions of Fundamental Rights

According to German thought, human rights are the axis on which all legal thinking turns. The functions that are ascribed to them are correspondingly numerous. Fundamental rights are first of all defensive rights, as has been emphasized since the 19th century. The state may not interfere with the legal position of the individual unless there is special reason to do so. Unjustified infringements can be blocked by the individual, implying that every person has legal remedies against unjustified detention, against the confiscation of property, against the banning of a particular point of view, and against any other unconstitutional infringement on his or her rights by state authorities.

Fundamental rights also traditionally involve the right to participate in the democratic political process. Particularly important are freedom of assembly, freedom of the press and of opinion, and the right to vote.

To a limited extent, a certain individual entitlement to services from the state is also recognized. Insofar as this is practical, the state has a duty to ensure that circumstances are conducive to the exercise of fundamental rights. For example, the right to choose one's career obliges the state to make available a reasonable number of places in educational institutions that prepare people for the various careers.

The Basic Law creates a duty of the state to protect its residents from harm to their fundamental rights. As such, affirmative action for the equality of men and women is an explicit duty of the state, in Article 3(2). Similarly, the state is not only required to respect the right to life and physical integrity but also obliged by Article 2 to intervene to protect these rights against infringements by third parties or other sources of danger. Thus, the state must ensure a healthy, natural environment insofar as this is practical.

Finally, the fundamental rights are also a guarantee of due process. The state must provide appropriate organizational and procedural structures to ensure the prompt and effective protection of individual rights.

With only one exception, the constitution specifies rights for the individual and not duties. The only situation in which private persons are directly limited by fundamental rights is set out in Article 9, which guarantees

the freedom to form coalitions. The right to form associations for the protection and promotion of working and economic conditions is guaranteed for every person and for all trades and professions. Agreements that attempt to limit or hamper the exercise of this right are void, and measures with such an object are illegal. Article 9 thus directly forbids an employer to make it a condition for employment that a worker belong to a particular union or that the worker not belong to a union.

Other than Article 9, the fundamental rights do not explicitly regulate relations between private individuals. However, the idea of an indirect horizontal application has gradually been accepted. The fundamental rights permeate all areas of the law because they represent a constitutional decision in favor of certain values. Thus, even in relations between individuals, human dignity may not be violated, and freedom and equality must be respected in any circumstances.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. The German constitution establishes potential limits imposed by specific needs of the public and the rights of others. However, no fundamental right can be disregarded completely. Each limit faces limits itself.

One of the most important of the "limitation limits" is the principle of proportionality. This concept expresses the idea that all law must be reasonable, one of the central principles of German law. Any rights limit must be appropriate, and there must not be any alternative that is less impairing. As always, the advantages and disadvantages of any state action must be weighed against one another; all legal interests involved must be drawn into a reasonable balance.

Further limiting the limitations is the requirement of legal certainty. The limits must be sufficiently clear and certain that the affected persons can orient themselves and adapt to the new situation. A limitation may also not interfere with the essential content of a right.

Article 18 of the Basic Law provides that anyone who uses rights such as freedom of opinion, assembly, and association to undermine the free democratic constitutional order can be found to be abusing these rights. This provision is based on the experience of the Weimar Republic and National Socialist eras. Up to now, this provision has not had any practical significance.

ECONOMY

The German constitution does not specify a specific economic system. The legislature is thus free to structure the economy. On the other hand, certain basic decisions by the framers of the constitution provide for a set of conditions that have to be considered in making economic decisions.

Freedom of property and the right of inheritance must be protected. Confiscation by the government is legal only in the public interest and if adequate compensation is given. The fundamental rights also protect the freedom of occupation or profession, general personal freedom, as well as the right to form associations, partnerships, and corporations. The right to form associations in order to safeguard and improve working and economic conditions is guaranteed to every individual and all corporations and professions. This right guarantees autonomy for trade unions and employers' associations in labor bargaining.

Germany is also defined by the constitution as a social state, providing for minimal social standards. This guarantee is of high political and legal impact. The constitution allows the government to transfer land, natural resources, and means of production to public ownership, but this provision has never been applied.

Taken as a whole, the German economic system can be described as a social market economy. It combines aspects of social responsibility with market freedom. This idea has had considerable impact also on shaping the economic system of the European Union.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for religious communities. In addition, the Basic Law recognizes their special status. The constitution incorporates provisions regulating the relations between state and religions that had previously been part of the constitution of the Weimar Republic.

There is no established state church. All public authorities must remain strictly neutral in their relations with religious communities. Religions must be treated equally. Nonreligious philosophies of life, such as those of the Humanist Association, are accorded the same status as religious views.

The Catholic Church, the Protestant churches, and a series of smaller religious communities, such as the Jewish faith communities, the Adventist church, or the Church of Jesus Christ of Latter-Day Saints, are corporations under public law and enjoy a number of specific powers. The administrative authorities grant this status to communities if they show a minimal number of adherents and adequate internal statutes. As any other administrative act, the decision can be challenged in court.

Despite the essential separation of religions and the state, there are many areas of cooperation. Religious communities incorporated under public law are empowered to collect taxes from their adherents. The church tax can be collected by the state tax authorities on behalf of the community in exchange for a fee. Every taxpayer can opt out of this church tax by formally leaving the religious community in question.

Religious education is part of the curriculum in public schools and is taught in accordance with the principles of the religious community involved. Currently

there are classes for Catholic, Protestant, Christian Orthodox, Jewish, and Hindu pupils as well as for some other beliefs, whenever there are a minimum of six to eight pupils of any of these religions at a school and the religious community requests that instruction. If the pupil does not want to participate in religious instruction, he or she can opt out, usually by taking classes in ethics instead. Classes that target Turkish or Iranian pupils that offer education on their home culture usually encompass teaching on Islam.

The independence and self-determination of the religious communities are of central importance. Religious communities regulate and administer their affairs independently within the limits of the laws that apply to all.

MILITARY DEFENSE AND STATE OF EMERGENCY

Creation and maintenance of armed forces for defense are responsibilities of the federal government. Apart from defending the country against an external or internal military attack, the armed forces may be used only for purposes specifically listed in the constitution, such as assistance during a natural disaster or a major accident, when police forces are insufficient.

General conscription requires all men above the age of 18 to perform basic military service for nine months. In addition there are professional soldiers who serve for fixed periods or for life. Women can volunteer. Conscientious objectors can file a petition to be excluded from military service, and these petitions are usually accepted. They then are obliged to perform service in social institutions for nine months.

The military always remains subject to civil government. During times of peace, the commander in chief is the minister of defense. Only in a state of defense does the chancellor assume that role. A special resolution of the Bundestag is required before the military can undertake any mission abroad.

Most units of the federal defense force are under the supreme command of NATO. Increasingly, multinational units oriented toward Europe are being organized. The Federal Republic of Germany has obliged itself in international treaties not to produce atomic, biological, or chemical weapons.

Federal defense forces may be committed to operations under United Nations auspices, whether as peacekeeping forces or in armed conflicts aimed at restoring peace and order. The constitution permits the integration of the armed forces into organizations for mutual collective security.

The Basic Law defines the state of defense in great detail. A state of defense exists only if the Federal Republic of Germany is attacked with armed military force. At that point, a series of laws aimed at ensuring the ability to mount an effective defense are operative. The powers of the civil authorities remain essentially intact; those of the military do not significantly increase, and there is no martial law. Fundamental rights may not be limited, with a few minor exceptions. The main impact of a state of defense relates to the redistribution of powers between state bodies.

AMENDMENTS TO THE CONSTITUTION

The Basic Law was designed so as to be difficult to change. Amendments require support from two-thirds of the members of the Bundestag and the Bundersat. A change can be made only by express alteration of the text. The aims are to ensure that there is a broad consensus supporting any change and to remove the constitution from the influence of short-term political trends. Nevertheless, the 1949 constitution has been amended more than 50 times.

Certain fundamental provisions are not subject to change at all. Article 79(3) says: "Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible." This so-called guarantee of eternity applies to the federal structure of Germany and the protection of and respect for human dignity. It also applies to certain central principles such as constitutional government under the rule of law, democracy and the sovereignty of the people, the social state, and the principle of republican form. In sum, the essential identity of the constitution may not be changed. This does not prevent the replacement of the constitution by a new one, but it does prevent the deformation of its fundamental structures by a process of creeping subversion.

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Gerhard Robbers

GHANA

At-a-Glance

OFFICIAL NAME
Republic of Ghana

CAPITAL
Accra

POPULATION
20,757,032 (2005 est.)

SIZE
92,456 sq. mi. (239,460 sq. km)

LANGUAGES
English (official), African languages (including Akan, Moshi-Dagomba, Ewe, and Ga)

RELIGIONS
Christianity 63%, Islam 16%, traditional beliefs 21%

NATIONAL OR ETHNIC COMPOSITION
African tribes (major tribes—Akan 44%, MoshiDagomba 16%, Ewe 13%, Ga 3%, Gurma 3%, Yoruba 1%) 98.5%, European and other 1.5%

DATE OF INDEPENDENCE OR CREATION
March 6, 1957

TYPE OF GOVERNMENT
Mixed presidential-parliamentary system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 7, 1993

DATE OF LAST AMENDMENT
December 16, 1996

Ghana is a democratic state, founded on the sovereign and free will of its people to establish for themselves a nation built on freedom, justice, probity, accountability, the rule of law, and the respect for and protection of fundamental human rights. It is a unitary state, governed by an executive branch headed by the president; a 230-member Parliament headed by the speaker; and a judiciary headed by the chief justice. The powers and functions of these three institutions are distinctly separate under the constitution.

CONSTITUTIONAL HISTORY

Ghana, formerly known as the Gold Coast, was the subject of Portuguese, Danish, Dutch, and British influence between 1470 and 1957, but it officially became a British Colony in 1874. The country became an independent and sovereign state on March 6, 1957, governed under the 1956 constitution, which provided for a parliamentary system similar to the Westminster model of Britain.

On July 1, 1960, a new constitution, changing Ghana from a parliamentary to a presidential system and declaring the nation a republic, was adopted. The constitution had no bill of rights and gave the president wide executive powers. In 1964, a referendum officially made Ghana a one-party state.

On February 24, 1966, the army and the police overthrew the Nkrumah regime and formed the government of the National Liberation Council. The council suspended the 1960 constitution, but the judiciary and civil service were allowed to continue to operate.

A new constitution was promulgated in October 1969, ushering in the Second Republic. This constitution established a mixed parliamentary-presidential system. It provided for a 140-member Parliament, a prime minister, and a presidential commission to exercise executive powers.

Between 1972 and 1979, three more military governments, namely, the National Redemption Council, the Supreme Military Council, and the Armed Forces Revolutionary Council, ruled Ghana. In 1979, the last council instituted a program to restore constitutional rule. The third republican constitution entered into force on September 24, 1979. This constitution departed extensively from the Westminster model. The constitution advocated separation of powers and had a bill of rights. However, it granted indemnity from prosecution to members of the Armed Forces Revolutionary Council for any executive, legislative, or judicial action it had taken or omitted to take.

On December 31, 1981, there was another coup d'état, led by Flight Lieutenant Jerry John Rawlings. Rawlings became chairman of the Provisional National Defence Council.

In 1991, with pressure from the international community and Ghanaians to restore democracy, the Provisional National Defence Council established a 258-member Consultative Assembly. Representing all sections of the Ghanaian community, it was mandated to consider proposals for a new constitution drafted by a seven-member committee of experts.

The final draft constitution was put to a national referendum on April 28, 1992, and was accepted by a 92 percent majority. The constitution entered into force on January 7, 1993, and established the Fourth Republic.

FORM AND IMPACT OF THE CONSTITUTION

The 1992 constitution is embodied in a single document. The constitution is the supreme law of the republic and forms the standard against which all other law is measured. To prevent a repeat of past history, the constitution prohibits Parliament from enacting a law to make Ghana a one-party state.

BASIC ORGANIZATIONAL STRUCTURE

Ghana is divided into 10 administrative regions, which are further divided into 138 districts. The president appoints regional ministers and district chief executives to exercise executive authority in the name of the president and in accordance with the constitution. The district assembly is the highest body at the local government level and exercises deliberative, legislative, and executive powers. In addition, the constitution mandates Parliament to enact laws to coordinate the relationship between the central government and the district assemblies.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution upholds democracy, freedom, justice, supremacy of the constitution, popular sovereignty, probity, accountability, rule of law, and separation of powers.

CONSTITUTIONAL BODIES

The main constitutional bodies under the constitution are the president, Parliament, the House of Chiefs, and the judiciary. Others are the Council of State, the Commission for Human Rights and Administrative Justice, and the National Commission for Civic Education.

The President

The president is the head of state, head of the executive administration, and commander in chief of the armed forces. The executive authority of Ghana vests in the president. A candidate for the presidency must nominate a vice president before running. Any presidential candidate must be a citizen of Ghana and at least 40 years old. The election of the president is by universal adult suffrage for a term of four years. No one may hold the presidency for more than two terms. There is a cabinet consisting of the president, the vice president, and no fewer than 10 and no more than 19 ministers of state assisting the president in the determination of general policy.

The Parliament

Parliament consists of no fewer than 140 elected members. The legislative power of Ghana is vested in Parliament.

The Lawmaking Process

Parliament exercises its legislative authority by passing bills, which must be approved by the president. In the ordinary lawmaking process, a bill is published in the *Gazette,* accompanied by an explanatory memorandum. After 14 days, the bill is laid before Parliament, which deliberates extensively on it through the appropriate parliamentary committee and the whole house. The president assents to bills to make them law. A bill affecting the institution of chieftaincy, however, cannot be introduced unless it has first been referred to the National House of Chiefs.

The House of Chiefs

The constitution guarantees the institution of chieftaincy, together with its traditional councils, as established by customary law and usage. Parliament has no power to enact any law that confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever or in any way that detracts

from or derogates the honor and dignity of the institution of chieftaincy.

There is a National House of Chiefs. The House of Chiefs for each region elects a member to the National House of Chiefs. The National House of Chiefs advises any person or authority charged with any responsibility under the constitution concerning any matter related to chieftaincy. The house also is charged with the development of customary law and exercises jurisdiction over matters affecting chieftaincy through a Judicial Committee.

The Judiciary

Article 125 vests judicial power in the judiciary and declares its independence. The judiciary is made up of the superior courts, namely, the Supreme Court, the Court of Appeals, the High Court, and the Regional Tribunals, and the lower courts and tribunals established by Parliament, currently the Circuit, Magistrate, and District Courts. The chief justice is the head of the judiciary.

The Supreme Court is made up of the chief justice and no fewer than nine other justices. The court has original jurisdiction in the interpretation and enforcement of the constitution and is the final court of appeal in all matters. The court also has supervisory jurisdiction over all courts and adjudicating authorities in the country.

The Court of Appeals is composed of a chief justice and no fewer than 10 justices. It has jurisdiction to hear appeals from any judgment, decree, or order of the High Court, as well as from regional tribunals and the lower courts.

The High Court is composed of a chief justice and no fewer than 20 justices. It has original jurisdiction in all civil and criminal matters, including treason and high treason, and appellate jurisdiction over the lower courts. It also has exclusive original jurisdiction to enforce fundamental human rights.

The regional tribunals are made up of a chief justice, a chair and other members, who may or may not be lawyers, designated by the chief justice to sit as panel members for specified periods. The regional tribunal has jurisdiction to try such offenses as Parliament may prescribe by law.

Since the inception of the Fourth Republic, the judiciary has ensured that both private and public persons, including the government, act in a manner consistent with the constitution. Landmark decisions of the Supreme Court in this regard include the "31st December" case, in which the Court ruled that the celebration of 31st December, the anniversary of a coup d'état, was contrary to the spirit and letter of the constitution in the light of the nation's painful history of military interventions.

The Council of State

Article 89 establishes a 25-member Council of State to counsel the president, ministers of state, and Parliament in the performance of their duties. The council also reviews bills, particularly those dealing with constitutional amendments. The council is akin to a council of elders in Ghanaian tradition. The president appoints the members of the council in consultation with Parliament. Members of the council serve a four-year term, coterminous with the president, unless a member resigns, becomes permanently incapacitated, dies, or is removed from office by the president, in consultation with Parliament.

The Commission for Human Rights and Administrative Justice

The Commission for Human Rights and Administrative Justice is an independent body established under Article 216 of the constitution. This commission is made up of a commissioner and two deputy commissioners, appointed by the president in consultation with the Council of State. The commissioner and the two deputies cease to hold office upon attaining 70 and 65 years of age, respectively. The president may also remove them from office.

The commission investigates complaints of human rights abuses, corruption, injustice, abuse of power, and unfair treatment by public officers or private persons, and those against the Public Services Commission concerning unequal access to recruitment into the security services of Ghana. The commission has quasi-judicial powers and can adopt a number of remedial measures, including alternative dispute resolution mechanisms and institution of proceedings in a competent court.

National Commission for Civic Education

The National Commission for Civic Education is established under Article 231 and is composed of a chair, two deputy chair, and four other members, all appointed by the president in consultation with the Council of State. Members of the commission cannot be members of any political party and must be eligible to be elected members of Parliament. The commission's functions include the education of the general public on the principles and objectives of the constitution and assistance to the government in inculcating civic responsibility and awareness in Ghanaians.

The commission, in conjunction with the electoral commission, has played an important role in voter education, helping to ensure four successful national elections and three local government elections.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every citizen of Ghana who is at least 18 years of age and of sound mind has the right to vote and be registered as a voter for any public election and referenda.

Presidential and parliamentary elections are held every four years. The president appoints the seven-member electoral commission, which is responsible for the compilation and periodic review of a register of voters, the demarcation of electoral boundaries for national and local government elections, the conduct and supervision of all public elections and referenda, the education of voters on the electoral process, and any other functions prescribed by law.

POLITICAL PARTIES

Ghana is a multiparty democracy. Every citizen of Ghana has the right to form and join a political party of his or her choice and to participate in political activity. Political parties are, subject to the constitution, free to participate in political discourse in the state and disseminate information on political, social, and economic issues of a national character. The constitution prohibits formation of political parties along ethnic, religious, regional, or other sectional lines. The state is required to provide fair opportunities to all political parties to present their programs to the electorate by ensuring equal access to state-owned media. Given this opportunity, political parties have been the main instruments for shaping political opinion since the birth of the Fourth Republic.

CITIZENSHIP

Citizenship of Ghana is primarily by birth. Citizenship may, however, also be acquired by marriage to a Ghanaian citizen, by registration, and through any other means prescribed by Parliament. Dual citizenship is also permitted.

FUNDAMENTAL RIGHTS

Fundamental rights and freedoms are enshrined in Chapter 5 of the constitution. The executive, legislative, and judicial authorities, as well as private individuals and corporate bodies, are obliged to respect and uphold the enumerated rights and freedoms. The courts are responsible for enforcement.

Chapter 5 captures the primary human rights and freedoms, categorized as civil, political, economic, social, and cultural rights. It forms the clearest definition of rights in Ghanaian constitutional history.

Article 18 safeguards the right to enjoy property without unjustifiable interference. Article 20 goes further to prohibit compulsory acquisition of private property by the state, except for the public good, with prompt, fair, and adequate compensation. Article 22 gives a surviving spouse a right to a fair share of the estate of a deceased intestate spouse and requires Parliament to enact legislation regulating the property rights of spouses.

Impact and Functions of Fundamental Rights

The bill of rights in the 1992 constitution draws on the lessons learned from the nation's past, when both civilian and military regimes showed no regard for human rights. On the other hand, the transitional provisions in the constitution, which prohibit any inquiry into the acts and omissions of past military regimes, present a debatable limitation on the right to justice.

Limitations to Fundamental Rights

Most of the rights in the constitution require that such rights must be exercised with due regard to the rights of others and the public interest. When rights are limited by the state, the constitution requires that such limitation be justifiable according to law and the constitution.

ECONOMY

The constitution does not specify a particular economic system. However, the directive principles of state policy in Chapter 6 of the constitution enjoin the state to take all necessary steps to maximize the rate of economic development and to ensure a sound and healthy economy. The constitution also encourages private sector and foreign investment.

RELIGIOUS COMMUNITIES

The freedom of thought, conscience, and belief, as well as the freedom to practice any religion publicly, are guaranteed by the constitution. There is no state religion and no religion may receive preferential treatment by state institutions.

MILITARY DEFENSE AND STATE OF EMERGENCY

Parliament is the only institution authorized to raise an armed force. The president is the commander in chief of the Ghana armed forces and chair of the Armed Forces Council.

Only the president has the power to declare a state of emergency, by a proclamation published in the *Gazette,* acting in accordance with the advice of the Council of State. The proclamation must also be approved by Parliament. The military may be engaged in a state of emergency only on the authority of the president. There is no compulsory military service in Ghana.

AMENDMENTS TO THE CONSTITUTION

The ease or difficulty in amending the constitution depends on whether a provision is "entrenched." The constitution lists the entrenched provisions in Article 290. A provision that is not entrenched may be amended by an act of Parliament, with prior consideration of the bill by the Council of State.

An entrenched provision requires consideration by the Council of State and a majority vote in a referendum on the bill. At the referendum, at least 40 percent of registered voters must vote and at least 75 percent of the persons who voted must vote in favor of the bill.

PRIMARY SOURCES

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Edmund Amarkwei Foley

GREECE

At-a-Glance

OFFICIAL NAME
Hellenic Republic

CAPITAL
Athens

POPULATION
10,934,097 (2005 est.)

SIZE
50,942 sq. mi. (131,940 sq. km)

LANGUAGES
Greek

RELIGIONS
Christian Orthodox 97%, Muslim 1.3%, Catholic 0.4%, Protestant 0.1%, unaffiliated or other 1.2%

NATIONAL OR ETHNIC COMPOSITION
Greek 93%, Albanian 4%, other (Bulgarian, Russian, Romanian, American, Cypriot, Georgian) 3%

DATE OF INDEPENDENCE
February 3, 1830

TYPE OF GOVERNMENT
Parliamentary republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 11, 1975

DATE OF LAST AMENDMENT
April 6, 2001

Greece is a parliamentary republic, based on the rule of law and on the principle of the separation of powers. It is a unitary state with a unicameral legislature. The strongest political body is the cabinet. The role of the prime minister is central. The cabinet depends on Parliament's confidence. The head of state is the president of the republic. The role of the president is symbolic. Political parties are free. Elections take place every four years.

Human rights are constitutionally guaranteed and protected by independent courts of justice. Religious freedom is guaranteed, though the Orthodox Church enjoys some privileges, dictated by tradition and by the fact that 97 percent of the population is Orthodox. The economic system is a social market economy. The military is controlled by the government.

CONSTITUTIONAL HISTORY

After the successful revolt against the Ottoman Empire (1821–27), the independence of Greece was internationally recognized by the London Protocol of 1830. During the first year of the revolution, three local constitutions were voted, all of them to be superseded by the first national constitution of 1822. In 1823, the constitution was amended and in 1827 a new constitution was approved. All these constitutions were democratic and liberal, influenced by French and American political thought of the late 18th century.

The foundations of the Greek state were built under the leadership of Ioannis Kapodistrias, a statesman of international prestige who became the first governor of the republic. The republic fell with his assassination in 1831.

Greece then became a monarchy. The first king was Otho, son of King Ludwig I of Bavaria. He did not assume his duties until 1835, when he became of age, and a three-man regency exercised absolute royal power in the interim. A new constitution was voted in 1832, the so-called Hegemonic Constitution, which was actually never applied. This constitution was monarchic, but it included provisions guaranteeing fundamental rights and freedoms.

King Otho maintained the absolutism of the regency. In 1843, a one-day revolt, pervaded by the spirit of constitutionalism, forced Otho to proclaim elections. The resulting Parliament issued the constitution of 1844. This constitution remained monarchic, with the king as the supreme organ of the state and having major political power. However, fundamental rights were also protected, and Parliament passed an electoral law that actually introduced universal suffrage.

Otho's absolutism continued. The dynasty was dethroned after a revolt by the people and the army in 1862. Parliament elected Prince George of Denmark as the new king of the Greeks. A year later, the constitution of 1864, the first democratic constitution of the independent state, was written. Royal power was limited, the list of fundamental rights was enlarged, and the principles of separation of powers and judicial independence were emphasized.

Continued royal interference in political matters, especially in choice of the cabinet and in provocation of the breakup of political parties, stirred up political resistance. The leading political personality of this period, Harilaos Trikoupis, managed to introduce an authentic parliamentary system of government in 1875, in which the cabinet would depend only on Parliament's confidence, and not on the king's approval.

A long crisis in Greek politics and in the Greek economy put in power, in the beginning of the 20th century, Eleftherios Venizelos, who dominated Greek political life for a quarter of a century. An amendment of the constitution of 1864 was passed under his guidance in 1911. During its implementation, the country suffered a major constitutional crisis, known as the national split. The main issue was the extent of royal power in foreign policy, in the appointment and the dismissal of the cabinet, and in the dissolution of Parliament. During 1916–17, Greece was governed by two cabinets, one in Athens and one in Thessaloniki. The national split had consequences that affected the country for decades.

Antiroyalist movements succeeded in dethroning the dynasty in 1924. A republican constitution was created the following year and amended in 1926 and in 1927. The last amendment remained in force until 1935, when a coup d'etat restored the Crown and restored the constitution of 1911.

A military dictatorship in 1936 suspended the constitution. It lasted until the occupation of the country by German forces, after successful resistance of the Greek people to the Italian invasion. Greece was liberated in 1944. A civil war immediately after liberation delayed the normalization of political and constitutional life. In 1952, the constitution of 1864/1911 was revised. A major constitutional issue arose in 1965, when King Constantine II claimed the right to appoint ministers. This action led Prime Minister George Papandreou to resign. The crisis that followed culminated in a military coup in 1967. A military dictatorship lasted until 1974. The dictatorship abolished the constitution of 1952 and imposed the "constitution" of 1968, and later the "constitution" of 1973, which replaced the democracy monarchy with a republic. The military regime fell in 1974 after ineptly provoking the Turkish invasion of Cyprus.

Constantine Karamanlis, a conservative politician with an international profile, now formed a government of national unity. A referendum chose a republican form of government, and a new constitution was written in 1975. It is based on the principles of popular sovereignty, parliamentarianism, separation of powers, political pluralism, and the rule of law. It is a modern constitution with respect to human rights.

The 1975 constitution strengthened the political role of the president of the republic, thus creating a bipolar parliamentarianism. An amendment was voted in 1986, under the socialists, which limited the powers of the president to those of a merely symbolic head of state. The last constitutional amendment was passed in 2001. It enlarged the list of fundamental rights, simplified legislative procedure, and gave constitutional backing to independent regulatory authorities.

With the constitution of 1975, Greece's political life has been fully normalized. Institutions of democracy and parliamentarianism function without turbulence. Greece is a member of the European Union and the North Atlantic Treaty Organization (NATO), and has accepted the most important European and international conventions. Its legal system has absorbed all the principles of modern European legal culture.

FORM AND IMPACT OF THE CONSTITUTION

Greece has a written constitution that is placed at the top of the hierarchy of legal norms. The constitution is a single document consisting of 120 articles.

Both statutory law and the normative acts of the administration must comply with the constitution. Conflicts between the constitution and all other legal norms are resolved in favor of the former.

European law constitutes an exception to this rule. It has priority over internal statutory law, but its priority over the Greek constitution is not yet explicitly recognized. Actual conflicts between European law and the Greek constitution are very rare, but in case they arise, they will probably be resolved in favor of the primacy of European law.

The constitution is the most important law; since law reflects the values of the society, it is also a guarantor of such values. The Greek constitution has adopted all the significant values of modern legal culture. It is nevertheless an open constitution, leaving large margins of appreciation (leeway) to the government in the formation of general policy, as well as in balancing conflicting values and private interests with the public interest.

BASIC ORGANIZATIONAL STRUCTURE

Greece is a unitary state, not a federation. There is only one policymaking administration, that of the central government. Yet administrative authority is decentralized. The central government guides, coordinates, and reviews the work of the decentralized authorities (regions), which wield decisive powers on local matters. Decentralization is actually a constitutional ideal not yet fully achieved, and the central government still possesses serious decisive powers. This system does not necessarily contradict the constitution, which permits a slow transition to full decentralization.

Apart from regions, that is, decentralized state authorities, the constitution provides for local self-governed authorities of the first and second levels, which are entities of public law, separate from the state (i.e., separate from central government and decentralized authorities). To the first level belong the municipalities and communities, and to the second the prefectures. Local self-governed authorities administer local affairs. Their basic organs (prefect, mayor, and councils) are elected by universal and secret ballot. State control over local agencies is confined to the review of the legality of their actions.

While decentralized and local authorities are all confined within specific geographical areas, there are other public corporate bodies, functionally decentralized, whose authority covers the whole country. They are legal entities of public or private law. Examples are the regulatory authorities (for competition, telecommunications, energy, data protection, etc.), social security organizations, and public enterprises (for electricity, water supply, transport, etc.). Central state supervision varies from case to case, according to the law.

LEADING CONSTITUTIONAL PRINCIPLES

Greece is a parliamentary republic. The main principles of the form of government are democracy, representative government, parliamentarism, separation of powers, the rule of law, and the welfare state.

Greece is a democracy based on popular sovereignty; this means that Parliament, which represents the people and the nation, is elected through free, universal, and secret ballot. The cabinet is formally chosen by the president of the republic, but it must enjoy the confidence of Parliament or resign. Through Parliament's confidence, the cabinet represents the people, too.

Parliament legislates and exercises control over the administration. This is made possible by the cabinet's supervision over government bodies, local authorities, and so on.

Parliament and the administration are separate, but the separation of powers is not absolute. Thus, the president of the republic is an organ of both the legislative and the executive power. The cabinet initiates legislation and issues normative acts and regulations of its own. Cabinet ministers are usually members of Parliament.

A strict and absolute separation of powers obtains, however, for the judiciary. Judges are subject only to the constitution and the law. Because of the hierarchy of legal norms, courts of justice are bound not to apply laws whose content is contrary to the constitution, to European law, or to any other superior law.

The principle of the rule of law is expressly guaranteed by the constitution. Therefore, the executive may not act without a law (principle of legality of administrative action). It further means that fundamental rights and freedoms are guaranteed and that access to independent courts of justice is free.

The principle of the welfare state is also expressly guaranteed by the constitution. Furthermore, the constitution contains a list of social rights and obligations of the state, for health, social security, and the environment.

CONSTITUTIONAL BODIES

The constitution provides for the main organs of the state. These are the president of the republic, the cabinet, Parliament, and the courts of justice.

The President of the Republic

The president of the republic is elected by Parliament for a tenure of five years. Any person who has Greek citizenship for at least five years and is a descendant of a Greek parent is eligible to be elected president after having attained the age of 40. Reelection of the same person is permitted only once.

The institution of the vice president is unknown in Greece. The constitution provides instead for the replacement of the president, in case of incapacity to perform his or her duties lasting more than 30 days. The incapacity has to be ascertained by Parliament, in which case the election of a new president must follow. In any case, during the period of incapacity the president of the republic is replaced by the president of Parliament.

The president of the republic is the head of state. The constitution characterizes the president as a "mediator" or "arbitrator"; this attribute underlines the prestige of the office rather than its powers. Since the constitutional amendment of 1986, the president is a symbolic organ of the state deprived of any real political power.

Many state acts require the signature of the president. Examples of such acts are the promulgation of bills voted by Parliament, the issuance of administrative acts, the appointment of the prime minister, and, at the latter's advice, of the members of the cabinet. In all these functions, the president has little or no margin of appreciation (leeway).

The president does not have criminal and civil liability for acts related to the duties of the office, except for

high treason or intentional violation of the constitution. Criminal proceedings against the president are initiated by Parliament. The trial is performed by a special court. For acts not related to presidential duties the president is fully responsible, before ordinary criminal courts, but prosecution may not start until the expiration of his or her term. For such acts the president also bears full civil liability.

The Cabinet

The cabinet determines and exercises internal and foreign policy, according to the law. Having the right of legislative initiative, and enjoying the majority in Parliament, the cabinet often proposes laws that are approved by the legislature. It can thus determine the policy of the land, making it the strongest political body.

The cabinet comprises the prime minister and the ministers. In order to become a member of the cabinet one has to be Greek, at least 25 years old, and legally entitled to vote. Ministers may not engage in any other professional activities while serving in the cabinet.

The cabinet is governed by the principle of collegiality, though the prime minister has a predominant role. The prime minister's decision to appoint and dismiss ministers is binding on the president of the republic.

The president appoints as prime minister the leader of the political party that enjoys the absolute majority of seats in Parliament. If no party attains such a majority, the president gives a mandate to the leader of the largest party to explore the possibility of forming a cabinet that could enjoy the confidence of Parliament. If this seems possible, the president proceeds to the appointment. If not, the president addresses the leader of the second largest party with a similar mandate, and in case of failure the leader of the third largest party. If all the exploratory mandates are unsuccessful, the president proclaims new elections.

The cabinet, after its appointment, has to appear before Parliament for a vote of confidence. During its term, a vote of confidence or of censure may be initiated by the cabinet or by the opposition, respectively. The loss of Parliament's confidence results to the resignation of the cabinet. If no new cabinet enjoying Parliament's confidence can be formed, the president proclaims new elections.

The members of the cabinet have criminal responsibility for acts related to their duties. Prosecution is entrusted to Parliament and trial to a special court. For other acts, ordinary laws are applicable and ordinary courts of justice are competent. Members of the cabinet have full civil liability as well.

The Parliament

The Parliament is the representative body of the people. It legislates and exercises control over the executive. It also chooses the president of the republic and has the power to press charges against him or her or against cabinet members.

Parliament consists of 300 delegates. It is elected for a term of four years through free, direct, universal, equal, and secret elections, held simultaneously throughout the country. Parliament does not function under the principle of continuity; when its term is over, or when it is dissolved, there is no Parliament; elections must be held within one month of termination or dissolution, and the next Parliament must convene within the next month.

Parliament works in plenum during its annual sessions, which last at least five months, but some members carry on during the period between two sessions in a smaller version of Parliament. The body is organized into committees, the most important those responsible for drafting bills.

Members of Parliament enjoy parliamentary privilege, which safeguards their independence. They may not be prosecuted for opinions or votes in the discharge of their duties, except for libel, if Parliament gives its permission. They may be neither arrested nor prosecuted for acts not relating to their duties, without Parliament's permission, except in cases of flagrant felonies.

The Lawmaking Process

Legislative initiative belongs to each member of Parliament and to each cabinet minister. In practice, however, only bills proposed by the cabinet are voted by Parliament.

Bills are discussed and elaborated in parliamentary committees and in the plenum or in the smaller version of Parliament that operates between sessions. They are voted up or down by the plenum and by the section. Bills of major importance are voted only by the plenum.

Once Parliament passes a bill, the president of the republic proceeds to promulgate it and publish it in the official gazette. The president may choose to send the bill back to Parliament, in case of a serious violation of the legislative procedure. If the bill is passed again, the president is obliged to promulgate it.

The Judiciary

Justice is administered by two types of court: one for civil and criminal cases, the other for administrative cases. At the top of civil and criminal justice (which is composed of courts of first instance and appeal courts) is the Areios Pagos (a Supreme Court); at the top of administrative justice (which is also composed of first instance and appeal courts) is the Council of State. Both are supreme courts. There is also a third supreme court, the Court of Accounts.

A Special Highest Court is provided to settle matters of constitutionality, conflicting interpretation of laws by two supreme courts, and conflicts between different jurisdictions. The Special Highest Court also judges cases concerning parliamentary elections.

Since the end of the 19th century, judicial review of the constitutionality of laws has been diffuse—that is, it can take place in any court. If a lower court concludes

that a law is unconstitutional, it simply does not apply it to the case before it; it does not have the power to derogate (invalidate) the law. This power belongs only to the Special Highest Court.

The judiciary is independent of the legislative and the executive power. Judges enjoy constitutional guarantees that safeguard their independence. No change of their status is permitted without a decision by the Judicial Council.

THE ELECTION PROCESS

All Greeks have the right to vote at the age of 18 and the right to be elected at the age of 25.

Of the 300 members of Parliament, 288 are elected in electoral districts as candidates of political parties or, in very rare cases, as independents. The other 12 are elected as state deputies under the flag of political parties. The election is by proportional representation. No candidate of a political party and no independent candidate is elected if the party or the independent candidate does not win 3 percent of the electorate.

POLITICAL PARTIES

Greece has a multiparty system. Every Greek is free to found and join a political party. Parties are entitled to receive financial support from the state, but they are obliged to have transparent financial management. Banning of political parties is not provided for in the Greek legal system.

CITIZENSHIP

Greek citizenship is acquired by birth and after birth. A child born to a Greek father or a Greek mother is Greek, irrespective of the place of birth. Furthermore, a child born in Greece is also Greek, if he or she does not acquire any other citizenship. A person obtains Greek citizenship after birth if he or she is recognized or adopted by a Greek parent before the age of 18, if he or she voluntarily renders military service, if he or she is admitted to Mount Athos as a monk, or if he or she is naturalized by a decision of the minister of the interior. No person acquires or loses Greek citizenship through marriage. Loss of citizenship (which is very rare) may be decided by the minister of the interior upon application of the interested person, or if a Greek citizen acts to the detriment of the country.

FUNDAMENTAL RIGHTS

The Greek constitution protects fundamental rights and freedoms, civil as well as political and social.

Civil rights and freedoms establish a claim of the individual against the state and against public power in general not to intervene in certain spheres of action. They set limitations to the state and to public power. Examples of such rights in the Greek constitution are the dignity of the person, personal freedom, freedom of movement, privacy, habeas corpus, the right to freely develop one's own personality and to participate in the economic and social life of the country; property rights; freedom of thought, of art, of science, of the press; religious liberty, freedom of correspondence, free access to courts of justice, and fair trial. The current Greek catalogue of civil rights and freedoms contains new 21st-century rights as well, such as the right to be informed and to participate in the information society, protection of personal data and genetic identity, and protection against biomedical interventions.

Greek political rights are rights of participation: Participation in the legislative power is exercised with the right to vote and the right to be elected; participation in the executive power is guaranteed with the right to be appointed as a civil servant; participation in the judicial power is expressed with the right to be appointed as a member of a jury and as a judge. Establishment of political parties and free participation therein are also guaranteed by the constitution.

Greek social rights establish claims for certain services to be provided by the state, guaranteeing a decent standard of living. These claims are not enforceable directly on the basis of the constitution but only when a law concretizes them as legal. What the constitution actually guarantees are the responsibility of the state to advance health and social security; to protect homeless and disabled persons; to provide special care for family, maternity, and childhood; to establish good working conditions for the population; and to protect the environment. Social rights are guaranteed for both Greeks and aliens. The extent of the guarantee is specified by law.

The constitution expressly guarantees equality as a general principle of law. Special mention is made of the equality of men and women.

Civil rights and freedoms are recognized for every person, independently of Greek nationality. An exception is made for the right of assembly and association, which is endowed only to Greeks. Aliens enjoy this right, too, on the basis of the European Convention of Human Rights, but not for political purposes. While political rights are guaranteed only for Greeks, European citizens may vote and be elected in local self-government bodies, in accordance with European law.

Apart from civil rights and freedoms, and political and social rights, the Greek constitution contains institutional guarantees in matters such as ownership and competition; marriage; press, radio, and television; universities; and local self-government. These guarantees, though closely connected to the rights of individuals pertaining to them, protect the institutions as such and not the individuals.

Impact and Functions of Fundamental Rights

The constitution contains fundamental rights in a legal text at the top of the hierarchy of all legal norms, in recognition that rights are the basis of the relationship between the state and the individual. Fundamental rights incorporate the highest values of society and state; they must be respected in every aspect and in every dimension of state action.

Greek constitutional theory and jurisprudence have gradually proceeded to further recognition of the importance of fundamental rights. They are considered to be applicable not only vis-à-vis the state and public power but also vis-à-vis individuals. The most recent constitutional amendment (2001) expressly adopted this "horizontal effect."

In brief, fundamental rights are defensive rights of individuals and groups of individuals, rights of participation in state affairs, and rights of the population for a decent living. These rights are not isolated one from another but are in fact complementary.

Limitations to Fundamental Rights

Fundamental rights are concretized and limited in the constitution itself and in the law. Ordinary laws may restrict fundamental rights only if they are based on a concrete reservation within the constitution. This rule is a consequence of the supreme hierarchical status of the constitution. It applies, however, only to fundamental rights and not to institutional guarantees.

There are a few rights that are privileged and can never be restricted by law. These are basically human dignity and freedom of religious conscience (not of religious practice).

The general right of free development of the personality may not infringe upon the rights of others. The infringement clause of the constitution applies to all fundamental rights. It relies on a balancing test of conflicting rights, using logical, systematic, and teleological interpretation of the constitutional and legal provisions that guarantee these rights. No right may be surrendered completely in favor of another; all conflicting rights must be implemented at least partially, and to the greatest possible extent.

The main principles controlling limitations of fundamental rights are proportionality (the limit cannot be greater than the need), respect for the *core* of the rights, and the principle of equal treatment.

While the constitution prohibits the abuse of fundamental rights, it does not provide for sanctions. The prohibition is still legally binding, as the abusive exercise of rights is not protected.

ECONOMY

The constitution does not mandate a specific economic system. Nevertheless, a free market economy is guaranteed by freedom of contracts, professional freedom, and economic and property rights. It is, however, balanced by explicit provisions for state planning and coordination of economic activities. State intervention in the free market economy aims to consolidate social peace, protect the general interest, and safeguard the economic development of all sectors of the national economy.

The Greek state is defined as a welfare state under the rule of law. This means that it is both liberal and social. Its liberal character is manifested in the guarantee of fundamental civil rights and liberties, its social character in the guarantee of social rights of the members of society. The Greek economic system is, in other words, a social market economy.

RELIGIOUS COMMUNITIES

Parallel to the guarantee of individual and collective religious freedom, which includes the freedom of religious communities, the Greek constitution reserves a special status for the Orthodox Church. The Orthodox Church of Greece is dogmatically united with the Patriarchate of Constantinople and the other Orthodox Churches, but administratively it is autocephalous (rules itself). It is recognized by the constitution as the prevailing religion.

The attribute "prevailing" does not mean that the Church of Greece prevails over other religious communities. It means, according to the traditional doctrine, that the great majority of Greeks are Orthodox. The Church of Greece enjoys several privileges: It is a legal person of public law, whereas other religious communities are normally legal persons of private law. Important Orthodox holidays are recognized as state holidays. The Orthodox clergy is paid by the Greek state; the state undertook this obligation after major donations by the church in periods of economic crisis.

The constitution of 1975 dropped certain other privileges of the Church of Greece, included in former constitutions. Thus, the head of state does not have to be Orthodox, and his or her oath, while Christian, does not pledge protection of Orthodoxy. Proselytism is now forbidden in general, not just when aimed at Orthodox believers as in the past. Finally, education retains a religious orientation but is more detached from the so-called Hellenic and Christian ideals.

A special constitutional provision refers to Mount Athos, a monastic area in the northern part of Greece. The 20 monasteries collectively enjoy a special self-governing status, under the spiritual jurisdiction of the Patriarchate of Constantinople. No person may dwell as a monk in Mount Athos if he is not Orthodox, and no woman may be admitted even for a visit. These exceptions to the principle of equality of sexes and to religious freedom are justified by an Orthodox tradition of more than 1,000 years. They are recognized in the constitution and in international treaties.

MILITARY DEFENSE AND STATE OF EMERGENCY

The army is politically responsible to the cabinet. Its main objective is the defense of the country, though it also assists in cases of natural disasters, for example, if other public forces cannot cope. All Greek men at the age of 18 are obliged to contribute to the defense of the country by 12 months of military service. Women can volunteer but are not required to serve. Conscientious objection is recognized, but men exempted on that basis must serve in social institutions for twice the normal period.

In case of war, mobilization, or an armed coup d'état the Law on the State of Emergency may be put in effect. All powers concerning the protection of the security of the state and of public order are then transferred to the military authorities. Provisions on fundamental rights may be suspended and military tribunals acquire jurisdiction over civilians. The law takes effect after a three-fifths vote of all the members of Parliament, upon recommendation of the cabinet.

AMENDMENTS TO THE CONSTITUTION

The Greek constitution is relatively rigid. The most fundamental constitutional principles and provisions cannot be changed at all. These are the form of government as a parliamentary republic, the separation of powers, the dignity of the person, the freedom of movement and of the development of the personality, equality, and religious freedom. All other provisions may be amended but only under a complicated two-phase procedure. Parliament, upon proposal of at least 50 of its members, decides by a three-fifths majority of its members' vote on the need to revise the constitution and specifies the provisions to be amended. The next elected Parliament proceeds to the revision, which now requires only the support of an absolute majority of all members. If the first Parliament only achieved an absolute majority to the proposal, then the second Parliament needs the three-fifths vote to pass the change. Revision of the constitution is not permitted before a lapse of five years from the previous revision.

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Philippos Spyropoulos

GRENADA

At-a-Glance

OFFICIAL NAME
Grenada

CAPITAL
Saint George's

POPULATION
100,800 (2005 est.)

SIZE
133 sq. mi. (344 sq. km)

LANGUAGES
English (official), French patois

RELIGIONS
Roman Catholic 53%, Anglican 13.8%, other Protestant 33.2%

NATIONAL OR ETHNIC COMPOSITION
African descent 82%, European 13%, European and East Indian 5%, trace of Arawak or Carib Indian

DATE OF INDEPENDENCE OR CREATION
February 7, 1974

TYPE OF GOVERNMENT
Constitutional monarchy with British Westminster style Parliament

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 19, 1973 (in force February 7, 1974)

DATE OF LAST AMENDMENT
July 19, 1992

Grenada is a constitutional monarchy, divided into executive, legislative, and judicial branches of government, all of which are independent of each other.

As a member state of the British Commonwealth, Grenada is headed by the British monarch, currently her majesty the queen of England, who appoints the governor-general as her representative in Grenada. The executive is formed by the prime minister as the head of the executive branch and the cabinet. As a result of Grenada's character as a Commonwealth state and a part of the Eastern Caribbean legal system, the country maintains only local magistrates' courts. Grenada's legal system subordinates itself under the jurisdiction of the Eastern Caribbean Supreme Court, which was established by the West Indies Associated States, as well as the jurisdiction of the Privy Council of the United Kingdom.

The constitution of Grenada protects a wide range of fundamental freedoms, the enforcement of which lies in the original jurisdiction of the High Court as one branch of the Eastern Caribbean Supreme Court. In accordance with Grenada's common law tradition, religious freedom is protected under the umbrella of freedom of conscience and guaranteed to the individual and to religious communities. There is a separation between the state and religious communities.

The economic system of Grenada can be characterized as a free market system with a few social elements. Grenada does not maintain separate military forces but integrates them into its police forces.

CONSTITUTIONAL HISTORY

The island of Grenada, originally inhabited by Arawak and later by Carib, was discovered in 1498 by Columbus. After more than 100 years without colonization, Grenada was under French rule in 1650. In 1762 the island was captured by the British. Pursuant to the Treaty of Versailles between France and Great Britain, Grenada became a British colony, to which African slaves were taken.

After constituting a part of the British Windward Islands Administration from 1833 until 1958, under which slavery was outlawed in 1834, Grenada joined the Federation of the West Indies until the collapse of this union in 1962. Afterward Grenada gained the status of a state associated with Great Britain. Under the Associated Statehood Act in 1967, Grenada attained full autonomy in internal affairs.

On February 7, 1974, Grenada achieved full independence and adopted a constitution, framed by Great Britain, which established a modified British Westminster parliamentary system. As a result of a coup d'état in 1979, this constitution was suspended and a Marxist-Leninist government, which established strong ties with the Communist bloc countries, was installed. During a power struggle in Grenada in 1983, U.S.-Caribbean forces landed in Grenada and restored the power of the pre-1979 government until general elections could be held the following year. As a result of these elections, the 1974 constitution was restored. In 2003, the Grenada Constitutional Review Commission was established in order to examine the necessity of fundamental changes of the constitution.

FORM AND IMPACT OF THE CONSTITUTION

Grenada has a written constitution, codified in a single document, called the Grenada Constitution Order 1973. This constitution forms the supreme law of Grenada. Every law contradicting it is void.

BASIC ORGANIZATIONAL STRUCTURE

Grenada is a unitary state structured in six parishes and one dependency, which comprises Carriacou and Petit Martinique Islands. Each of the latter two has a local government.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution of Grenada establishes as guiding concepts the principle of the democratic society and the values of peace, order, and good government.

CONSTITUTIONAL BODIES

Under Grenada's constitution, the British monarch, represented by a governor-general, is head of state; the prime minister is the central figure of the executive, while the House of Representatives constitutes the predominant force in the legislature, which also includes the Senate. In matters of judicial solution of constitutional questions, the High Court tends to be the most active part of the judiciary in Grenada.

Her Majesty

The executive powers of the state are vested in the monarch, currently her majesty the queen of England, who exercises them through the governor-general.

The Governor-General

The governor-general, who according to convention is chosen by the prime minister, is appointed by her majesty as her representative in Grenada. The governor-general is a constitutional member of Parliament and has the power to dissolve Parliament at any time. In accordance with the advice of the prime minister, the governor-general assigns responsibilities to the prime minister and other cabinet ministers and plays an active role in the government of Grenada.

The Prime Minister

The prime minister must be a member of the House of Representatives. The governor-general appoints to the post whoever he or she believes is likely to gain the support of the majority of the House of Representatives.

The Cabinet

The cabinet is composed of the prime minister, the other cabinet ministers, and the attorney-general. The cabinet ministers, all members of the Senate or the House of Representatives, are appointed by the governor-general in accordance with the advice of the prime minister.

The Parliament

The Parliament of Grenada is formed by her majesty, the Senate, and the House of Representatives.

The Senate

The Senate consists of 13 members, all appointed by the governor-general, 10 of them on the advice of the prime minister and three on the advice of the leader of the opposition. Given this influence, the Senate does not actually function as an effective and independent balance to the House of Representatives.

The House of Representatives

The House of Representatives represents the 15 constituencies of Grenada. They are elected in general, direct, and secret elections for a term of five years. Each of the members represents the constituency in which he or she has won the majority of the votes ("first-past-the-post").

The Lawmaking Process

Generally speaking, a bill must be first passed by the Senate and the House of Representatives and then assented to by the governor-general on behalf of her majesty. The house plays the major role, in part because it is the house speaker who monitors the constitutionality of the process; in some cases the consent of the Senate to a bill is not obligatory.

The Judiciary

The constitution determines the supreme, independent courts for Grenada to be the High Court and the Court of Appeal that together form the Eastern Caribbean Supreme Court of the West Indies Associated States, and the Privy Council of the United Kingdom. The original jurisdiction of constitutional questions, including those concerning possible infringements on fundamental freedoms, is vested in the High Court. Three of its 13 members are resident judges in Grenada. The Court of Appeal handles only appeals against the High Court's decisions that relate to the interpretation of the constitution or the violation of fundamental rights. The Privy Council's jurisdiction is not restricted to constitutional matters.

THE ELECTION PROCESS

Every Commonwealth citizen who has reached the age of 18, is domiciled in Grenada, and is registered to vote has the right to vote for the House of Representatives. In order to stand for election, a person must, in addition to the aforesaid, have held his or her residence in Grenada for 12 months immediately before the date of the nomination for election or be domiciled in the state and resident in Grenada at that date. The prospective candidate must also have a sufficient knowledge of the English language to take an active part in the proceedings.

POLITICAL PARTIES

Grenada can be described as a multiparty democracy. However, the role of political parties is not established by the constitution.

CITIZENSHIP

In general, every person born in Grenada is a citizen of Grenada, as are those born outside Grenada if one of their parents is a citizen of Grenada. A person who is married to a state citizen is, under certain circumstances, entitled to citizenship.

FUNDAMENTAL RIGHTS

In its preamble, the constitution of Grenada bases itself on inalienable rights. The first article of the document anchors the equal right of every person to a range of fundamental rights and freedoms, as long as their exercise does not conflict with the freedom of others.

Impact and Functions of Fundamental Rights

Although the constitution ascribes a high status to fundamental rights, their impact is rather small. Not all of the rights enshrined in the first article are legally enforceable. The constitution describes, for each fundamental right, the permissible legislation that should not be regarded as limitations of that right. For example, according to the constitution the execution of a court's death sentence shall not be regarded as an intentional deprivation of a person's right to life. Also, the right to life shall not be regarded as implicated when someone dies as the result of the use of force for the defense of property, as long as this result is reasonably justifiable and its extent and circumstances permitted by law.

Limitations to Fundamental Rights

Each fundamental right is, according to the constitution of Grenada, subject to the limits of other individuals' rights and of public values (e.g., public morality). Only in a few cases must these limits be balanced with the values of a democratic society.

ECONOMY

The constitution of Grenada does not establish a specific economic system. However, the text does protect the right to own property, freedom of association, and the right to work (which is not judicially enforceable). The economy is in fact a free market system, while the government fosters social values by setting a 40-hour workweek as a binding standard for the state and by subsidizing the umbrella labor federation.

RELIGIOUS COMMUNITIES

State and religious communities in Grenada are separated. Religious communities have the right to provide their respective members with religious instruction, as long as they do so at the communities' own expense and at sites they fully maintain.

MILITARY DEFENSE AND STATE OF EMERGENCY

Grenada does not have a military, but a paramilitary force (the coast guard) is integrated into the police forces, the latter of which is partly governed by the constitution. There are no constitutional provisions concerning service in the paramilitary force or detailing its powers.

AMENDMENTS TO THE CONSTITUTION

The constitution, as well as the Courts Order and Section 3 of the 1967 West Indies Associated States (Appeals to Privy Council) Order, can be amended by a majority of at least two-thirds of all the members of the House of Representatives. Any changes to the amendment subsequently adopted by the Senate must be approved by the House of Representatives with the same two-thirds majority.

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Angelika Günzel

GUATEMALA

At-a-Glance

OFFICIAL NAME
Republic of Guatemala

CAPITAL
Guatemala City

POPULATION
14,280,596 (July 2004 est.)

SIZE
42,043 sq. mi. (108,890 sq. km)

LANGUAGES
Spanish 60%, Amerindian (23 officially recognized languages, e.g., Quiche, Cakchiquel, Kekchi, Mam, Garifuna, and Xinca) 40%

RELIGIONS
Roman Catholic 55%, Protestant 40%, indigenous Mayan beliefs and other 5%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (mixed Amerindian-Spanish or assimilated Amerindian) approximately 55%, Amerindian or predominantly Amerindian approximately 43%, whites and others 2%

DATE OF INDEPENDENCE OR CREATION
September 15, 1821

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral congress

DATE OF CONSTITUTION
May 31, 1985 (in force January 14, 1986)

DATE OF LAST AMENDMENT
November 17, 1993

Guatemala's 1985 constitution provides for a presidential democracy with a separation of powers among the executive, legislative, and judicial branches. Guatemala is organized as a unitary state.

The classical presidential system is modified. There is a strong vice president and there are elements of parliamentarism, such as the congressional power to vote no confidence against ministers of state.

Free, equal, general, and direct elections of the members of parliament are guaranteed. Guatemala has a pluralistic system of political parties. Referendums can be held.

The constitution provides a number of far-reaching guarantees of human rights, including freedom of religion or belief. The economic system can be described as a social market economy. The constitution provides that the military is subject to the civil government. Guatemala is obligated to conduct its international relations with the purpose of contributing to the maintenance of peace and freedom.

CONSTITUTIONAL HISTORY

From the fourth to the 11th century C.E., the lowlands area of the Peten region of Guatemala was the center of the flourishing Maya civilization. After the decline of the lowland states, the Maya states of the central highlands continued to exist until the Spanish conquest.

The colonial period began on July 25, 1524, when the Spanish conqueror Pedro de Alvarado founded the first permanent conquistador settlement in the capital city of Iximché. The *encomienda,* a system of tributes to be paid by the native people introduced to all the Spanish colonies by the Laws of Burgos 1512, was applied to Guatemala as well. Most of Central America (including San Salvador, Honduras, Nicaragua, Costa Rica, and Chiapas) was under the control of the Captaincy General of Guatemala.

Spanish royal authority in the New World weakened during the European wars of the Napoleonic era. Guatemala had the opportunity to participate in the first Span-

ish constituent congress of Cadiz (1811), but creoles (the locally born descendents of Spaniards) were still in practice excluded from participation in the government of the colonies, and local opposition to the colonial system grew. Influenced by the Plan de Iguala in Mexico (which called for the unification of all the colonies from California to Panama under the rule of a European king), a group of nobles convened in the capital city (present-day Guatemala City) on September 15, 1821, to declare independence.

After a short period as part of the first Mexican Empire of Agustín de Iturbide, Guatemala (except the province of Chiapas) joined El Salvador, Honduras, Nicaragua, and Costa Rica in a united federal state and adopted the Constitution of the Federal Republic of Central America (Provincias Unidas del Centro de América) on November 22, 1824. The federation, independent of both Spain and Mexico, fell apart in a civil war between liberals and conservatives (1838–40). Guatemala had already withdrawn from the federation in 1839, under a conservative counterrevolution led by José Rafael Carrera. Carrera heavily revised the 1824 constitution of Guatemala and also signed a treaty with the United Kingdom in 1859 that defined the borders with Belize, then known as British Honduras.

The 1879 constitution introduced habeas corpus rights. The document was amended nine times and lasted until 1945.

Despite the liberal constitution, presidents became increasingly dictatorial. The country passed through a series of dictatorships, insurgencies, and periods of military rule with only occasional periods of representative government. These dictators, known as *caudillos,* all had the strong support of the armed forces. The last was overthrown in the "October Revolution" (1945) and a new constitution was proclaimed. In addition to civil liberties, it included social rights, the possibility of expropriation of landowners, and the neutrality of the armed forces. A successful United States–backed invasion from the territory of Honduras in 1954 led to the constitutions of 1956 and 1965. In the meantime, guerrilla groups emerged to conduct armed insurrections against the government that lasted for the next 36 years.

After a series of insurgencies and another coup d'état in 1982, a Statute of Government was promulgated, but it was supplanted by emergency measures on several occasions. The 1985 constitution was an attempt to start a process of democratization. It included many provisions of the 1965 constitution and was similar to other Latin American constitutions.

Guatemala, Costa Rica, Honduras, Nicaragua, and El Salvador signed a peace treaty for Central America in 1987, and in 1996, the Guatemalan government and rebels finally signed peace accords that ended the 36-year conflict. However, a referendum on a constitutional amendment that permitted the appointment of a civilian minister of defense failed in 1999.

Guatemala is a member state of the Organization of American States (OAS).

FORM AND IMPACT OF THE CONSTITUTION

The written constitution comprises 307 articles (280 articles in the main constitution and 27 transitory and final provisions) and four constitutional laws (*leyes constitucionales*): on elections and political parties, on constitutional remedies, on public order and the state of emergency, and on freedom of expression. These make up the Political Constitution (Constitución Política de la República de Guatemala), which takes precedence over all other national law.

Ratified international human rights treaties and agreements have precedence over national law.

BASIC ORGANIZATIONAL STRUCTURE

Organized as a unitary state, Guatemala is made up of 22 departments administered by governors appointed by the president. Local autonomy is constitutionally protected. In practice, in some instances there is a parallel administration for indigenous people.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution defines the state of Guatemala as free, independent and sovereign, organized to guarantee its inhabitants the enjoyment of their rights and liberties. Its system of government is republican, democratic, and representative.

It is also a social state, based on the rule of law. It is a duty of the state to guarantee the inhabitants of the republic life, liberty, justice, security, peace, and the integral development of the person. Furthermore, Article 1 reads: "It is the duty of the state to protect the person and the family; its supreme goal is the realization of the public good."

CONSTITUTIONAL BODIES

The predominant bodies are the president and the vice president, the Congress of the Republic, the judiciary including the Constitutional Court, and the human rights ombudsman.

The President and the Vice President

The president of the republic is both the chief of state and head of the executive. The president appoints and dismisses the cabinet ministers, in accordance with the law.

In view of negative experiences with past leadership, the constitution limits the president to one four-year

term. Reelection or extension of the term can be punished in accordance with the law. Furthermore, no one who has served in the armed forces in the previous five years or has taken part in a coup d'état or armed movement may run for president.

The vice president also has a strong position. The vice president coordinates the ministers of state, assists the president in implementing general policy, and participates jointly with the president in foreign policy.

The president, the vice president, and the ministers of state, meeting in session, constitute the Council of Ministers (Consejo de Ministros). The ministers have the obligation to appear before the Congress of the Republic if called.

The Congress of the Republic (Congreso de la República)

The legislative power is vested in the Congress of the Republic. Its period of office is four years.

If congress is dissatisfied with the performance of a cabinet minister, the deputies can so indicate with a vote of no confidence. If the president does not accept the subsequent resignation of a cabinet minister, congress can dismiss the cabinet minister with a two-thirds majority.

The Lawmaking Process

Laws may be proposed not only by the president and the congress, but also by the Supreme Court, the Supreme Electoral Tribunal, and the University of San Carlos, in their respective areas of authority.

The president may veto acts of congress, but congress may override the veto by a vote of two-thirds of its members.

The Judiciary

According to the constitution, the judiciary is independent. The Supreme Court of Justice (Corte Suprema de Justicia) consists of 13 justices or *magistrados,* who serve for five-year terms. The justices are proposed by an expert commission and are elected by the Congress of the Republic.

Rulings on the constitutionality of laws are reserved for the Constitutional Court (Corte de Constitucionalidad), which consists of five justices, who serve for five-year terms. The following institutions appoint one justice each: the Supreme Court Plenary, the Congress of the Republic, the president, the Superior University Council of the University of San Carlos of Guatemala, and the Assembly of the Guatemala Bar Association.

Human Rights Ombudsperson (Procurador de Derechos Humanos)

Any citizen may submit a complaint to the office of the human rights ombudsperson. The ombudsperson, proposed by a Human Rights Commission and elected by the Congress of the Republic, investigates complaints and makes recommendations.

THE ELECTION PROCESS

All Guatemalans over the age of 18 have the right to vote in elections except active members of the armed forces, who are restricted to their barracks on election day. Deputies to the Congress of the Republic are elected directly by the people in universal and secret suffrage for a period of four years. There is a system of proportional representation with 75 percent of the members of congress elected in multimember districts and the remainder chosen from a single national district.

Active members of the armed service may not stand for elections as deputies, president, or vice president; they must wait for five years after their retirement or resignation. This provision has been tested several times: In 1993, when Vice President Espina unsuccessfully tried to succeed Serrano, and in 1995, when the retired general Efraín Ríos Montt, who had led the coup d'état in 1982, tried to run for president, the Constitutional Court decided that they could not run.

POLITICAL PARTIES

Guatemala has a pluralistic system of political parties; however, the party system lacks stability.

CITIZENSHIP

Those born in the territory of Guatemala and children of a Guatemalan father or mother born abroad are considered native Guatemalans. Nationals of the republics that make up the Central American Federation may also acquire citizenship.

FUNDAMENTAL RIGHTS

Fundamental rights are defined at the beginning of the constitution, after the definition of the overall duty of the state. There are the classic individual rights, such as the right to life and equality, as well as social rights, such as the right to food.

Impact and Functions of Fundamental Rights

Human rights in the constitution are regarded as natural rights. The procedure of *amparo* entitles a person to sue for "protection" by the courts, if constitutional rights are threatened. According to international organizations, the respect for human rights and the implementation of the

rule of law by the Guatemalan administration of justice still face serious challenges.

Limitations to Fundamental Rights

Many rights can be limited by law, such as the inviolability of home, correspondence, and private documents. The state can also suspend some rights during a state of emergency.

ECONOMY

The constitution does not specify any type of economic system. It acknowledges private property as well as expropriation, provides for state economic planning, and obliges the state to provide electricity and certain other goods. Taken as a whole, the economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a fundamental right. The legal status of the Catholic Church is recognized; other associations of a religious character can apply for recognition by law.

MILITARY DEFENSE AND STATE OF EMERGENCY

It is the constitutional duty of citizens to serve and defend the country and to perform military and social service in accordance with the law. Citizens at the age of 18 and 24 must serve either in the armed forces or in social service projects, respectively. The length of service in the army is 30 months.

The army is still authorized to maintain both internal and external security. According to the constitution, it must be "apolitical." The constitution emphasizes that the president is commander in chief of the armed forces. Should a president refuse to leave office after the term has expired, the army automatically falls under the authority of Congress of the Republic.

The law of public order knows five different states of emergency. The president may suspend some fundamental rights in a state of emergency but must submit the decree to the Congress of the Republic within three days for review.

AMENDMENTS TO THE CONSTITUTION

The constitution, as well as constitutional laws such as the electoral law, can generally be amended by a two-thirds vote of the total number of deputies. Amendments must then be ratified through a referendum.

The human rights provisions of Chapter 1 of Title 2 of the constitution, and the amendment provisions themselves, can be changed only by a National Constituent Assembly. Such an assembly can be called by a two-thirds majority vote of the members of congress.

Some provisions are not subject to change at all: "In no case can Articles 140, 141, 165g, 186 and 187 be amended, nor can any question relating to the republican form of government, to the principle of the non-re-electability for the exercise of the presidency of the republic be raised in any form, neither may the effectiveness or application of the articles that provide alternating the tenure of the presidency of the republic be suspended or their content changed or modified in any other way." In other words, the essential identity of the constitution may not be changed.

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Michael Rahe

GUINEA

At-a-Glance

OFFICIAL NAME
Republic of Guinea

CAPITAL
Conakry

POPULATION
9,246,462 (2005 est.)

SIZE
94,926 sq. mi. (245,857 sq. km)

LANGUAGES
French (official), ethnic group languages

RELIGIONS
Muslim 85%, Christian 8%, indigenous belief 7%

NATIONAL OR ETHNIC COMPOSITION
Peuhl 40%, Malinke 30%, Soussou 20%, smaller ethnic groups 10%

DATE OF INDEPENDENCE OR CREATION
October 2, 1958

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 23, 1990

DATE OF LAST AMENDMENT
June 12, 2003

Guinea is a centralist democratic state with a unicameral parliament. The constitution provides for separation of executive, legislative, and judicial powers. The fundamental set of human rights is guaranteed. The Supreme Court of Guinea has the jurisdiction over certain constitutional disputes as specified in the constitution.

The president of the republic is the head of state, the central political figure, and the head of the executive administration. The prime minister holds responsibility for the execution of government policy. The legislative power lies with the unicameral parliament as the representative body of the people. Elections for parliament and president are secret, equal, general, and direct. The pluralistic system of political parties has major political impact.

The Guinean constitution establishes the principle of secularity, under which religious freedom is assured for the individual as well as for religious communities. The economic system outlined in the constitution is that of a market economy with social responsibility.

CONSTITUTIONAL HISTORY

Since gaining independence from France in 1958, Guinea has had only two presidents. After the death of the first president in 1984, the military seized power and General Lansana Conté became head of the military government.

In the period of the transition to a civil government, the constitution was enacted in 1990. In 1993, the general became the civil president in Guinea's first democratic election, and he was reelected in 1998. He was reelected for a third time in 2003 after the constitution was altered to allow him to run for another term.

In the 2003 election, Mamadou Bhoye Barry, the only other presidential candidate and a member of the Union for National Progress, gained less than 5 percent of the votes and contested the results. Other opposition parties boycotted the elections, saying they would not be free or fair. The Guinean Human Rights Organization accused the election organizers of substantial and severe violations of the law.

The stability of the Republic of Guinea has been threatened on numerous occasions when humanitarian crises and unrest in neighboring countries spilled over into Guinea.

FORM AND IMPACT OF THE CONSTITUTION

Guinea has a written constitution, codified in a single document that takes precedence over all other laws in the country. Thus, the wide range of customary law may have to be modified to put it into conformity with the constitution.

Recent history shows a lack of attachment to the constitution; in some situations the constitution was amended to meet specific political needs. The last amendment, for example, was passed to allow the president to be reelected for a third term.

BASIC ORGANIZATIONAL STRUCTURE

Guinea is a centralist state with a primarily presidential organizational structure. For administrative reasons, the country is divided into 33 prefectures and one special zone.

LEADING CONSTITUTIONAL PRINCIPLES

Guinea is a secular state with a legal system based on the French civil law and influenced by indigenous customary law. The governmental system provided by the constitution is that of a presidential democracy with a unicameral parliament. Executive, legislative, and judicial powers are separated and bound by the rule of law. The judiciary is independent.

CONSTITUTIONAL BODIES

The predominant organs provided for in the constitution are the president of the republic; the prime minister, who bears chief responsibility for the executive administration; the president's cabinet; the National Assembly, Guinea's unicameral parliament; and the judiciary, including the Supreme Court of Guinea, which has jurisdiction over specific constitutional disputes.

The President of the Republic

The president of the republic is the head of state and the dominant figure in politics. The president serves a five-year term and can be reelected. The election is direct, by means of a general, public, and secret vote. The president appoints the cabinet of ministers, including the prime minister, who supports the executive functions of the president.

The Cabinet

The cabinet determines the general policy of the executive administration. The main responsibility lies with the prime minister. This position is not specifically regulated in the constitution; the prime minister is selected out of the group of cabinet ministers as the first minister. As are all the other cabinet ministers, the prime minister is appointed by and responsible only to the president.

The National Assembly (Assemblée Nationale)

The parliament, as the main representative organ of the people, is the supreme legislative power. The members of parliament are elected for a term of five years in a general and secret balloting process; reelection is possible.

Article 59 of the Guinean constitution contains a detailed enumeration of topics in which the parliament has the right and the duty to exercise its legislative powers.

The Lawmaking Process

Parliament passes laws in the form of acts of parliament, which are then signed by the president. The president has the right to refuse to sign, in which case the president must return the unsigned bill to parliament for a second reading. To overcome the veto, the bill must win approval from no less than two-thirds of the members of parliament. If the president still is opposed, he or she can ask the Supreme Court to review whether the bill is in conformity with the constitution.

The Judiciary

The independence of the judiciary is guaranteed by the constitution. The highest court is the Supreme Court of Guinea, which has two functions. It is the final court of appeal for all inferior courts (High Court of Justice and lower local courts). In addition, the constitution gives the Supreme Court exclusive jurisdiction to decide whether a new law is in conformity with the constitution. The Supreme Court also decides other constitutional disputes, especially those between state organs.

THE ELECTION PROCESS

Guinea has universal suffrage for all citizens over the age of 18. The minimal age of eligibility to run for parliament is 21 years. A presidential candidate must be between 40 and 70 years old.

POLITICAL PARTIES

Guinea has a pluralistic system of political parties. The constitution provides several instruments to regulate the involvement of political parties in public life. Such topics as the maximal number of political parties, the conditions under which they can act, and the procedure to ban a party are left to be regulated by law. Political parties play an important role in political life. The constitution requires that presidential candidates and candidates for deputy be proposed by a political party.

CITIZENSHIP

A child of a Guinean father acquires citizenship regardless of the child's country of birth. Citizenship can also be obtained by descent through the maternal line, provided that the mother was a Guinean citizen and the father is unknown or stateless. A foreign woman who marries a citizen of Guinea is entitled to citizenship.

FUNDAMENTAL RIGHTS

Fundamental rights are described specifically in the first part of the constitution. The traditional basic set of human rights and civil liberties is guaranteed. The constitution not only guarantees protection against the violation of fundamental rights but even requires the state to become active in their support. Workers' rights are outlined very clearly.

Impact and Functions of Fundamental Rights

All public organs are bound by fundamental rights, but there is no special court or procedure to guarantee their enforcement. As a result of the long history of human rights abuses, the impact of fundamental rights in Guinean political life must be considered limited.

Limitations to Fundamental Rights

The exercise of the fundamental rights guaranteed in the constitution can be limited by law. The constitution stipulates that any such limitation is justifiable only as long as it is essential to the upholding of public order and democracy.

ECONOMY

No specific economic system is required by the constitution; however, certain principles can be derived from the list of fundamental rights, including the right to work and freedom of property. These provisions in effect oblige the state to create conditions in which the right to work can be exercised. Hence the constitution favors a system that recognizes social responsibility in the context of a relatively free market.

RELIGIOUS COMMUNITIES

Freedom of thought and religion is guaranteed as a human right. Religious communities have an explicit right to organize and administer themselves without interference from the state. The constitution follows the principle of secularity.

MILITARY DEFENSE AND STATE OF EMERGENCY

In Guinea, all men over the age of 18 are obligated to serve in the military for two years. In addition to this, professional soldiers can enter military service at the age of 18.

The purposes of the armed forces are not specifically outlined in the constitution. The president has responsibility for the national defense, the administration of the military, and the appointment of military personnel.

A state of emergency can be decreed by the president after consultation with the president of the parliament and the president of the Supreme Court. The president can take every measure necessary to reestablish public order or to defend the territorial integrity, but he or she cannot dissolve the National Assembly.

AMENDMENTS TO THE CONSTITUTION

The initiative to amend the existing constitution can originate with the president or National Assembly deputies. If the bill is a presidential proposal, it can be approved if a two-thirds majority of the members of parliament vote in favor. Otherwise, it requires a popular referendum. The type of government, the principle of secularity, and separation of powers are not open to amendment.

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Anja-Isabel Bohnen

GUINEA-BISSAU

At-a-Glance

OFFICIAL NAME
Republic of Guinea-Bissau

CAPITAL
Bissau

POPULATION
1,388,363 (2005 est.)

SIZE
13,946 sq. mi. (36,120 sq. km)

LANGUAGES
Portuguese (official), Crioul, African languages

RELIGIONS
Indigenous beliefs 50%, Muslim 45%, Christian 5%

NATIONAL OR ETHNIC COMPOSITION
Balanta 30%, Fula 20%, Manjaca 14%, Mandinga 13%, Papel 7%, European and Mulatto 1%, other 15%

DATE OF INDEPENDENCE OR CREATION
September 24, 1973 (unilaterally declared by Guinea-Bissau); September 10, 1974 (recognized by Portugal)

TYPE OF GOVERNMENT
Mixed presidential-parliamentary system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 16, 1984

DATE OF LAST AMENDMENT
June 9, 1996

The Republic of Guinea-Bissau is a centralist democracy with a unicameral legislature. The constitution provides a separation of executive, legislative, and judicial powers. The fundamental set of human rights is guaranteed. A claim of violation of fundamental rights can be taken before the regular courts. Parliament has the right to resolve constitutional disputes.

The president of the republic is the head of state; he or she is assisted in the executive functions by the Council of State. The prime minister is responsible for the execution of the administration's policy. The legislative power lies with the unicameral parliament as the representative body of the people. Elections for parliament and the office of the president are secret, equal, general, and direct. In recent years, a pluralistic system of political parties has had an increasing impact on political life.

The constitution of Guinea-Bissau establishes the principle of secularity, in which religious freedom is assured for the individual as well as for legally recognized religious communities. The economic system outlined in the constitution is that of a market economy with social responsibility.

CONSTITUTIONAL HISTORY

Since Guinea-Bissau gained independence from Portugal in 1974, the country has suffered from extensive turmoil. The founding constitution implemented a single-party system and a state-regulated economy. The ruling party, Partido Africano da Independência (PAIGC), connected the country closely to Cape Verde. Fearing an increasing influence of Cape Verde in Guinea-Bissau's politics, the military seized power in 1980. Joao Vieira became president, and a multiparty system as well as a market economy were established.

Several attempts to overthrow the government during the 1980s and early 1990s failed. Vieira became the country's first freely elected president in 1994. In 1998, a civil war broke out, and in 2004, Kumba Yala took the office of the president after a transparent election process.

In September 2003, Henrique Rosa followed him after a bloodless coup.

The stability of the Republic of Guinea-Bissau is threatened by its crippled economy and the consequences of prolonged civil war.

FORM AND IMPACT OF THE CONSTITUTION

Guinea-Bissau has a written constitution, codified in a single document, that takes precedence over all other national law. However, political practice shows increasing disrespect for the constitution. A number of changes of the constitution have occurred according to day-to-day political preference.

Therefore, the impact of the constitution is highly dependent on actual political situations.

BASIC ORGANIZATIONAL STRUCTURE

Guinea-Bissau is a centralist state with nine administrative divisions. The regional authorities have little political influence.

LEADING CONSTITUTIONAL PRINCIPLES

Guinea-Bissau is a secular state. The government system established by the constitution is that of a constitutional democracy. Executive, legislative, and judicial powers are separated and bound by the rule of law. The judiciary is independent.

CONSTITUTIONAL BODIES

The predominant organs provided for in the constitution are the president of the republic, assisted by the Council of State; the executive administration, with its prime minister; the National People's Assembly, Guinea-Bissau's unicameral parliament; and the judiciary, including the Supreme Court of Justice, which does not have special constitutional jurisdiction but is named expressly by the constitution as an independent constitutional organ.

The President of the Republic

The president of the republic is the head of state and represents the republic. The president serves a five-year term and is elected in a general, public, and secret vote.

The constitution provides a political organ called the Council of State to advise and assist the president. The 15 members of the Council of State are elected from among the members of parliament. In times when the legislature is not in session, the Council of State executes the functions of the National People's Assembly.

The Executive Administration

The executive administration comprises the prime minister, its head; the cabinet ministers; and the secretaries of state. It sets its own program, which must be approved by the parliament. The administration conducts the affairs of the state in accordance with this program.

The prime minister is appointed by the president after consultation of the political parties represented in parliament. It is the prime minister's duty to inform the president about important political issues.

The National People's Assembly

The parliament, as the main representative organ of the people, is the supreme legislative power. The members of parliament are elected for a term of four years in a general and secret balloting process. Reelection is allowed.

The Lawmaking Process

The constitution of Guinea-Bissau does not give a detailed description of the procedure to pass a law. In the articles dealing with the National People's Assembly, the constitution establishes that parliament has the right to create law, and that the right to initiate bills belongs to members of the Council of State, the parliament, the executive government, and the president. The president of the National People's Assembly must sign each new bill and order its publication in the *Official Bulletin.*

The Judiciary

The independence of the judiciary is guaranteed by the constitution. The highest court is the Supreme Court or Supremo Tribunal da Justica. It is the final court of appeals for all inferior courts. The first courts of appeal are the Regional Courts. The 24 Sectoral Courts are inferior courts in which the judges are not necessarily trained lawyers.

The National People's Assembly has the right to resolve constitutional disputes, rather than the Supreme Court.

THE ELECTION PROCESS

Guinea-Bissau has universal suffrage for all citizens over the age of 18. The minimal age to be eligible to run for office is 21 years.

POLITICAL PARTIES

The constitution of Guinea-Bissau guarantees the existence of political parties as an instrument for promoting political pluralism.

The constitution leaves the following matters to regulation by law: the role of the parties in public life, the conditions under which they can act, and the procedure for banning them. To ensure the unity of the country, a party is not allowed to use a name that can be identified with a person, a region, or a religion.

Political parties play an important role in public life, not only in elections for parliament, but also in designation of the prime minister, who is appointed by the president only after consultation of the main political parties.

CITIZENSHIP

Birth within the territory of Guinea-Bissau automatically confers citizenship on the newborn regardless of the nationality of the parents. A child born abroad acquires citizenship if at least one of the parents is a citizen of Guinea-Bissau. A foreign person who marries a citizen of Guinea-Bissau is eligible for citizenship, as are foreign persons whose grandparents were citizens of Guinea-Bissau.

FUNDAMENTAL RIGHTS

Fundamental rights are enumerated in the first part of the constitution. The traditional set of liberal human rights and civil liberties are included.

The constitution in particular clearly outlines the rights of the workforce and the rights of an accused person. The constitution guarantees protection against the violation of fundamental rights through the regular judicial organs.

Impact and Functions of Fundamental Rights

All public authorities are bound by the fundamental rights, but there is no special court or procedure to guarantee their enforcement. The jurisdiction lies with the regular courts, which are often overloaded and generally do not consist of trained lawyers.

As a result of the long history of human rights abuses, the impact of fundamental rights in Guinea-Bissau's political life has its limits. The full realization of civil and political rights also suffers from an underresourced administration of justice and the generally insecure economic situation.

Limitations to Fundamental Rights

The exercise of the fundamental rights guaranteed in the constitution can be limited by law. The constitution states that any such limitation is justifiable as long as it is necessary to uphold other constitutionally protected rights and interests. Such a limitation is valid only on condition that it is not retroactive and the limited right is not diminished so far as to endanger its essence.

ECONOMY

No specific economic system is mandated by the constitution. However, the 1984 constitution was created after the era of state-regulated markets, and it appears to provide the basis for a liberal economy, in fundamental rights provisions dealing with the workplace and property rights. In sum, the constitution favors a system that provides a system of social responsibility in a relatively free market.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed as a human right. In addition, the constitution declares a separation between state and religion, except that legally recognized religious communities are respected and protected. The conditions for legal recognition are not stated in the constitution, but any exercise of religion, as well as any activity of a religious community, can be made subject to regulation by law.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military of Guinea-Bissau consists only of professional soldiers, as general conscription does not exist. All men over the age of 18 are allowed to volunteer.

The purposes of the armed forces are not specifically outlined in the constitution. The president bears responsibility for national defense, the administration of the military, and the appointment of military personnel.

A state of emergency can be declared by the Council of State, which then takes over the functions of the parliament. The constitution spells out the measures that can be taken in a state of emergency; fundamental rights can be suspended, but only in part.

AMENDMENTS TO THE CONSTITUTION

The initiative to alter the existing constitution can originate with the president, the Council of State, the administration, or one-third of the members of parliament. To be adopted, such a proposal needs a two-thirds majority of all deputies in the National People's Assembly. The republican form of the state, the unitary structure, the principles of secularity, and the integrity of national territory are not open to amendment.

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Anja-Isabel Bohnen

GUYANA

At-a-Glance

OFFICIAL NAME
The Co-operative Republic of Guyana

CAPITAL
Georgetown

POPULATION
772,200 (2005 est.)

SIZE
83,000 sq. mi. (214,970 sq. km)

LANGUAGES
English (official), Amerindian dialects, Creole, Hindi, Urdu

RELIGIONS
Christian 50%, Hindu 35%, Muslim 10%, other 5%

NATIONAL OR ETHNIC COMPOSITION
Indo-Guyanese 49.5%, Afro-Guyanese 35.6%, Amerindian 6.8%, Chinese, European, and other 8.1%

DATE OF INDEPENDENCE OR CREATION
May 26, 1966

DATE OF CREATION
February 23, 1970

TYPE OF GOVERNMENT
Presidential democracy, cooperative republic within the Commonwealth

TYPE OF STATE
Centralist state divided into 10 administrative regions

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 6, 1980

DATE OF LAST AMENDMENT
August 12, 2003

After achieving independence from the United Kingdom in 1966, the former British Crown Colony of Guyana has embarked on a slow but steady route to representative democracy. Ruled by a series of authoritarian and socialist-oriented governments, it held its first genuinely free and fair elections in 1992.

The Co-operative Republic of Guyana is a secular, democratic, and sovereign state, with socialist economic tendencies. Its constitution provides for a division of executive, legislative, and judicial powers. The constitution, based on the principle of participatory democracy, enshrines certain fundamental civil and political rights, as well as economic, social, and cultural rights, mainly in the field of employment and work. As a result of its colonial past, Guyana forms part of the British Commonwealth. The great ethnic diversity of population, with the Indo-Guyanese and Afro-Guyanese representing the two largest antagonistic groups, marks the political reality of Guyana's past, present, and future.

CONSTITUTIONAL HISTORY

A former British colony, the Co-operative Republic of Guyana was founded in 1970, four years after achieving independence. Its initial constitution was replaced by the constitution of the Co-operative Republic of Guyana Act in 1980, which enshrined socialist values and concentrated executive power in the hands of the president.

This constitution was amended in 1996. Further initiatives to strengthen the role of parliament, create constitutional commissions under a human rights umbrella commission, and reform the electoral system were stifled by opposing forces. Territorial disputes with Venezuela

and Suriname have led to the inclusion of various enemy-related provisions in the constitution.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Guyana is codified in a single written and detailed document, constituting the supreme law of the country. Any national legal provision inconsistent with its provisions shall be null and void. Provisions guaranteeing fundamental rights and freedoms may be directly invoked in any court of law; invocation of such provisions automatically leads to the jurisdiction of the High Court.

BASIC ORGANIZATIONAL STRUCTURE

Guyana is a centralist state, organized as a presidential democracy and consisting of 10 regional administrative districts. A certain level of decentralization grants administrative powers to lower government bodies at the regional and local levels.

LEADING CONSTITUTIONAL PRINCIPLES

Guyana's constitution subscribes to a clear division of powers, people's participation, and secularism. The principal objective of its constitution is the establishment of a socialist democracy with an emphasis on national economic planning, national development through cooperation, and the rights and duties of all citizens to achieve the highest possible levels of production and productivity.

CONSTITUTIONAL BODIES

Constitutional bodies provided for by the constitution are the president; the administration or cabinet; the National Assembly; the regional administration, including the National Congress of Local Democratic Organs; the Supreme Congress of the People; and the judiciary.

The President

The executive power is vested in the president, who serves simultaneously as head of state, supreme executive authority, and commander in chief of the armed forces. Elected for a term of up to five years, the president may dissolve all representative bodies, such as the National Assembly and Local Democratic Councils, at any time by proclamation; he or she can veto any bills, grant pardons, and repeal Guyanese citizenship. The president may also appoint the prime minister as his or her principal assistant and as leader of executive business in the National Assembly. Although extremely powerful, the president must answer to the National Assembly, which is granted power to investigate any allegations of misconduct or violation of constitutional provisions.

The Administration

The government of Guyana consists of the president, the vice president, the prime minister, and the cabinet of ministers.

The National Assembly

The National Assembly, consisting of 65 members elected by a system of proportional representation for a term of five years, constitutes the central representative organ of the people of Guyana. It exercises legislative powers by drafting and passing bills with the approval of the president.

All members of the National Assembly are granted immunity from civil and criminal proceedings while in office. The High Court exercises full judicial review of all National Assembly actions.

Regional Administration

Local Democratic Councils are the elected regional administrative bodies, charged with ensuring the development of their areas. As the lowest level of government, they have as their primary tasks maintenance of law and order, protection of public property, safeguarding of fundamental rights and freedoms, and improvement of living and working conditions. Parliament may assign more extensive powers.

The National Congress of Local Democratic Organs represents the interests of local government in Guyana and serves the central government in an advisory function.

Supreme Congress of The People

Consisting of all members of the National Assembly and the National Congress of Local Democratic Organs, the Supreme Congress of the People may discuss issues and make recommendations concerning matters of public interest and advise the president on all matters the president may refer to it.

The Lawmaking Process

Any member of the National Assembly may introduce a bill. After parliamentary debate and passage, the bill is presented to the president for approval. The president may either approve or veto it; in the latter case, he or she returns the bill to the speaker of the National Assembly. If the assembly overrides the veto by two-thirds major-

ity, the president must either approve the bill or dissolve parliament. The latter option has been used in the past to stifle parliamentary opposition. The National Assembly has no authority over fiscal matters, unless the cabinet recommends or consents to fiscal legislative changes.

The Judiciary

The judiciary is made up of a magistrate's court for each of the 10 regions as well as the Supreme Court of Judicature, consisting of a Court of Appeal and a High Court. It is granted full independence in reviewing legislative and executive acts.

The legal system of Guyana is based on British common law. A heavy backlog of cases, lengthy court proceedings, increasingly long periods of pretrial detention, as well as alleged violations of fundamental rights of indigenous peoples render the judiciary's effectiveness questionable.

In addition to the judiciary, an ombudsperson is granted investigative powers into government and administrative acts, with exceptions extending to actions taken with regard to foreign relations, national security, official appointments to office, presidential pardons, and the opening and conduct of civil or criminal court proceedings.

THE ELECTION PROCESS

The right to vote is granted to all Guyanese citizens and Commonwealth citizens resident in Guyana above the age of 18. The right to run for parliamentary elections is granted Guyanese citizens above 18 with English proficiency, unless they have allegiance to a foreign power, are declared mentally unsound, or are under a death or other prison sentence of more than six months. Elections are held by secret ballot, organized and supervised by the Central Elections Commission.

POLITICAL PARTIES

The constitution explicitly guarantees the right to form political parties and their freedom of action, subject only to respect for national sovereignty and democratic principles. Consequently, a pluralistic party landscape has developed. However, as political parties are mainly formulated along ethnic lines, the People's Progressive Party/Civic (PPP/Civic), representing the Indo-Guyanese population as the largest single ethnic group, has been able to win all free elections in the past. Guyana's ethnic division renders any change in the current distribution of political power unlikely.

CITIZENSHIP

The constitution makes detailed provisions for the acquisition and deprivation of Guyanese citizenship, linking citizenship to both Guyanese descent (*ius sanguinis*) and place of birth (*ius soli*). Every person born in Guyana, or to Guyanese citizens abroad, is accorded citizenship, with exceptions applying only to offspring of diplomats rightfully accredited to Guyana or of an enemy alien. Citizenship may also be acquired by marriage, subject to exceptions prescribed in the interests of national security or public policy. Dual citizenship is prohibited.

FUNDAMENTAL RIGHTS

The constitution of Guyana guarantees, in detail, a wide range of fundamental civil and political rights, as well as economic, social, and cultural rights. Among these are the right to life, liberty, and security of the person; the protection of the law including fair trial; freedom from forced labor and torture; and freedom of opinion, assembly, and association. Bound by socialist values, economic, social, and cultural rights include the right and duty to work and workers' rights and needs; the right to property of private enterprises as well as personal belongings and assets; free education and health care; and the right to adequate housing.

Impact and Functions of Fundamental Rights

Allegations of human rights violations are subject to judicial review of the High Court. All fundamental rights and freedoms may only be invoked in disputes governing the relationship between individual and government. Although respect for human rights in practice has improved considerably over the years, human rights groups claim counterterrorism measures have had deleterious effects on the protection of human rights.

Limitations to Fundamental Rights

The constitution contains several limitations on fundamental rights and freedoms and includes a broad derogation (suspension) clause. Fundamental rights and freedoms may be restricted in the interest of defense, public safety, public order, public morality, public health, as well as town or country planning. Private property may be expropriated in a wide range of cases, for example, for public benefit or the protection of Amerindian communities. Enemy property may be expropriated at all times.

ECONOMY

The constitution envisages a socialist economic system of national economic planning, based on the principle of social ownership of the means of production and eradication of the exploitation of human by human. While recognizing privately owned enterprises and property, the constitution envisages cooperation as the underlying

principle of socialist transformation and national development, supposedly to reflect the historical experience of the people of Guyana. The economy's supreme goal, according to the constitution, is the fullest possible satisfaction of the people's growing material, cultural, and intellectual requirements, as well as the development of their personality and their socialist relations in society.

RELIGIOUS COMMUNITIES

The constitution of Guyana respects freedom of religion and belief. With a view to the wide ethnic and religious diversity among its population, freedom of religion may be limited by law for the purpose of protecting the rights and freedoms of other persons, including the right to practice any religion without unsolicited intervention of members of any other religion. There is no state religion, as the constitution aspires to complete secularism.

MILITARY DEFENSE AND STATE OF EMERGENCY

Guyana's military, the Guyana Defense Force, is a non-conscription army, consisting mostly of Afro-Guyanese. Women are allowed to enlist, but rarely do so. The force's main tasks include protection from external threats, mainly border disputes with neighboring Venezuela and Suriname, as well as civilian work. Although it has acquired a reputation of being a heavily politicized army, it is no longer obedient to either of the political forces in the country.

The president may declare a state of emergency only for a period of up to 14 days. Unless the National Assembly makes use of its power to extend it up to six months, the state of emergency expires after the initial period of 14 days.

AMENDMENTS TO THE CONSTITUTION

The power to amend the constitution is vested in the National Assembly, which may amend any provision by passing a bill, by an absolute majority. In most cases the president's approval is required. The constitution explicitly allows itself to be suspended and repealed through amendment.

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Johanna Nelles

HAITI

At-a-Glance

OFFICIAL NAME
Republic of Haiti

CAPITAL
Port-au-Prince

POPULATION
8,100,000 (2001 est.)

SIZE
10,714 sq. mi. (27,750 sq. km)

LANGUAGES
French, Creole (both official)

RELIGIONS
Roman Catholic 80%, Protestant 16%, other or none 4%

NATIONAL OR ETHNIC COMPOSITION
Black Haitians 95%, white and mulatto Haitians 5%

DATE OF INDEPENDENCE OR CREATION
January 1, 1804 (from France)

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
March 29, 1987

DATE OF LAST AMENDMENT
No amendment

The Republic of Haiti was one of the first countries in the Western Hemisphere to become independent. It now has a progressive constitution that provides a presidential democracy, with safeguards against an overly strong presidency and against military rule. The executive, legislative, and judicial powers are divided, enforced by checks and balances. The constitution provides for liberal and social rights, but there is no mechanism for individuals to enforce these rights.

Haiti is organized as a unitary state. It is made up of nine departments, run by officials elected by universal suffrage on all levels.

The president is the head of state. The constitution provides for a strong bicameral parliament. Free and fair multiparty elections are guaranteed. Religious freedom is also guaranteed. No specific economic system is favored by the constitution. After being ratified, international treaties become part of the national legislation and take precedence over any law in conflict with them.

CONSTITUTIONAL HISTORY

Haiti comprises the western part of the island of Hispaniola as well as several smaller islands in the Caribbean. The Spaniards were the first Europeans to land and settle on Hispaniola, as early as the late 15th century. As people from France started to settle in the western part of the island, about a third of its territory was ceded to them by Spain in 1697. More and more African slaves were imported to the county. At the end of the 18th century, a huge slave revolt took place. After first seizing the northern part of the colony, the rebels won complete independence from France in 1804. After a brief period when the northern, western, and southern regions each had their own regimes, the sectors were united in 1820. Haiti even ruled the eastern part of Hispaniola (today's Dominican Republic) for some 20 years until 1844.

The country faced turbulent times with many different governments, until in 1915 the United States began a military intervention that lasted until 1934.

For almost three decades, the Duvalier family ruled Haiti. The 1983 constitution implemented by the family granted vast powers to the president. In January 1986, François Duvalier was forced to resign after months of political unrest and growing demonstrations against his leadership. The Duvalier constitution was suspended and the National Assembly was dissolved. In the following months, a Constituent Assembly drafted a new constitution. On March 29, 1987, this constitution was approved in a national referendum.

In 1990, Jean-Bertrand Aristide was elected president. Only a few months later, in September 1991, he was overthrown in a coup and had to flee to the United States. A military regime took control of Haiti. Several articles of the 1987 constitution were temporarily suspended. In 1994, a Human Rights monitoring mission (called MICIVIH), set up by the United Nations (UN) and the Organization of American States, was expelled. As a reaction, the United Nations Security Council passed Resolution 940 authorizing member states to "use all necessary means" to restore Haiti's government. A multinational force led by the United States intervened. In the 1995 presidential election, René Préval became president. Aristide's subsequent split with the ruling party led to more politically difficult times with disputed elections.

In 2000 new elections returned Aristide to office, but the political stalemate did not end. Most international troops had gone by 2000, but the situation did not improve. Political strikes and fighting between opposition and progovernment followers grew violent. Rebels gained effective control over major cities. In February 2004, Aristide resigned as president of Haiti and the president of the Supreme Court took over as interim president. During all those troubled years, the constitution was not changed. Since 2004, the UN Stability Mission in Haiti (MINUSTAH) has deployed some 7,500 peacekeeping troops to Haiti. New elections were to be held in 2006. Préval was declared the victor, despite allegations of electoral fraud.

FORM AND IMPACT OF THE CONSTITUTION

The 1987 constitution is a relatively long document with 298 articles plus several more that were inserted in the final stage, but not renumbered. Despite the political crises the country has faced in the past two decades, the constitution can be called relatively stable. After the resignation of the elected president of the republic in 2004, the president of the Supreme Court became interim president, as provided for in the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Haiti is a centralist state and a parliamentary republic. It consists of (currently) nine departments, which are further subdivided into communes and communal sections. Each administrative level is run by a council of three, its members elected by universal suffrage for four years. Representatives of these councils form an Interdepartmental Council, which works together with the national executive on decentralization programs.

LEADING CONSTITUTIONAL PRINCIPLES

Haiti has a strict separation of the three powers: the executive, legislative, and judicial. According to the constitution, Haiti is a social state, a democracy, and a republic. Furthermore, it is indivisible, sovereign, independent, cooperatist, and free.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic; the administration, headed by the prime minister; the parliament, consisting of two houses; and the judiciary, including the Supreme Court.

The President of the Republic

The president of the republic is the head of state. He or she chooses the prime minister from the party that has a majority in parliament. The president is also the nominal head of the armed forces.

Compared to those in previous Haitian constitutions, presidential powers are reduced. The president cannot serve consecutive terms and must wait five years to be reelected.

The Executive Administration

The administration is headed by a prime minister. As must the president of the republic, the prime minister must be a native-born Haitian. The prime minister is responsible for enforcing the law.

The members of the cabinet of ministers are chosen by the prime minister. While serving in the administration, they may not be members of parliament.

The Parliament

The two chambers of the Haitian parliament are the House of Deputies and the Senate, both of them elected by direct, universal suffrage. Delegates to the House of Deputies represent municipalities. Every department is represented by three senators. Both chambers are legislative bodies.

Together, the House of Deputies and the Senate compose the National Assembly. The joint body has limited, but important functions, such as declaring war or amending the constitution.

Neither of the chambers can be dissolved or adjourned at any time; nor can the term of their mandate be extended. These rules must be seen as safeguards developed after bitter experiences with dictators who ruled in Haiti in the past.

The Lawmaking Process

Either chamber of parliament can initiate legislation, as can the executive. However, only the administration may initiate legislation in certain areas, such as budget laws. After a bill has been passed by the legislature, it is forwarded to the president of the republic. The president has the right to make objections. These objections may in turn be rejected by either house of parliament. In that case, the president must promulgate the law.

The Judiciary

The judiciary is independent. The legal system is based on Roman civil law. At the top of the Haitian court system is the Supreme Court (Cour de Cassation). Other courts are the courts of appeal, courts of first instance, and various special courts. Under certain circumstances, the Senate constitutes itself as the High Court of Justice, responsible for the indictment of elected state officials.

Other Bodies

In addition to these primary organs of state, the constitution enumerates many others as well, such as the permanent electoral council, the superior court of auditors and administrative disputes, the conciliation commission, and the office of citizen's protection. There is also a Haitian Academy, which standardizes the Creole language.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Suffrage is universal for Haitians aged 18 and older. Both chambers of the bicameral parliament as well as the president of the republic are directly elected by the people. The term of office of the 83 members of the House of Deputies is four years, while the 27 senators serve for six. The president may serve up to two nonconsecutive terms of five years. He or she must be Haitian by birth, be at least 35 years old, own at least one real property in Haiti, and have resided in the country not less than five years before the election.

The constitution provides for public elections on many administrative levels.

POLITICAL PARTIES

After a ban on opposition parties under the Duvaliers' rule, many new parties have emerged in recent years. Their political appeal is usually based on personalities rather than policies. There is no threshold for parties to win seats in the elections, but only parties who win at least 10 percent of the votes nationwide, with a minimum of 5 percent in each department, are reimbursed with government funds.

CITIZENSHIP

Haitian nationality is primarily acquired by birth to a native-born Haitian parent. Foreigners may acquire nationality after having lived continuously for five years in Haiti. Dual citizenship is not allowed. Under special circumstances, a person can lose Haitian nationality, for example, when serving in a foreign government.

FUNDAMENTAL RIGHTS

The constitution of Haiti specifies a large number of both liberal and social rights, found in Title III, Chapter II. Duties of the citizens are listed in Chapter III. Freedom and its protection by the state are formulated as the starting point.

The constitution makes much mention of education—for example, that it is the state's first responsibility and must be free of charge. The same is true of the "right to security" (Articles 41–51). The right to work is guaranteed, combined with the obligation to engage in work.

Impact and Functions of Fundamental Rights

The constitution of Haiti does not provide for clear mechanisms to enable individuals to enforce their enumerated basic rights.

Limitations to Fundamental Rights

Fundamental rights are not without limits. The constitution provides some specific limits, such as provisions limiting the right to strike, the right to own private property, or the practice of religion. The practical human rights situation in the country is rather problematic.

ECONOMY

The constitution does not favor a special economic system. Owning private property is recognized and guaranteed. Nationalization for political reasons is forbidden. However, according to the constitution, ownership entails obligations. Failure to comply can result in a penalty; for example, landowners have the duty to cultivate their land.

RELIGIOUS COMMUNITIES

The constitution recognizes freedom of conscience as well as freedom of assembly. The right not to belong to a religious community is also accepted. A vast majority of Haitians are of the Roman Catholic faith, though many practice Voodoo at the same time. The government officially recognized Voodoo as a religion in 2003. Roman Catholicism was the official state religion until the enactment of the 1987 constitution.

MILITARY DEFENSE AND STATE OF EMERGENCY

The "Public Forces" of Haiti are composed of the regular Haitian armed forces, which have been demobilized since 2005, and the police force. According to Article 268, military service is compulsory.

A state of siege is declared by the president of the republic. However, the state is lifted if it is not renewed by a vote of the National Assembly every 15 days.

AMENDMENTS TO THE CONSTITUTION

Only the legislature may propose amendments to the constitution, and a majority of two-thirds in both chambers is needed for passage. The constitution strictly forbids holding referendums to amend the constitution. No amendment that would impact the democratic and republican nature of the state is allowed.

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Hartmut Rank

HONDURAS

At-a-Glance

OFFICIAL NAME
Republic of Honduras

CAPITAL
Tegucigalpa

POPULATION
6,975,204 (July 2005 est.)

SIZE
43,433 sq. mi. (112,492 sq. km)

LANGUAGES
Spanish and indigenous dialects

RELIGIONS
Roman Catholic 97%, Protestant 3%

NATIONAL OR ETHNIC COMPOSITION
Mixed 90%, indigenous 7%, African descent 2%, white 1%

DATE OF INDEPENDENCE OR CREATION
September 15, 1821 (from Spain)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral congress

DATE OF CONSTITUTION
January 11, 1982

DATE OF LAST AMENDMENT
May 4, 2005

Honduras is a state of law, sovereign, constituted as a free republic, democratic, and independent. It has a unitary government under a president and a vice president and a unicameral congress of deputies. Both congress and the president are elected for four-year terms. Reelection of the president is prohibited, but it is allowed for the deputies.

The Supreme Court of Justice is composed of 15 magistrates, elected by the National Congress but nominated by a committee in which representatives of civil society participate. Magistrates' terms last seven years, and they can be reelected.

The constitution establishes respect for the human person as a fundamental principle and as the supreme aim of society and the state. It details an ample catalogue of human rights, emphasizing the economic, social, and cultural rights, and in particular, the rights of workers. In order to guarantee the supremacy of the constitution, a Constitutional Chamber was recently created within the Supreme Court of Justice.

The president of the republic commands the armed forces. Military service, during periods of peace, is voluntary.

National education is secular. Basic education is obligatory and paid for by the state. Religious freedom is guaranteed, and the state is separated from any religious creed. The economic system established in the constitution has a strong orientation toward a social market economy, but neoliberal measures have been implemented in recent years.

CONSTITUTIONAL HISTORY

Honduras became independent of Spain on September 15, 1821, along with its fellow Central American republics Guatemala, El Salvador, Nicaragua, and Costa Rica. Together they had formed the old Captaincy General of Guatemala. Once they reached independence, after a short period of Mexican rule, they decided to establish a federal system, adopting the Constitution of the Federal Republic of Central America on November 22, 1824.

Honduras, as a state member of the federation, issued its first constitution in 1825. But in spite of the struggles of General Francisco Morazán to maintain the union, the federation was soon dissolved.

Honduras underwent numerous revolutions in the 19th century. The most important constitutions of the era were implemented in 1880 and 1894. Both adopted liberal principles. The same is true of the 1957 constitution, which initiated the modern political era. President Ramón Villeda Morales, who governed under the 1957 constitution, was overthrown by a military takeover in 1963. The new constitution issued in 1965 was almost identical to the 1957 text. In 1972 President Ramón E. Cruz was overthrown by another military takeover. The armed forces held power for an entire decade. In April 1980 a Constitutional National Assembly was elected; after almost two years of discussions, the current constitution was adopted on January 11, 1982. It has by now achieved the longest duration of any constitution in the history of Honduras.

Honduras supports the union of Central America and participates in the efforts for its economic integration.

FORM AND IMPACT OF THE CONSTITUTION

Honduras, following the Latin American tradition, has a written constitution that has generous and detailed content, with a total of 379 articles. The constitution represents a unifying point for all Hondurans, and it serves as a warranty of the enjoyment and exercise of their rights.

BASIC ORGANIZATIONAL STRUCTURE

Honduras is a unitary state, with a central government administratively divided into 18 departments, which are in turn divided into 298 municipalities. These autonomous municipalities are each administered by a mayor and a vice mayor and a number of advisers according to the number of inhabitants. Municipalities are becoming more and more important, as they develop their own projects in close contact with the needs of the region. However, most of them depend on subsidies from the central government.

LEADING CONSTITUTIONAL PRINCIPLES

Honduras is a law-abiding state, the sovereignty of which belongs to the people, from whom the powers of the state emanate by representation. The constitution nobly aims to strengthen and perpetuate the rule of law through representative democracy, in order to assure all inhabitants respect for the dignity of the human person, justice, peace, and the common good.

The Honduran government is a republican democracy. The three powers, legislative, judicial, and executive, are complementary and independent and are not subordinate to one another, as a result of checks and balances. For example, the reelection of the president of the republic is prohibited.

The government is to be founded on participatory democracy, leading to national integration; this implies the participation of all political sectors in public administration. Recently, the constitution was amended to add the referendum as an instrument of participatory democracy.

In international matters, the constitution upholds the principles and practices of international law that promote human solidarity, self-determination of nations, nonintervention, reinforcement of peace, and universal democracy. Also, it proclaims an inescapable obligation to arbitration and international courts.

CONSTITUTIONAL BODIES

The Honduran system is largely presidentialist. Nevertheless, the influence of the president of the republic has diminished through electoral law reform; citizens now cast votes for deputies on a separate sheet. As a result, the party of the president does not have the majority in congress.

Consequently, congress has recently played an important role in controlling the president and the administration. It has even used its power to question ministers.

The President

Executive authority is exercised by the president and vice president of the republic, who in theory represent and work for the benefit of the people. They are elected by direct popular vote by a simple majority. They serve for a period of four years and cannot be reelected.

The president is in charge of the general administration of the state. The main duties of the president are to direct the general administration of the state and to represent it; to name and remove freely the cabinet ministers and vice ministers; to participate in the formation of laws, presenting bills through the cabinet ministers; to issue agreements, decrees, regulations, and resolutions in accordance with the law; to direct foreign policy and international relations; to conclude treaties and international conventions and ratify them after congressional approval; to name the heads of diplomatic missions; to administer the public finances; to direct the economic and financial policy of the state; and to formulate the National Plan of Development, discuss it in the cabinet, deposit it for approval by the National Congress, and direct its implementation.

The president of the republic summons the ministers into cabinet sessions. The ministers collaborate with the president in directing, coordinating, and supervising the components of the national public administration. In their respective fields, they are responsible alongside the president for the acts that they authorize.

The ministers must annually present to the National Congress a report of their activities. They can be questioned by the congress on issues related to public administration.

The National Congress

Legislative power is exercised by the Congress of Deputies of 128 members, chosen by direct suffrage for a period of four years, with the potential to be reelected. The deputies represent the people.

The chief function of the National Congress is to create, decree, interpret, reform, and countermand the laws. As a unique characteristic of the Honduran constitutional system, congress is the power that interprets the constitution for the given legislative period. It votes on specific interpretations by a two-thirds majority of all its members. Congress chooses the high civil officers of the state: magistrates of the Supreme Court of Justice, members of the Superior Court of Accounts, the attorney-general and assistant attorney-general of the republic, magistrates of the Electoral Supreme Court, the general prosecutor and subgeneral prosecutor of the republic, the attorney-general of the environment and his or her assistant, the national commissioner for human rights, the superintendent of concessions, and the director of the national civil registry and his or her assistant. Congress also approves the national budget and international treaties, establishes taxes, declares war and calls for peace, and fixes the number of permanent members of the armed forces.

The Lawmaking Process

The most important task of the National Congress is to discuss and approve laws. Once a bill is presented, it is passed to a standing committee, and later discussed in a plenary session of congress. Once approved, the bill is sent to the president of the republic for approval and promulgation as law. If the president rejects the law, it is returned to the National Congress, which can now adopt the law only with a majority of two-thirds of those voting. At this point, it is passed to the president, who must publish it without delay. If the president's rejection is based on constitutionality issues, it must undergo a hearing before the Supreme Court of Justice. The Supreme Court of Justice issues its final ruling within the time that the National Congress indicates.

The Judiciary

The judicial power is composed of a Supreme Court of Justice, courts of appeal, courts of first instance, and other branches as designated by the law.

The Supreme Court of Justice has jurisdiction over the entire state. It is composed of 15 magistrates elected for a period of seven years, eligible to be reelected thereafter.

A recent reform to the constitution, effective in 2001, established a new procedure for the election of magistrates to the Supreme Court of Justice. The National Congress, with a two-thirds majority of all its members, elects 15 magistrates from a list of no fewer than three potential magistrates for every open position. The Joint Appointment Committee, which proposes to congress its candidates for magistrates of the Supreme Court, is composed of seven members who represent these different sectors of society: the Supreme Court of Justice, the Bar Association of Lawyers of Honduras, the National Commission of Human Rights, the Honduran Council of Private Business, the universities of the country, the organizations of the civil society, and the worker's unions.

This same reform created a Constitutional Court within the Supreme Court, to guarantee the supremacy of constitutional standards.

THE ELECTION PROCESS

Every Honduran over the age of 18 has the right to stand for election and to vote. Voting is universal, obligatory, egalitarian, direct, free, and secret.

All issues related to electoral procedures fall under the jurisdiction of the Electoral Supreme Court. This court is independent. It is made up of three magistrates and a substitute. Members are elected by a vote of two-thirds of all the members of the National Congress for a term of five years, with the ability to be reelected.

POLITICAL PARTIES

The political party system in Honduras is very dynamic. Five parties exist, two of which—the Liberal and the National Parties represent together more than 90 percent of the voters. Both parties have existed for over a century. The Liberal Party is Left center, while the National Party is oriented Right of center. The other parties are the Party of Innovation and Unity, the ideology of which is social democrat; the Christian Democratic Party; and the Democratic Unification Party, which is oriented to the Left.

CITIZENSHIP

People born in the national territory of Honduras, with the exception of diplomats' children, and those born abroad of a Honduran father or mother are Honduran. Naturalization is possible in certain cases such as marriage to a Honduran citizen by birth.

FUNDAMENTAL RIGHTS

The constitution establishes and guarantees a long list of human rights starting with the recognition of the dignity of human life. It protects human life, prohibits the death penalty, and protects the unborn child. It recognizes specifically individual rights, social rights, the

rights of children, worker's rights, social security rights, health rights, education and cultural rights, and the right to life.

Impact and Functions of Fundamental Rights

Human rights represent, for the society and the state of Honduras, the principles that govern their life. In order to guarantee respect for these rights, a constitutional reform that went into effect in 1995 created the institution of the National Commission of Human Rights, which additionally carries out the functions of the ombudsperson.

Limitations to Fundamental Rights

The rights of everyone are limited by the rights of others, by the need to protect the security of all, and by the requirements of general well-being and of developing democracy.

ECONOMY

The economic system of Honduras is founded on principles of efficiency in production and social justice in the distribution of wealth and national income. The state promotes economic and social development, which are subject to national economic planning. The national economy is sustained through the harmony of diverse forms of business and property and coexists with the democratic political system.

Despite these principles, Honduras is one of the poorest countries in Latin America.

RELIGIOUS COMMUNITIES

The constitution guarantees the free exercise of all religions and forms of worship without preference and ensures the separation of laws and religion. Clergy of the diverse religions are not permitted to proclaim public positions, participate in any form of political propaganda, or invoke the religious beliefs of the community as a tool for such aims.

The state is separated from the church, and public education is secular. The majority of the Honduran population is Catholic, although in the last few years the number of evangelical Christian churches has increased.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces have played an important role in the life of Honduras, seizing power on various occasions. The 1957 constitution gave the army internal autonomy, which was retained in both the 1965 and current 1982 constitutions. In 1998, an amendment to the constitution put the armed forces under the control of the president of the republic, who became its commander in chief. The secretary of national defense is appointed and can be removed freely by the president, who serves as chief of combined state headquarters.

Another important reform affirming the supremacy of the civil power was the constitutional amendment that entered into effect in 1997, which separated the national police from the armed forces.

The armed forces participate in international peacekeeping missions, in the fight against drug traffic, in assistance during natural disasters, and in environmental conservation programs. Military service is voluntary.

The suspension of fundamental rights can be declared by the president of the republic, in the Council of Ministers. In this case, the suspended rights must be specified and the National Congress must be informed within 30 days. If the congress is in session, the president must inform it immediately. The suspension cannot last more than 45 days.

AMENDMENTS TO THE CONSTITUTION

The National Congress, in ordinary session, can amend the constitution with two-thirds of the votes of all members. The measure must indicate the article or articles that have been reformed. To enter into effect it must be ratified by the next ordinary session of congress, with at least an equal number of members voting for ratification.

An ordinary session of congress runs from January through October every year, and on occasion is prolonged through December. Thus, constitutional reforms can be approved in very little time, as long as the two major parties are in agreement to supply the needed two-thirds vote. Political pacts are often made for this purpose.

Consequently, the constitution of Honduras has been reformed 24 times since its inception in 1982, affecting some 100 of its articles. Some critics have criticized the frequency of these reforms and have even suggested that a new constitution should be adopted; others have argued that the process has encouraged a gradual and peaceful transformation of Honduran society and has solidified the rule of law.

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Leo Valladares Lanza

HUNGARY

At-a-Glance

OFFICIAL NAME
Republic of Hungary

CAPITAL
Budapest

POPULATION
10,117,000 (2005 est.)

SIZE
35,919 sq. mi. (93,030 sq. km)

LANGUAGES
Hungarian

RELIGIONS
Catholic (Roman Catholic 52%, Greek Catholic 3%) 55%, Protestant (Calvinist 16%, Lutheran 3%) 19%, smaller religious communities: Jewish, Orthodox, Evangelical 1%, unaffiliated 15%, no data 10%

NATIONAL OR ETHNIC COMPOSITION
Hungarian, Roma (approximately 5%), German (approximately 2%), Slovak, Croat, Romanian, Serb (under 1%)

DATE OF INDEPENDENCE OR CREATION
1000 C.E.

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
August 20, 1949 (revised October 23, 1989)

DATE OF LAST AMENDMENT
January 1, 2005

Hungary is a parliamentary democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. The country is organized as a unitary state, with a central government counterbalanced by local self-government. The constitution provides for guarantees of human rights. Remedies include a strong constitutional court.

The president of the republic is the head of state, but the functions of the office are mostly representative or symbolic. The central political figure is the prime minister as head of the administration, depending on parliament as the representative body of the people. Free, equal, general, and direct elections of the members of parliament are guaranteed. A pluralistic system of political parties has intense political impact.

Religious freedom is guaranteed and religious communities are separated from the state. The economic system can be described as a market economy. The military is subject to the civil government in terms of law and in fact. By constitutional law, Hungary is obliged to support international cooperation, European integration, and responsibility for ethnic Hungarians living abroad.

CONSTITUTIONAL HISTORY

Hungary emerged as a state a century after Magyar tribes arrived in central Europe in 896 C.E. In the year 1000, the pope acknowledged Hungarian statehood by sending a crown to its Christian king, the founder of the monarchy later known as Saint Steven (977–1038). By the 15th century—despite a devastating Tatar invasion in 1241—Hungary emerged as a significant feudal kingdom in central Europe. The nobility gained important rights that were embodied in a Magna Carta in 1222, seen as a fundament of the Hungarian constitution. The privileged status of the nobility was a source of later parliamentary powers: The king could make laws only with the consent of the peers.

The expanding Ottoman Turks occupied the central part of the country for 150 years in the 16th and 17th

centuries. In the east, the Principality of Transylvania emerged as a safe haven for religious freedom and Hungarian national culture. The Kingdom of Hungary was reduced to its northwestern lands, maintaining statehood and its traditional legal system even as it was absorbed into the emerging Habsburg Empire. As the Turks were driven out by the end of the 17th century, ethnic Hungarians in Hungary were outnumbered by ethnic minorities (Germans, Romanians, Slovaks, Serbs).

The following centuries were characterized by the fight for independence, Protestant emancipation, and a drive to catch up with the economic and cultural progress that had occurred in western Europe. The revolutionary legislation of 1848 created a new constitutional settlement: Parliament (the House of Representatives) became a representative, elected body while the king lost nearly all his executive powers, as these were now to be exercised by an administration responsible to parliament. Although it was not until 1867 that Austria and Hungary reached a new compromise (Austro-Hungarian Empire) that consolidated the constitutional structure, the era saw economic progress and rapid modernization. With the breakup of the Austro-Hungarian Empire after World War I (1914–18), the Kingdom of Hungary lost about two-thirds of its territory, most of its ethnic minorities, and a large part of its ethnic Hungarian population. Hungary became a small country surrounded by former territories, all populated with large ethnic Hungarian minorities.

Despite the influence of Continental legal traditions and some efforts at codification after 1867, Hungarian law remained to a large extent customary: There was neither a written constitution, nor a civil code. In matters of civil law, the law book (*Corpus Iuris Hungarici*) collected and published by the judge Werböczy in 1514 remained authoritative for centuries. A peculiar cornerstone of Hungarian public law was the theory of the Holy Crown. According to this, the nobility (the "nation") was to be regarded as member of the Crown, as an expression of shared sovereignty.

The country became involved in World War II (1939–45) as a German ally. In 1944 three-fourths of all Hungarian Jews became victims of the Holocaust. After the war, in 1946, Hungary became a republic. A short democratic period was undermined by massive Soviet influence and ended with the outright Communist takeover in 1948. A written constitution was adopted in 1949, breaking away from centuries of constitutional tradition and neglecting all established values of constitutionality: eliminating human rights, democracy, the rule of law, and the separation of powers. The revolution against communism in 1956 was crushed by a Soviet invasion, but the regime had to grant some concessions that made Hungary a relatively open place behind the iron curtain.

With the collapse of European communism in the late 1980s, Hungary won a new chance to establish itself as an independent country. After revision of the constitution as a result of negotiations between the Communist Party and the democratic opposition in 1989, free elections were held in 1990. Since then Hungary has had a multiparty system, a parliamentarian form of government, an independent court system, and judicial review, with a Constitutional Court as the ultimate warrant of the constitution. The country joined the North Atlantic Treaty Organization (NATO) in 1998 and the European Union in 2004.

FORM AND IMPACT OF THE CONSTITUTION

Hungary has a written constitution, codified in a single document, that takes precedence over all other national law. The principle of the hierarchy of norms requires that regulations of local self-government conform to central norms and that regulations of the administration conform to acts of parliament. The constitution provides for the harmony of international and domestic law. The question of precedence of the law of the European Union is a current issue: An eventual collision between directly applicable European law and the constitution of Hungary would confront the Constitutional Court with a delicate legal issue.

The preamble of the constitution calls for a new replacement constitution, but the political consensus needed to achieve that end has not existed since the collapse of communism. However, considering the revisions introduced during the transition of 1989 and 1990, the constitution has become a new constitution in fact. Since then, it has also become "real law," whereas before it had a merely declarative-political character.

The Constitutional Court has proved to be a powerful instrument in safeguarding the letter and the spirit of the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Hungary is a unitary state with a central government.

Local self-government has a strong position in Hungary. There is a long historical tradition of territorial self-government (counties), dating back to the founder king, Saint Steven. Local communities enjoy significant autonomy in many fields: They provide public services in both villages and cities, such as education, health care, and public transport; they pursue their own economic development programs; and they enjoy limited taxation powers. The residents of the communities elect mayors and members of local political bodies.

LEADING CONSTITUTIONAL PRINCIPLES

Hungary's system of government is a parliamentary democracy. There is strong division among the executive,

legislative, and judicial powers, based on checks and balances. The judiciary is independent; apart from the regular court system there is an independent Constitutional Court.

The Hungarian constitutional system is based on a number of leading principles. Article 2, Section (1), provides the following definition: "The Republic of Hungary shall be an independent, democratic state under the rule of law."

Indirect, representative democracy has precedence over direct democracy. Direct democracy, whereby voters can voice their choice directly, has a more practical role on the local than on the national level. However, even parliament may be bound by a referendum, although no referenda are allowed in certain matters enumerated by the constitution and the law, including modification of the constitution itself, the budget, taxes, duties and fees, and international obligations. A national referendum must be held if requested by at least 200,000 voters—and if the question complies with the constitution.

The principle of republican government has rather limited meaning in Hungary today. It simply means that there shall be no monarchy, although some understand the republican principle to include the participatory nature of decision making as well.

Rule of law is of decisive impact. All state actions impairing the rights of the people must have a basis in parliamentary law, and the judiciary must be independent and effective. The principle of legal certainty is inherent in the rule of law: Legal certainty requires the law to be stable, foreseeable, and accessible, so that those obligated by the law can learn of the obligations they are supposed to observe.

Further structural principles are implicitly contained in the constitution, such as ideological-religious neutrality. The constitution commits Hungary to respect international law and renounces war as a means of solving disputes between nations. The constitution contains a comprehensive bill of rights, including not only civil and political rights and freedoms, but also "second-generation" economic, social, and cultural rights. The environment is protected by the acknowledgment of a right of everybody to a healthy environment.

The constitution declares that Hungary exercises certain public powers jointly with other European countries, and that these actions may also be exercised by the organs of the European Union itself.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic and the administration, headed by the prime minister; the parliament; and the judiciary. The court system has four levels: local courts, county courts, courts of appeal, and the Supreme Court. Constitutional jurisdiction (primarily the control of the constitutionality of laws) is held exclusively by the Constitutional Court. A number of other entities complete the list of constitutional bodies, such as the National Bank, the chief public prosecutor, and the Defense Council, which functions as a representative body in a state of defense if parliament cannot convene.

The President of the Republic

The president is the head of state of the Republic of Hungary, expressing the unity of the nation and guarding over the democratic operation of the state. The prime minister is elected by parliament upon nomination by the president. The president appoints the ministers upon the presentation of the prime minister and appoints ambassadors, generals, and university professors. However, as the president carries no political responsibilities, a member of the government countersigns all his or her appointments and presents the candidate. The president can refuse such a recommendation only if legal preconditions have not been met or if the president holds that the appointment may endanger the democratic operation of the state. The president also appoints all judges, upon the recommendation of the judiciary, and no countersignature is necessary in this case. Finally, the president nominates candidates to some important posts such as the chief public prosecutor, the president of the Supreme Court, and the ombudsperson, although in these cases parliament makes the final choice.

The president promulgates the laws, with the right to veto a law adopted by parliament once. If parliament passes the law again, the president has to promulgate it. If the president considers a law passed by parliament to be unconstitutional, he or she must refer it to the Constitutional Court. The president can dissolve parliament and call for new elections in strictly defined cases. This can happen if parliament is unable to elect a prime minister within 40 days of the first nomination, or if within a year there are at least four successful votes of no confidence against the prime minister.

The president also represents the republic in international affairs and has the right to pardon individual criminal offenders. The president is the commander in chief of the armed forces; this role does not imply the power to give any commands; it is the responsibility of the administration to direct the armed forces.

The political position of the president is limited, as the office consists largely of representative functions, but under critical circumstances the president may help the state overcome a crisis. The political impact of the president depends largely on personal charisma. On the other hand, this relative lack of political power enables the president to be representative of the whole of the nation, above everyday politics.

The president of the republic is elected by parliament for a five-year term and can be reelected only once. A majority of two-thirds of the members of parliament is needed, but if this is not achieved in two rounds, a simple majority is sufficient. The president must be at least 35

years of age. An impeachment procedure is possible only if the president intentionally violates the law while exercising the functions of the office. The procedure has to be initiated by 20 percent of the members of parliament, followed by a positive impeachment vote of two-thirds of the members. It is the Constitutional Court that decides on the actual removal from office.

The Administration

The administration is the central policymaker and the head of the entire government. It consists of the prime minister and the ministers. The prime minister is elected by the majority of all members of parliament upon the proposal of the president of the republic.

The administration serves for the legislative period of the parliament, unless dismissed early in a vote of nonconfidence by a majority of members of parliament; the no-confidence motion must include the name of a new prime minister, who takes office if the motion passes. Each newly elected parliament must go through the process of electing a prime minister and adopting the program of the new administration.

The prime minister is generally the dominant figure in Hungarian politics. The administration depends on the prime minister; it loses office if he or she dies or resigns. The administration bears responsibility for the implementation of law and the administration of the state.

The Parliament

The parliament is the supreme body of state authority and popular representation. It is the legislative body, and it adopts and modifies the constitution itself. For the latter a qualified majority is needed. Parliament elects the prime minister and monitors the administration. The members of parliament have the right to put questions to ministers, to the chief public prosecutor, to the chair of the national bank, to the president of the state audit office, and to the ombudsperson. Any minister can be cited to appear before parliament.

An important right of members of parliament that helps to ensure their independence is parliamentary privilege. This gives them far-reaching protection against legal action or other negative consequences arising from their voting or statements in parliament. Parliamentary privilege also serves to protect the personal freedom of the members of parliament. Only with the permission of the parliament may a member be subjected to any criminal prosecution, be arrested, or have his or her personal freedom limited. The only exception to this privilege occurs if the member of parliament is arrested in the course of committing a crime.

The parliament consists of 386 members. Its period of office, the legislative term, is four years. Parliament can dissolve itself, except during a state of defense; the president of the republic also has the power, under politically extreme conditions, of dissolving parliament. The members are elected in a general, direct, free, equal, and secret balloting process, partly in winner-takes-all constituencies, partly on party lists.

Parliament has two independent controlling agencies: the State Audit Office, which monitors the use of public moneys, and the ombudsperson, the public watchdog for the protection of fundamental rights. Their power lies in the influence they may have on the public: They cannot impose penalties, but they submit reports on their findings to parliament and to the general public. The president of the State Audit Office is elected for a term of 12 years, the ombudsperson for six years, both by two-thirds of the votes of all members of parliament upon the nomination of the president of the republic.

The Lawmaking Process

One of the main functions of parliament is to pass legislation. This is done in cooperation with various other constitutional bodies. The right to introduce a bill is enjoyed by the president of the republic, the administration, and any member of parliament. In fact, it is mostly the administration that submits the bills, as drafted by the ministries. Bills are first debated at the committee level in parliament. Then, the plenum generally holds two readings: the first a discussion of the general principles of the proposed legislation, the second a section-by-section debate. To pass a bill, the majority of the members of parliament have to be present, and their majority has to vote in favor.

The constitution enumerates a list of laws that can be passed and modified only by two-thirds of the votes of those members present. These include human rights issues, such as the media law or the law on religious freedom, and some sensitive issues of state organization such as the law on courts or the law on local self-government. These statutes do not constitute a separate level in the hierarchy of legal norms: They are below the constitution, at the same level with any other statute. However, a collision of a statute passed by a two-thirds majority with one passed by a simple majority may lead to legal uncertainty (as may the collision of any other laws) and be unconstitutional for this reason, but not because of the violation of the hierarchy of norms.

For the law to take effect, the president needs to assent and promulgate the law in the official gazette. The president has a limited right of political veto (which can be overridden) as well as the right to submit the bill to the Constitutional Court for review if he or she holds it to be unconstitutional. The president must exercise these rights within 15 days, in urgent cases within five days.

The Judiciary

The judiciary in Hungary is independent of the executive and legislative branches and is a powerful factor in legal life. The court system has four levels—local courts, county courts, courts of appeal, and the Supreme Court. The courts are uniform; that is, the same courts (though

different panels) deal with civil, criminal, and administrative cases. The only exception is the labor court on the county level, but appeal against a labor court judgment is decided by the county court.

The administration of the judiciary is performed by an independent body presided over by the president of the Supreme Court. The majority of its members are judges elected from among the judiciary. One of its important powers is the nomination of judges, who are then appointed by the president of the republic. The president of the Supreme Court is elected by parliament with the vote of two-thirds of all members of parliament, on the nomination of the president of the republic.

The Constitutional Court deals exclusively with constitutional disputes. It consists of 11 judges elected by two-thirds of all the members of parliament for a nine-year term. A special commission, in which all parties represented in parliament have one member, nominates the candidates, who shall be university professors or outstanding practitioners. The members of the Constitutional Court elect a president from among their number. The court can declare void any act of parliament, administration decree, or decision by local self-government, on grounds of its being unconstitutional. A constitutional complaint can be taken before the Constitutional Court by any person. The claim can be abstract; that is, no specific case or individual controversy is needed.

The Constitutional Court has proved to be a powerful instrument in safeguarding the constitution; it has gained a high level of public esteem. In many sensitive cases of high political impact, it was the court that resolved the issue. Significant cases have included the abolition of capital punishment, the regulation of abortion, media issues, and borderline cases concerning freedom of expression.

In addition to these human rights cases, the court has resolved a number of delicate political issues such as the relationship between the president of the republic and the prime minister, the role of referenda and their effect on representative democracy, the independence of the judiciary, and the autonomy of local self-government. The Constitutional Court also played an outstanding role in making fundamental choices during the transition from communism to democracy: how to handle criminal acts committed by former rulers, how to compensate for expropriations and the denial of liberty, and what kind of consequences should ensue for collaboration with the communist secret services.

THE ELECTION PROCESS

All citizens who reside in the territory of Hungary and are over the age of 18 have both the right to stand for elections and the right to vote, to initiate a referendum, and to take part in one. Election procedures are guarded by independent electoral committees that supervise and ensure due process.

Parliamentary Elections

Parliamentary elections follow a complex process. Of the 386 members of parliament, 176 are elected in single-member constituencies by an absolute majority of votes. One-half of all voters have to participate in the elections as a condition of validity. The rest of the deputies are elected on party lists. Every voter, therefore, has two votes. As the party lists do not fully compensate the disproportion arising from the constituencies where the winner takes the mandate, the results of the elections are not always entirely proportionate. A party must win at least 5 percent of the party list votes to gain any seat in parliament on party lists. The aim of this rule is to prevent splinter groups from obstructing the work of the legislature. Between four and six parties cleared this hurdle in each of the four elections conducted under the present law between 1990 and 2002.

Local Elections

Residents who are not Hungarian citizens have the right to vote in local election and to stand for municipal councils if they are citizens of any member state of the European Union. Mayors, however, have to be Hungarian citizens.

There is no minimal turnout for local elections. Mayors are chosen by a winner-takes-all plurality vote. The election system for local councils varies; municipalities with fewer than 10,000 choose council members by name from a list of candidates; these members are usually independent. In larger localities, where the parties dominate local politics, 60 percent of the council members are elected in constituencies by plurality, while 40 percent of the mandates are distributed on a compensatory basis among the participating parties.

European Elections

The Hungarian members of the European Parliament are elected on party lists, by proportional representation. All European Union citizens have the right to vote. If they decide to vote in Hungary, they cannot do so in their country of citizenship. There is no minimal turnout, but the 5 percent party list hurdle applies.

POLITICAL PARTIES

Hungary has a pluralistic system of political parties. The multiparty system is a basic structure of the constitutional order. According to the constitution, political parties play a role not only in expressing, but also in forming the political will of the people. They cannot exercise direct political power as the Communist Party used to do, and they must respect the pluralistic system. Parties are to a large extent financed from the state budget, according to the proportions of votes gained at the last two general elec-

tions. Political parties are registered with courts and can be deleted from the registry as a consequence of a court procedure.

CITIZENSHIP

Hungarian citizenship is primarily acquired by birth. The principle of *ius sanguinis* applies: That is, a child acquires Hungarian citizenship if one of his or her parents is a Hungarian citizen. It is of no relevance where a child is born. Dual citizenship is not excluded.

The law on citizenship strives to prevent statelessness and to ensure that family members have the same citizenship. Ethnic Hungarians who move to Hungary acquire citizenship more easily. Ethnic Hungarians who live as national minorities in neighboring countries who are citizens of those countries may apply for a "Hungarian certificate" that provides certain benefits for them in their kin state, Hungary. This status, however, does not qualify as citizenship.

FUNDAMENTAL RIGHTS

The Hungarian constitution guarantees the traditional classic set of human rights, as well as a list of economic, social, and cultural rights, such as the right to work, the right to social security, and the right to free education. As a third-generation human right, the right to a healthy environment appears in the constitution, too.

The starting point for human rights in the constitution is the guarantee of life and human dignity. The constitution guarantees numerous specific rights as well. The basic rights set out in the constitution have binding force for the legislature, the executive, and the judiciary, as directly applicable law. This applies to all acts of public authority in all circumstances. The constitution's equal treatment clause is worded generally, but it is open to the possibility of affirmative action or "positive discrimination" as a means to eliminate "inequality in opportunities."

Some rights apply only to citizens, such as the right to vote in national elections and rights to certain social benefits.

Impact and Functions of Fundamental Rights

Fundamental rights are first of all defensive rights. This means that the state may not interfere with the legal position of the individual unless there is special reason to do so. This is the subjective aspect of the right. On the other hand, the state has a duty to ensure that circumstances conducive to the exercise of the fundamental rights are created. This is the objective aspect of the right.

For example, to ensure the freedom of press it is not sufficient not to violate this right: The state has to maintain the public media, providing space to all relevant social and cultural sectors in a balanced way. Respecting the right to life makes it a duty of the state to protect the fetus, who has no rights but deserves protection. The right to a healthy environment has no subjective content, but mere objective aspects: A setback in the level of protection of the environment may be allowed only if another, competing constitutional right or value compels it.

Human rights apply not only in the relation of the individual to the state, but to some extent also to the relations of private persons. One significant area in which this concept plays an important role is equal treatment.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. However, the constitution states that no limits are allowed, even if by law, that would compromise the *essential content* of these rights. This means that one can never be totally deprived of his or her rights. Furthermore, fundamental rights can be limited only by law, that is, by acts of parliament, and not by regulations passed by the administration or a local self-government.

According to the approach of the Hungarian constitutional court, by its very nature the right to life (in dignity) cannot be limited, since life can be wholly taken, or wholly respected, but never taken or respected in part. Other fundamental rights can be limited by law, if this is necessary to ensure another fundamental right or a value recognized by the constitution itself. A mere claim of public order, public safety, public health, or morals is not a sufficient reason to limit a fundamental right. The limitation has to be proportionate with the aim of limitation; that means that the least restrictive limitation has to be applied.

Constitutional, but not fundamental, rights can be limited more easily, on the basis of a commonsense test. An unreasonable limitation would be regarded as arbitrary, and hence unconstitutional.

The right to property is a special case. On the one hand, expropriation is permissible as an extraordinary measure for the public interest; on the other hand, immediate, unconditional, and full compensation has to be provided.

ECONOMY

The constitution defines the economy of Hungary as a "market economy." This general statement leaves the government a broad margin to form economic policy.

Enumerated fundamental rights protect freedom, property, and the right of inheritance. They also protect freedom of occupation or profession, general personal freedom, as well as the right to form associations, partnerships, and corporations. The right to form associations to safeguard and improve working and economic conditions is guaranteed to every individual and all corporations and

professions. This right guarantees the autonomy of trade unions and employer's associations in labor bargaining.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for the religious communities. As church and state are separate, there is no established church. All public authorities must remain strictly neutral in their relations with religious communities. Religious communities cannot exercise public power, on the one hand, but, on the other hand, the state cannot interfere with their internal affairs.

Religions must be treated equally; however, relevant social differences between religious communities, such as number of adherents, can be taken into consideration. A religious community can register with a county court to gain legal personality as a church. Neutrality does not mean indifference: Despite the essential separation of religions and the state, there are many areas in which they cooperate, for example, in education, health, and social care.

MILITARY DEFENSE AND STATE OF EMERGENCY

The creation and maintenance of armed forces are responsibilities of the administration. The fundamental duty of the armed forces is the military defense of the country. The domestic use of the armed forces is permitted only under extreme conditions such as in a state of emergency, when police forces have proved to be insufficient. This might be the case in the event of armed actions that aim to subvert the constitutional order or to gain exclusive control over public power, or in the case of grave acts of violence committed by armed groups that endanger the lives and property of citizens on a mass scale. With the exception of military maneuvers carried out through a decision of NATO, the army may cross the country's borders only with the prior consent of parliament.

Prior to 2005 the law required all men to perform military service for six months. Conscientious objection is allowed. According to a constitutional amendment, which entered into force on January 1, 2005, national service can only be required in the state of defense. As conscription was abandoned, the armed forces became a professional force consisting of soldiers who voluntarily serve for fixed periods or for life.

Hungary has obligated itself by international treaties not to produce nuclear, biological, or chemical weapons.

The military always remains subject to civil government. The president of the republic is the official commander in chief, but the army is administered through the minister of defense. In case of a state of defense, a special defense council exercises the powers of the administration, and to a limited extent those of parliament as well.

The constitution describes the state of defense in great detail. Such a state exists only if the country is attacked with armed military force. There are some fundamental rights that may not be limited, even in a state of defense.

A state of emergency could exist in the case of an internal armed conflict endangering the constitutional order. In a state of emergency the president of the republic has special powers, in order to help the constitutional system overcome the crisis.

AMENDMENTS TO THE CONSTITUTION

Changing the constitution is relatively easy, requiring only the votes of two-thirds of the members of the parliament. Only the proportion of required votes makes a constitutional amendment different from any other law. In case of an amendment of the constitution, the president of the republic has no right to refer the amendment to the Constitutional Court for preliminary review, as the Constitutional Court itself had no jurisdiction over the constitution itself.

Only the lack of political consensus, on the one hand, and the moral respect of the constitution as a value, on the other, prevent overly frequent changes. If one day a new constitution were to be passed, the general presumption is that a referendum would be required for adoption.

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Balázs Schanda

ICELAND

At-a-Glance

OFFICIAL NAME
Republic of Iceland

CAPITAL
Reykjavík

POPULATION
290,054 (2005 est.)

SIZE
39,756 sq. mi. (103,021 sq. km)

LANGUAGES
Icelandic, English, Nordic languages, German widely spoken

RELIGIONS
Protestant 91.5%, Catholic 2%, Asatruar 0.26%, Buddhist 0.17%, Muslim 0.09%, unaffiliated or other 5.98%

NATIONAL OR ETHNIC COMPOSITION
Icelandic 93.4%, other Nordic 1.9%, other European 2.7%, American 0.5%, Asian 1.1%, other 0.4%

DATE OF INDEPENDENCE OR CREATION
June 17, 1944

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Centralist

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 17, 1944

DATE OF LAST AMENDMENT
July 1, 1999

Iceland is a parliamentary democracy based on the rule of law and separation of powers. Organized as a centralized state, Iceland is made up of 105 municipalities, towns, and rural districts. In addition to these, there are 23 regional districts or counties. The constitution of the republic provides for guarantees of classical rights and freedoms as well as some social and economic rights. It is generally well respected by the public authorities; if a violation of the constitution does occur in individual cases, there are effective remedies enforceable by an independent judiciary. Since the review of its Human Rights Chapter in 1995, the constitution has become a centerpiece of Icelandic self-understanding.

The president is the head of state. Although the president is a part of the legislative as well as the executive branch, the office remains mostly representative or symbolic.

The central political figure is the prime minister, as head of the administration. The prime minister depends on parliament as the representative body of the people. Free, equal, general, and direct elections of the members of parliament are guaranteed. Iceland has a pluralistic system of political parties. Religious freedom is guaranteed by the constitution. According to the constitution, the Evangelical Lutheran Church is the national church of Iceland. The country's economic system can be described as a social market economy. Iceland has no military of its own.

CONSTITUTIONAL HISTORY

During the settlement period, 874–930 C.E., no formal system of central government existed in Iceland. With the foundation of the parliament, the Althing (Alþingi), in 930, Iceland emerged as political entity. The period from 930 to 1262 has often been referred to as the time of the Icelandic Free State.

In 1262, Iceland was under the rule of the Norwegian king. It followed Norway in 1380 to become a part of the Danish kingdom. This monarchy became absolutist in Iceland from 1662 until 1845, the same year the Althing was reestablished (it had been formally abolished in 1800).

In 1874, Iceland implemented its first modern constitution. However, the constitution covered only certain domestic matters, and the king of Denmark reserved the veto even there. An amendment to the constitution in 1904 created home rule. Through the Union Act with Denmark, Iceland became a sovereign state in 1918 with the king of Denmark as its king. The Constitution of the Kingdom of Iceland entered into force in 1921. The Union Act was an international treaty as well as domestic law in both Denmark and Iceland; it lasted 25 years.

As a result of German occupation of Denmark in World War II (1939–45), the Danish government was unable to take care of Iceland's foreign affairs. A referendum, held in May 1944, showed that over 90 percent of Icelanders favored the dissolution of the Danish-Icelandic Union. This led to the Declaration of the Republic of Iceland on June 17, 1944, based on a new constitution, which the Icelanders approved in the May referendum.

Although some major amendments have been made to the 1944 constitution, such as the change from a bicameral to a unicameral parliament in 1991 and revisions to the Human Rights Chapter in 1995, no changes have been made to its structure or basic concepts.

FORM AND IMPACT OF THE CONSTITUTION

Iceland has a written constitution, codified in a single document, called the Constitution of the Republic of Iceland (Stjórnarskrá lýðveldisins Íslands). The constitution takes precedence over all other domestic law. International law must be implemented explicitly into national law to have direct application within Iceland. In general, the law in Iceland in fact complies with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Iceland is a unitary, centralized state made up of 105 municipalities, towns, and rural districts. According to the constitution, the municipalities govern their own affairs as provided by law. The municipalities differ considerably in geographical area, population size, and economic strength. In addition to the municipalities, there are 23 regional districts, or counties. All have equal rights and administrative and judicial competencies.

LEADING CONSTITUTIONAL PRINCIPLES

Iceland's system of government is a parliamentary democracy. There is a division of the executive, legislative, and judicial powers, and an independent judiciary.

The Icelandic constitutional system is defined by a number of leading principles: Iceland is a democracy, a republic, and a social state, and it is based on the rule of law. On the national level, political participation is for the most part shaped as an indirect, representative democracy. Should the president refuse to sign a piece of legislation into law, the people have the opportunity to vote on it in a referendum. The president is chosen by the people. Rule of law is respected. All state actions restricting the rights of the people must have a basis in parliamentary law. Religious freedom is implicit in the constitution. According to the constitution, the death penalty may never be required by law. The constitution does not allow Iceland to become a member of the European Union or any other supranational organization.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the prime minister and cabinet ministers; the parliament, called the Althing; and the judiciary, including the Supreme Court.

The President

The president is the head of state. The president appoints and dismisses the prime minister. As the formal head of the administration, the president can have a significant political role in launching coalition negotiations after parliament elections.

The president is elected by the people in a free, equal, general, and direct election for a four-year term. The candidate who receives the most votes becomes president. There are no limits to the number of times a president can be reelected. The constitution requires the signature of the president on all new laws, and the countersignature of the relevant cabinet minister. The constitution gives the president the power to call a referendum on a proposed law, simply by refusing to sign it.

Draft legislation prepared under the auspices of the administration must also receive the president's sanction before it can be placed before the Althing. The president agrees to administrative acts by adding his or her signature, which is also countersigned by a cabinet minister, who thereby becomes legally responsible for the act.

The Council of State consists of the president as chair and the cabinet ministers including the prime minister. The president is the head of state and carries such status under international law, with the power to conclude treaties with other states.

The Administration

According to the constitution, formal executive power is jointly vested in the president and the administration. The cabinet of ministers is the political center of Iceland. The ministers are the heads of executive authority, each in his or her own field. At district levels the central ex-

ecutive authority is represented by the magistrates (*sýslumenn,* singular *sýslumadur*).

The Althing (Parliament)

The Icelandic Althing is the central representative organ of the people at the state level. Together with the president, the Althing is the legislative body. Its term of office is four years. The delegates are elected in a general, direct, free, equal, and secret balloting process.

The Lawmaking Process

One of the main duties of the Althing is to pass legislation. It debates draft legislation and approves it when appropriate. Althing legislation consists of constitutional amendments as well as ordinary acts or statutes. Provisional laws are enacted by the administration.

The Judiciary

The judiciary is independent of the administration and a powerful factor in legal life. There are only two levels of courts in Iceland, district courts and the Supreme Court. In contrast to some European states, Iceland has very few specialized courts. The Supreme Court consists of a single chamber of nine justices.

Supreme Court cases may be heard by panels of three or five justices, which are sufficient for a ruling. In the most important cases seven judges take part in the judgment. For judgments determined by five or seven justices, participation is determined by seniority.

The Court has issued many legally and politically significant decisions; for example, decisions regarding pensions for the disabled have been highly controversial.

THE ELECTION PROCESS

All Icelanders over the age of 18 have both the right to stand for election and the right to vote in all elections, except that presidential candidates must be at least 35 years of age. Members of the Althing are chosen by direct, proportional suffrage in eight multimember constituencies.

POLITICAL PARTIES

Iceland has traditionally had a pluralistic system of political parties. The multiparty system is a basic structure of the political order without any reference to the constitution or other laws. The political parties are a fundamental element of public life.

CITIZENSHIP

Icelandic citizenship is primarily acquired by birth. A child born in Iceland acquires Icelandic citizenship automatically if one of his or her parents is an Icelandic citizen.

FUNDAMENTAL RIGHTS

The constitution defines freedom of religion and belief in Chapter 6 and other fundamental rights in its seventh chapter. Fundamental rights are of foundational importance for the state and constitution in Iceland. The constitution guarantees the traditional set of liberal human rights, civil liberties, and some social and economic rights. The human rights provisions of the constitution were reviewed and amended in 1995.

A "memorandum" attached to the amendments presented three main reasons for the amendments. First, the changes were proposed to make the articles more sound, in certain matters. Second, most of the articles, unchanged since the 1874 constitution, needed to be modernized to increase their clarity. Third, the articles needed to be reevaluated in light of Iceland's international commitments concerning human rights, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, which were both made a part of Icelandic domestic law in 1994.

The constitution guarantees numerous specific rights. The basic rights set out in the constitution have binding force on the legislature, the executive, and the judiciary as directly applicable law. Thus, they are binding for all public authorities in any circumstances in which they act.

The general equal treatment clause, contained in Article 65, guarantees that all persons are equal before the law, and that men and women shall enjoy equal rights in all respects.

Impact and Functions of Fundamental Rights

In Iceland, human rights are the axis on which all legal thinking turns. Fundamental rights relate to all areas of the law because they represent a constitutional decision in favor of certain values. In the interpretation and application of all law, the value judgments contained in the fundamental rights must be given effect.

Limitations to Fundamental Rights

The fundamental rights are not without limits, but no fundamental right may be disregarded completely. Each limit to a fundamental right faces limits itself. One of the most important of the "limitation limits" is the principle of proportionality—the limitation must be proportional to the need, and no greater. It gives expression to the idea that all law must be reasonable.

ECONOMY

The Icelandic constitution does not specify a specific economic system. However, certain basic decisions by the framers of the constitution provide for a set of conditions

that have to be met in laws or acts impacting the economic system. Among them are the right to property, freedom of occupation or profession, and the right to form associations. The constitution also defines Iceland as a social state. Taken as a whole, the Icelandic economic system can be described as a social market economy. It combines aspects of social responsibility with market freedom.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for religious communities. According to the constitution, the Evangelical Lutheran Church is the established national church of Iceland. When amending the human rights provisions of the constitution in 1995, changes were made to two of Chapter VI's three articles concerning the national church and other societies of religion and belief. The intention was to give new emphasis to the wording of the provisions and to specify the right to be unaffiliated with a religious group. According to Article 64, "Anyone who is not a member of a religious group [is obliged to] pay to the University of Iceland the dues he would otherwise have been required to pay to his congregation."

MILITARY DEFENSE AND STATE OF EMERGENCY

Iceland has no armed forces of its own but is a member of NATO. When amending the human rights provisions of the constitution in 1995, the previous Article 75, concerning the obligation to take part in the defense of the country, was deleted without any form of substitute.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed only if an amendment is passed by the Althing twice, with elections held in between.

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Agúst Thor Árnason

INDIA

At-a-Glance

OFFICIAL NAME
Republic of India

CAPITAL
New Delhi

POPULATION
1,028,700,000 (2005 est.)

SIZE
1,269,219 sq. mi. (3,287,263 sq. km)

LANGUAGES
Hindi (official language), English (also used for all official purposes); states may, by law, adopt any one or more of the languages in use in the state or Hindi for official purposes; constitution recognizes 18 languages as national: Assamese, Bengali, Gujrati, Hindi, Kanada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjab, Sanskrit, Sindhi, Tamil, Telugu, and Urdu

RELIGIONS
Hindu 80.5%, Muslim 13.4%, Christian 2.33%, Sikh 1.84%, Buddhist 0.76%, Jain 0.40%, other (including unclassified) 0.77%

NATIONAL OR ETHNIC COMPOSITION
The peoples of India are largely the mixed product of successive invasions. Language, rather than ethnicity, is the main distinction between India's peoples.

DATE OF INDEPENDENCE OR CREATION
August 15, 1947

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
January 26, 1950

DATE OF LAST AMENDMENT
January 20, 2006

India, a union of states, is a sovereign socialist secular democratic republic with a parliamentary system of government. The constitution envisages a federal state with unitary features. It distributes legislative powers between the union parliament and state legislatures and vests residual powers in parliament. Power to amend the constitution also vests in parliament.

The president of India is the constitutional head of the executive of the union. The real executive power vests in the Council of Ministers, with the prime minister as the head; the council is collectively responsible to the House of the People (lower house of parliament). Similarly, in the states, the governor is head of the executive, but real executive power is vested in the Council of Ministers, with the prime minister as its head.

The constitution offers all citizens, individually and collectively, some basic freedoms in the shape of fundamental rights that are justiciable. These include freedom of conscience and freedom to profess, practice, and propagate religion; the right of any section of citizens to conserve their culture, language, or script; and the right of minorities to establish and administer educational institutions of their choice. By the 42nd amendment of the constitution, adopted in 1976, fundamental duties of citizens have also been enumerated.

The constitution also specifies certain directive principles of state policy that although not justiciable, are fundamental in the governance of the country. Apart from various provisions for the welfare of citizens, these principles also stipulate that the state shall endeavor to

promote international peace and security, maintain just and honorable relations between nations, foster respect for international law, and encourage settlement of international disputes by arbitration.

The constitution provides for universal adult suffrage. Free and direct elections are provided for the union and for the state and local levels of government. A multiparty system prevails throughout the country. The constitution also provides for the independence of the judiciary, the comptroller, the auditor general, the public service commission, and the special commissioners for scheduled castes and tribes, minorities, and languages.

The framework of the constitution is based on ideals of participatory democracy, guaranteed rights of citizens, secularism, egalitarianism, cooperative federalism, rule of law, and independent judiciary.

CONSTITUTIONAL HISTORY

India is known to be the largest functioning democracy in the world. It is also known as an ancient society and a new state. India joined the community of sovereign nation-states on August 15, 1947. The process of state formation and the establishment of a constitutional polity were guided not only by the nature, influence, and governmental structures of British colonial rule, but also by the long struggle for independence against that very rule by the peoples of India.

British colonial rule had two faces: from 1757 to 1858 that of the British East India Company and from 1858 to 1947 that of the British Crown. The British, of course, were not the first invaders of India. From Alexander of Macedon to Nadir Shah of Persia, many invaders crossed the Indian frontiers. Although most of these invaders were tempted by the wealth of Hindustan, their invasions were transient. The difference of British colonialism lay in its sustained exploitation of India through what the British called "trade" and "administration."

What is historically significant is that British colonialism was a product of an economic system that originated in England and gradually spread over the rest of the world. The traditional political system of India was exposed to the impersonal coercive machine of the modern state. In other words, the British Empire destroyed much of traditional India, its self-sufficient village economy, its traditional structure of authority, and its system of hereditary division of labor. It shook Indian civilization to the roots. Yet in that very destructive process was sown the seed of regeneration and modernization.

In the context of two phases of colonialism, the freedom struggle also had two distinct phases. In the meantime, a new system of governance had been growing in India—the Regulation Act of 1773 can be taken as its starting point. This was the first statute that recognized the British East India Company as fulfilling functions other than those of trade. It applied chiefly to the presidency of Bengal, where it imposed a governor-general and a council with four members. The governor-general was given the power to control the presidencies of Madras and Bombay and all events relating to war and peace.

In 1784, Pitt's India Act was passed. It established a board of control with six members called commissioners. The six commissioners were the secretary of state, the chancellor of the exchequer, and four privy councilors appointed by the Crown.

Pitt's India Act remained the basis of British government in India until 1857. In 1813 the company's charter was renewed, but under terms that destroyed its trading monopoly. The 1833 Charter Act, while once more renewing the charter, extended the authority of the governor-general to all of British India. All civil and military powers came to be vested in him.

Opposition to British rule emerged parallel to the imperial expansion of governance. The disastrous effect of British rule was apparent almost immediately. India ceased to be a manufacturing country. Old manufacturing centers were ruined. India developed into a supplier of minerals, food, and plantation products such as rubber, tea, and coffee and became a purchaser of finished industrial products. After 1833, the surplus of export over import from India to England came to be called "tribute." In 1848 alone this amounted to 3.5 million pounds a year.

Resentment grew among the established ruling classes of India, now deprived of their economic, political, and social status. As a result, from the day of the British occupation, the people of India resisted. There were uprisings and rebellions in various regions by different sectors of the population.

These revolts climaxed in 1857. The revolt began with an uprising of Indian soldiers at Meerut, whose religious sentiments were offended when they were given new cartridges greased with cow and pig fat, whose covering had to be stripped out by lifting with the mouth. Soon the revolt spread to a wider area, and there were uprisings in almost all parts of the country. The rebel forces marched toward Delhi and proclaimed Bahadur Shah Zafar, the last Mughal ruler, as the emperor of India. The British succeeded in crushing the revolt within a year, but the Indian rulers, masses, and militia participated so enthusiastically that it came to be regarded as the First War of Indian Independence. British historians traditionally called it "the Sepoy Mutiny."

The revolt of 1857 forced many important changes in the British government's policy toward India. Queen Victoria's proclamation of November 1, 1858, declared that India would thenceforth be governed by and in the name of the British monarch through a secretary of state in London. The governor-general was given the title of viceroy.

Some administrative and constitutional reforms were introduced by the 1861 Indian Councils Act. This added one more ordinary member to the Executive Council, which already consisted of the governor-general, four ordinary members, and the commander in chief of the army as extraordinary member. The Legislative Council, which

comprised six members in addition to the members of the Executive Council, was also expanded by another six to 12 members, half of whom were to be nonofficials. The 1861 act also initiated a process of decentralization. It restored to the Legislative Councils of Bombay and Madras some of their lost powers and provided for new, similar councils in other provinces as well. However, most of the legislation enacted by the provincial legislatures still had to receive the consent of the governor-general.

Whatever the reforms, it became clear to the Indian intelligentsia that India was administered for the interest of England alone. Some among them began to document, by hard statistics, the depth of Indian poverty and to hint that colonialism was its cause. The liberal dream of the empire was shattered by the discrepancy between the profession and the practice of British rule. At the same time, the spread of English education increased the strength of that class of Indians who were influenced by Western political thought and likely to criticize that discrepancy.

Thus, in the post-1857 period the more politically conscious people in the country took to agitating public opinion against the evil effects of the British administration. Although they did not go so far as questioning British control, they wanted the Indian government to be guided more in the economic interest of India. Various associations and organizations were formed in several parts of the country for that purpose. The birth of the Indian National Congress in 1885 was the culminating point of India's political awakening. It was the first all-India association of a permanent nature, and it signaled a new era in the political life of India.

The early rebellions and agitations had been more militant, but they were ineffective as a result of geographical isolation, poor communication, and the local character of the grievances. The new political leadership was aware of the strength of the British colonial power, its all-India scope, its technological superiority, and its economic resources. In light of these realities, the Indian National Congress was formed on an all-India basis and took a more moderate tone. Among its important demands were the abolition of the Council of India, reform and expansion of the national and provincial legislative councils, holding of Indian civil service examinations simultaneously in India and Britain, appointment of Indians to higher posts, a reduction in military expenditure, training of Indians for commissioned posts in the army, separation of the judiciary from the executive, repeal of various repressive laws, and removal of restrictions on the Indian press.

The popular agitation bore some fruit. Lord Ripon introduced reforms in the field of local self-government, although the measures were halfhearted. The British government, however, was reluctant to accept expansion of legislative councils by the addition of elected members. However, some concessions were made in 1892, when the Indian Councils Act enlarged the functions of the Legislative Councils. Although direct elections were not approved, the government was obliged to consult municipalities, landholders, and others, before nominating council members. The government could, however, reject their recommendations.

After the turn of the century, nationalism became an ever greater factor in India's freedom movement, while the stabilization of parliamentary institutions cast its lengthening shadow over the fortunes of the British rule in India. Extreme nationalism and a wave of religious revivalism grew throughout this period. Although the moderates held a majority in the congress, they were losing ground because of lack of adequate response from the government. In 1907, the conflict between the moderates and the extremists split congress in two.

In 1909 the British government, to keep moderates on its side, announced the Morley-Minto Reforms. The number of additional members in the Central Legislative Council was raised from 16 to 60, of whom 27 were to be elected by organizations of landlords and industrialists. Separate representation was given to Muslims. The number of provincial councils was also increased. In spite of their defects and shortcomings, the Morley-Minto Reforms constituted an important stage in the evolution of representative institutions in India.

The reforms received a mixed reaction, and they did not much satisfy the nationalist aspirations of self-rule. Extremists and revolutionaries stepped up their activities. Nevertheless, India fully cooperated with the British in World War I (1914–18) in the hope that they would grant at least "Dominion status" to India after the war. The government's response was the 1919 Montague-Chelmsford Reforms, embodied in the 1919 Government of India Act. The act called for popular control of local government, the responsibility of provincial administrations to the popular representatives, and a relaxation of control by the British Parliament and the secretary of state.

The act basically dealt with the structure and authority of provincial governments and imposed a system called diarchy. Under this scheme, the responsibilities of government were divided into two categories: reserved and transferred. The administration of the reserved subjects was entrusted to members of each provincial governor's Executive Council, who were appointed by the Crown for a period of five years at fixed pay. They were not responsible to the provincial legislature. The transferred subjects were entrusted to ministers, who were chosen by the governor from among the elected members of the Provincial Council and who were to hold office during his pleasure. The transferred list included those departments that required local knowledge, and social services such as medicine, health, and education.

At least 70 percent of the members of provincial councils (whose power varied from one province to another) were to be elected. No more than 20 percent could be officials. The act also provided for communal representation (as for Muslims), as had its predecessor. Detailed qualifications for voters were also specified. The pattern of the central government did not undergo much change; the government of India was still responsible to the British Parliament through the secretary of state.

The experiment of diarchy was a glaring failure. In any case, the reforms did not satisfy the aspirations of the Indian people, who had hoped to achieve self-rule after the end of the war. Mohan Das Karam Chand Gandhi (known as Mahatma) soon became the undisputed leader of congress, and the organization adopted a new form of struggle against the British—the noncooperation movement—which was a great success. New leaders such as Jawaharlal Nehru and Subhash Chandra Bose also emerged; they advocated the goal of complete independence.

In 1927 the British government sent the Simon Commission to India to suggest further reforms in the structure of Indian government. The commission did not include any Indian member, and the government showed no intention of accepting self-rule. Therefore, the congress as well as the Muslim League boycotted the commission. The congress annual session of 1929 adopted a resolution demanding complete independence and launched a civil disobedience movement, which spread throughout the country. In response, the British organized roundtable conferences. Gandhi attended the second of these in London, but with no results forthcoming, the civil disobedience movement was revived.

The 1935 Government of India Act reflected Parliament's decision to seek eventual Dominion status for India. For the first time provincial ministers were entrusted with responsibility for specific domains of government. However, the governors retained control of certain special responsibilities and reserved functions. If the constitutional machinery failed, the governor could assume the functions of any provincial body or authority and suspend any provision of the act.

In the 1937 spring elections for the provincial Legislative Assemblies, congress made further gains. The elections and the process of building ministries, however, widened the gulf between the congress and the Muslim League, and communal tensions increased. In 1940, the Muslim League's Pakistan Resolution called for the independence of Muslim-majority areas from India.

When World War II (1939–45) broke out, congress offered moral support to the British war effort. However, it wanted assurances about India's position after the war. The clarifications provided by the British government were found unsatisfactory. There also were differences between congress and the Muslim League. Congress, therefore, decided not to cooperate and resigned from ministries.

The right of Indians to determine their form of government was finally conceded in March 1942, when Sir Stafford Cripps took to India the reform proposals of the war cabinet. The Cripps proposals were rejected, but the right of Indians to frame their own constitution through a Constituent Assembly was now established.

Britain's war with Germany was over in May 1945. On June 15, 1945, Viceroy Wavell called the Shimla Conference with Indians to frame a new executive council. The conference collapsed as a result of ideological differences between the congress and the Muslim League. The biparty division became clearer in the 1945–46 voting, particularly in elections for the Central Legislative Assembly. When a British commission reached India in March 1946, it quickly realized that the constitutional problem of India boiled down to the communal problem. After another failed conference at Shimla, the cabinet decided that immediate arrangements should be made for Indians to draft a future Constitution of India.

Elections (based on limited franchise) for the Constituent Assembly were held in July 1946. The Muslim League won all but seven of the seats reserved for Muslims, and congress secured the large majority of the general seats. Congress had also captured one Sikh and four Muslim seats. The autonomous Indian princely states were to have 93 seats.

The Constituent Assembly met as scheduled on December 9, 1946. The Muslim League boycotted its deliberations. The assembly was adjourned until January 20, 1947, but the Muslim League continued its boycott when it met after the adjournment. On February 20, 1947, the Labor prime minister, Attlee, announced in the Parliament the intention to transfer power to Indian hands by June 1948. If no agreement was reached among the Indian parties, the government would have to consider whether to transfer power to a single central government or to some other system of governance (i.e., partition). Lord Louis Mountbatten was appointed in place of Lord Wavell to arrange the transfer of power. Mountbatten reached India, held a series of conferences with the Indian leaders, and, finding no agreement, announced on June 3, 1947, the plan to partition India.

On July 4, 1947, the Indian Independence Bill was introduced in the British Parliament to create the two independent dominions of India and Pakistan. The Constituent Assembly of British India was split into two, one for each of the new states.

The members of the Constituent Assembly had been indirectly elected by a system of proportional representation from the provincial legislatures, which had themselves been elected on a restricted franchise consisting of about 20 to 24 percent of the adult population. Of course, these voters constituted, as a rule, the most politically conscious section of the population and the leaders of public opinion. The assembly completed its work on November 26, 1949, with the formal adoption of the Constitution of India. It entered into force on January 26, 1950. That day is celebrated as Republic Day every year.

FORM AND IMPACT OF THE CONSTITUTION

The Constituent Assembly of India produced a comprehensive written constitution that is considered to be one of the lengthiest constitutions in the world. It contains 395 articles and eight schedules detailing almost all aspects of governance. The constitution is the basic law of

India and takes precedence over all other national laws. India is one of the founding members of the United Nations and a signatory to various international conventions and treaties, which it is bound to implement while keeping in view the national interest.

Aware of the conditions of the people and the consequence of colonial rule, and because of their training and orientation, almost all the members of the assembly favored a social revolution. This revolution could fulfill the needs of the common people, and, it was hoped, would produce fundamental changes in the structure of the Indian society.

Rivaling the social revolution in importance were the goals of national unity and stability. At the outset, the modern elite was much attracted to the idea of a centralized national state, through which their authority would be consolidated and which could be a bulwark against the divisiveness and centrifugal tendencies inherent in the Indian situation. Partition of the subcontinent had created mutual insecurity and suspicion between India and Pakistan, which made political order and territorial integration the most important problems on the agenda. The assembly also believed that the goal of economic progress could be fulfilled only by a strong centralized authority. Other aims such as the protection of minority interests, creation of efficient government and administration, and national security also played roles in shaping the constitution.

The distinctive features of the constitution reflect the political culture of postcolonial nationalism that was shared in different degrees by a heterogeneous elite cutting across class and identities. This is especially true concerning the explicit goals of the state and the fundamental rights with which the goals were to be pursued. The constitution of India has been framed on a philosophy of liberalism. Democracy is its functional manifestation and the concept of the welfare state is its socioeconomic basis. The document paved the way for an active state designed to achieve simultaneous development on many fronts. Commentators have observed that the Indian constitution is more than an instrument of governance and the basic law of the country: It is also an instrument for socioeconomic transformation and change.

BASIC ORGANIZATIONAL STRUCTURE

India comprises 28 states and seven union territories. Although it is a federal system, the constitution does not use that term. Rather, its first article declares that India is a union of states. It is not the product of an agreement among the units, who have no freedom to secede. The very existence and boundaries of the states are at the discretion of the union government. Although the opinion of the states must be consulted in the matter, Parliament is not obliged to accept their opinions.

Not only does the union government have greater and more significant powers than the states, it can intervene in state matters as well, and any residual powers automatically belong to the union. Furthermore, when the union Parliament and a state legislature pass laws on subjects in the list of concurrent powers, in case of differences union law prevails. Finally, a state governor can reserve any bill passed by the state legislature for the consideration of the president of India.

Article 355 of the constitution vests a duty and a corresponding power with the union government to protect the states against internal disturbances and to ensure that the governance of every state is carried out in accordance with the provisions of the constitution. In case a state is considered remiss in that regard, the union government can take over its administration through a proclamation by the president. This is popularly known as president's rule. Proclamation can be issued either on receiving a report from the governor of the state or on the president's will.

Taxation powers under the constitution are included in both the union and the state lists. These tax lists are both exhaustive and mutually exclusive. Various taxes levied and collected by the union government are divided with the states. The union may also give grants-in-aid to states from its consolidated fund as Parliament may by law provide.

States in India do not have constitutions of their own; the Constitution of India itself contains provisions for their governance. Thus, the system of government in all states is the same. It resembles the parliamentary form of the union level, with crucial differences. Unlike the elected union president, the state governors are unelected. In fact, each governor is appointed by the union president, who may remove him or her at any time. Furthermore, the governor enjoys certain discretionary powers independent of the Council of Ministers.

Thus, while India is a federal state, the constitution contains significant unitary features, leading jurists and commentators to describe India with such labels as "quasi-federal." Nevertheless, a degree of federalism, with occasional trends of centralization and decentralization, has been accepted from the start as an essential principle of India's constitution. If anything, federalism has strengthened since the 1980s, as opposition parties established administrations in different states, and regional parties played an important role in forming administrations even at the union level.

LEADING CONSTITUTIONAL PRINCIPLES

The framers of the constitution of India provided for a parliamentary democratic system of government, a federal and secular polity, recognizing the worth of the individual by guaranteeing fundamental rights, while aiming

at a welfare state based on mildly socialist principles. The preamble of the constitution describes India as a sovereign, socialist, secular, and democratic republic.

The constitution provides for universal adult suffrage and elections at every level of the government. The 14 general elections that India has had since 1950 have demonstrated that in spite of their poverty, widespread illiteracy, and difficulties in communication, the people, in general, have been able to exercise robust common sense in electing candidates of their choice.

The idea of secularism as it emerges from the provisions on fundamental rights means freedom of worship, religious tolerance, and communal harmony, crucial provisions in a pluralist society such as India. Similarly, the provisions on federalism help promote fraternity among citizens, assure the dignity of the individual, and encourage the unity and integrity of the nation within a multilingual, multicultural, and multiethnic society.

The framers provided an independent judiciary, to help safeguard individual rights, protect minorities, and monitor the federal distribution of powers and functions. The judiciary in India has been framed more on the United States' model of a federal state than the British model of a parliamentary system. Thus, it has been kept free of executive or legislative control and has been assigned the roles of keeping every wing of state within its legitimate bounds and interpreting the meaning of law.

The constitution's concept of social justice has not been rigidly defined, in order to maintain the constitution as a living organ and keep pace with changing needs.

CONSTITUTIONAL BODIES

The constitution provides for a well-defined executive, legislature, judiciary, and other statutory bodies both for the union and for the state governments. The union executive consists of the president, the vice president, and the Council of Ministers, which is headed by the prime minister and is mandated to aid and advise the president. The legislature of the union, the Parliament, consists of the president and two houses, known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

At the state level, the executive consists of the governor and the Council of Ministers with a chief minister as its head. For every state, there is a legislature, which consists of a governor and one or two houses as the case may be. The lower house is called the Legislative Assembly and the upper house, where it exists, is called the Legislative Council. Parliament, by law, can abolish an existing legislative council or create one where it does not exist, if the proposal is supported by a resolution of the corresponding Legislative Assembly.

Unlike many federations, India has a single, integrated judicial system. It is in the shape of a hierarchy, with the Supreme Court at the apex. The constitution also establishes independent statutory bodies to perform and supervise important functions. These include the Union Public Service Commission, the Election Commission, the comptroller and the auditor general of India, the attorney general, and the National Commission for Scheduled Castes and Scheduled Tribes.

The President

The president is elected by members of an electoral college consisting of elected members of both houses of Parliament and legislative assemblies of the states in accordance with the system of proportional representation by means of single transferable vote. To secure equality among the states as well as between the states and the union, suitable weight is given to each vote. The president must be a citizen of India, not less than 35 years of age, and qualified for election as a member of the Lok Sabha. The term of office is five years, and the president is eligible for reelection. The president's removal from office by impeachment is defined in Article 61 of the constitution.

The executive power of the union is vested in the president, as is the supreme command of the union defense forces. The president summons, prorogues, addresses, and sends messages to Parliament and dissolves the Lok Sabha. The president promulgates ordinances whenever either house of Parliament is not in session, initiates financial and money bills, and gives assent to bills in general. The president also grants pardons, reprieves, respites, or remission of punishment or suspends, remits, or commutes sentences in certain cases. When there is a failure of the constitutional machinery in a state, the president can assume all or any of the functions of the administration of that state. The president can proclaim an emergency in the country if satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened, whether by war, external aggression, or armed rebellion.

Vice President

The vice president is elected by members of an electoral college in a similar fashion to the president. The candidate must be a citizen of India, not less than 35 years of age, and eligible for election as a member of the Rajya Sabha. The term of office is five years, and the vice president is eligible for reelection. The vice president's removal from office is defined in Article 67b.

The vice president is chairperson of the Rajya Sabha. He or she acts as union president when the latter is unable to discharge the functions of office because of absence, illness, or any other cause. The vice president remains in power until the election of a new president; during that period, he or she ceases to chair the Rajya Sabha.

Council of Ministers

The Council of Ministers, headed by the prime minister, aids and advises the president in the exercise of presi-

dential functions. The prime minister is appointed by the president, who also appoints other ministers on the advice of the prime minister. The Council of Ministers comprises ministers who are members of the cabinet, ministers of state, and deputy ministers. The council is collectively responsible to the Lok Sabha.

It is the duty of the prime minister to communicate to the president all decisions of the Council of Ministers relating to the administration of affairs of the union, and all proposals for legislation as well as information relating to them. The president is bound by the advice of the Council of Ministers.

Legislature

The legislature of the Union, called Parliament, consists of the president and two houses, known as the Council of States (Rajya Sabha) and House of the People or House of Commons (Lok Sabha). Each house of parliament has to meet within six months of its previous sitting. A joint sitting of the two houses can be held in certain cases.

The constitution provides that the Rajya Sabha (Council of States) shall consist of 250 members, of whom 12 are nominated by the president from among persons who have special knowledge or practical experience in such matters as literature, science, art, and social service. The other 238 representatives are from the states and union territories.

Elections to the Rajya Sabha are indirect; members representing states are elected by the elected members of legislative assemblies in accordance with proportional representation by means of the single transferable vote, and those representing union territories are chosen in such manner as Parliament may by law prescribe. The Rajya Sabha is not subject to dissolution; one-third of its members retire every second year.

The Lok Sabha is composed of representatives of the people chosen by direct election on the basis of adult suffrage. The maximal strength of the house envisaged by the constitution is now 552 (530 members to represent the states, 20 to represent the union territories, and not more than two members of the Anglo-Indian community to be nominated by the president, if, in the president's opinion, that community is not adequately represented in the house). The total elective membership of the Lok Sabha is distributed among the states in proportion to their population. The Lok Sabha at present consists of 545 members.

The term of the Lok Sabha, unless dissolved, is five years from the date appointed for its first meeting. In order to be chosen a member of Parliament, a person must be a citizen of India and not less than 30 years of age in the case of Rajya Sabha and not less than 25 years of age in the case of Lok Sabha.

Functions and Powers of Parliament

As in other parliamentary democracies, the Parliament of India has the cardinal functions of legislating, overseeing the administration, passing the budget, ventilating public grievances, and discussing various matters such as development plans, international relations, and national policies. The Parliament can, under certain circumstances, assume legislative power even over matters falling within the sphere exclusively reserved for the states. The Parliament is also vested with powers to impeach the president and to remove the judges of the Supreme Court and High Courts, the chief election commissioner, and the comptroller and auditor general.

All legislation requires consent of both houses of Parliament. In the case of money bills, however, the will of the Lok Sabha prevails. Delegated legislation is also subject to review and control by parliament.

The Lawmaking Process

Legislation is dealt with in three stages: introduction, consideration, and passing, which roughly correspond with (1) the first reading in the House of Commons; (2) the second reading, committee, and report stages; and (3) the third reading. At the second stage, the bill may be referred to a select committee. One of the differences between the Lok Sabha and the British House of Commons is the absence in the former of standing committees and committees of the whole house. Instead, the Indian Parliament uses ad hoc select committees of 20 to 25 members, chosen by the administration's chief whip and the speaker and reflecting the balance between the parties. The minister in charge of the bill may not participate. After the completion of its third stage, a bill is passed on to the other house and goes through an identical procedure. In case of unresolved disagreement between the two houses, the president in consultation with the speaker may call a joint session.

Each Friday about two hours is reserved for nonofficial business, when private members can move their own resolutions and bills. Additional time for private members may be allotted on any other day after consultations between the speaker and the leader of the house.

The Judiciary

The judiciary in India has been kept independent of the executive and the legislature of both the union government and state governments. Unlike many federations, India has a single judicial system. At the apex of the judicial system is the Supreme Court of India with a High Court for each state or group of states and a hierarchy of subordinate courts in each.

The judiciary in India performs four important functions: (1) It is the protector and guarantor of fundamental rights, (2) it maintains federal equilibrium, (3) it acts to check the executive and legislature and enforce the rule of law, and (4) it interprets the constitution.

The Supreme Court of India consists of 26 judges (including the chief justice of India), who hold office until the age of 65. The court has original jurisdiction in any dispute arising between the states, or between them and

the union government. The Supreme Court also hears appeals from any judgment, decree, or final order of a High Court, whether in a civil, criminal, or other proceeding.

The High Court stands at the head of the state's judicial administration. There are 21 High Courts in the country, three of which have jurisdiction over more than one state. Each High Court comprises a chief justice and such other judges as the president may, from time to time, appoint. The chief justice of a High Court is appointed by the president in consultation with the chief justice of India and the governor of the state. The procedure for appointing the other High Courts judges is the same except that the initiative lies with the chief justice of the High Court concerned. The justices hold office up to the age of 62.

The structure and functions of subordinate courts are more or less uniform throughout the country. These courts deal with all disputes of civil or criminal nature according to the powers conferred on them.

THE ELECTION PROCESS

Elections to various offices and bodies are held on the basis of universal adult suffrage. Every adult 18 years of age or older has the right to vote, apart from those who have unsound mind or have been punished for election-related offenses.

An Indian citizen who is registered as a voter and is above 35 years of age is allowed to stand for the Lok Sabha or State Legislative Assembly. For the Rajya Sabha the age threshold is 30 years. A candidate for the Rajya Sabha should be a resident of the state that he or she wishes to represent. A person who has been convicted of an electoral offense or certain criminal offenses cannot contest an election for a period of six years from the date of conviction.

Elections in India are events involving political mobilization and organizational complexity of an amazing scale. Happily, the record of free, fair, and peaceful elections has so far been remarkable.

POLITICAL PARTIES

Political parties are an established part of the political process in India. As a liberal democracy, India has a pluralistic system of political parties.

The list of recognized parties is revised by the Election Commission after every general election in the light of written criteria. A political party enjoys the status of a national party if it is recognized in four or more states; otherwise, it is deemed a state party. Among the major national parties, the Indian National Congress and the Bharatiya Janta Party (Hindu nationalist) enjoy almost all-India political support in recent times. Among the other important national parties are the Communist Party of India (Marxist) and the Bahujan Samaj Party (alliance of Dalits and low castes) at the national level.

CITIZENSHIP

The constitution of India provides for a single citizenship for the entire country. Every person who was domiciled in the territory of India at the inception of the constitution and who was born in India or who had been ordinarily resident in India for not less than five years became a citizen of India. No person may be a citizen of India if he or she has voluntarily acquired the citizenship of any foreign state.

There are four ways to become an Indian citizen: by birth, descent, registration, and naturalization. A newborn child is a citizen if either parent is an Indian citizen at the time of birth, irrespective of whether the child is born in India. Registration is for people of Indian origin or spouses or children of Indian citizens. Naturalization applies to all other people, who can acquire citizenship by residing in India for 10 years.

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The constitution of India contains, in Chapters III and IV, two sets of fundamental rights and directive principles of state policy; the first set of rights are justiciable and the latter nonjusticiable.

In the chapter on fundamental rights, the constitution affirms the basic principle that every individual is entitled to enjoy certain rights as a human being. They include all the basic liberties such as freedom of speech, movement, and association; equality before the law and equal protection of the law; freedom of belief; and cultural and educational freedoms. There is also a right to constitutional remedies that entitle every aggrieved person to approach the highest judicial organ to restore to him or her any fundamental right that may have been violated. Subject to specific exceptions under the constitution, the state cannot make any law that abridges or takes away fundamental rights. These rights, however, can be amended by the process of constitutional amendments.

There are five articles dealing with the right to equality. Article 14 deals with equality before the law and equal protection of the law. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It explicitly declares that no citizen shall on ground only of religion, race, sex, or place of birth be subject to any disability or restriction with regard to access to public places, such as shops, or the use of public facilities, such as wells. However, the state is empowered to make special provisions for women and children. Equality of opportunity is guaranteed under Article 16. The commitment of the constitution to eradicate untouchability (of people of lowest social standing in the caste system traditionally regarded as unclean) finds emphasis in Article 17, which abolishes untouchability and makes its practice in any form an offense punishable by law. Article 18 specifies that no title,

other than military or academic distinction, shall be conferred by the state.

The framers of the constitution wanted to balance the general right of citizens to equality of opportunity in public employment with social justice for the disadvantaged castes and tribes. Therefore, though Clauses (1) and (2) of Article 15 prevent discrimination, Clauses (3) and (4) provide for protective discrimination in favor of women and children, and for the advancement of any socially and educationally disadvantaged classes of citizens. Similarly Articles 16 (1) and (2), which guarantee equality of opportunity in matters of public employment and nondiscrimination, provide for similar exceptions.

The constitution therefore permits the reservation of jobs and of seats in educational institutions for women and "socially and educationally backward classes of citizens" or for the scheduled castes and scheduled tribes. It may be pointed out here that what constitutes a "socially and educationally backward class of citizens" has nowhere been defined in the constitution; therefore, by implication the legislatures have to interpret these words.

Article 20 forbids retrospective criminal legislation and double punishment for the same offense and protects the right of an accused person not to be a witness against himself or herself. Article 21 provides that no person shall be deprived of life or liberty without legal authority and without the procedure stated in the law.

Related to this are provisions of Article 22, which stipulate that no person can be detained without being informed of the grounds of such arrest. The constitution, in Articles 23 and 24, also guarantees rights against exploitation by prohibiting traffic in human beings.

The constitution in Articles 29 and 30 protects the cultural and educational rights of minorities. Any group that has a distinct language, script, or culture has the right to conserve them. It also has the right to establish and administer educational institutions of its choice.

Article 300A in Part XII of the constitution provides that no person can be deprived of private property save by authority of law. This provision gives protection against executive orders depriving a person of property, but not against legislative deprivation.

Impact and Functions of Fundamental Rights

The constitution offers judicial protection and sanctity in the enforcement of enumerated rights, by granting every person the right to appeal to the High Court or the Supreme Court (at the person's choice). The right to move the Supreme Court to issue orders or directions for the enforcement of fundamental rights is guaranteed and cannot be suspended except when a proclamation of emergency is in force.

Thus, the fundamental rights under the constitution have been made effective by the right to explicit constitutional remedies. Citizens as well as noncitizens can exercise and enjoy these rights to the fullest extent with an assurance of judicial protection.

Limitations to Fundamental Rights

The fundamental rights guaranteed by the constitution are not absolute. Such rights, however basic, cannot override national security and collective welfare. The constitution contains express provisions for limitations on fundamental rights. Equality is subject to restrictions in favor of special provisions for women, children, scheduled castes and tribes, and other backward classes.

The state can impose reasonable restrictions on most freedoms in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, and decency or morality, or in relation to contempt of court, defamation, or incitement to an offense. The phrase *public order* does not have a definite accepted connotation, raising the danger of illegitimate use. The right of assembly is subject to two special limitations: It must be exercised peaceably and without arms.

The operation of fundamental rights can be partly suspended during a state of national emergency. These can also be modified or restricted by constitutional amendments.

Directive Principles of State Policy

Fundamental rights can make room for social justice by asking the state not to deny equality and liberty of individuals. In addition, in the constitution of India the idea of positive socioeconomic justice is explicitly addressed through directive principles of state policy contained in Part IV. Through these principles, the state is instructed to direct its policy toward securing a wide range of measures essential to the achievement of social justice. The inclusion of these principles, which can be called nonjusticiable rights, can be described as a "novel feature" of the constitution of India. The ideas in the directive principles are borrowed from the Irish constitution of 1937.

Directive principles of state policy are not legally enforceable by courts. Nevertheless, the constitution makes it clear that these principles are fundamental in the governance of the country and that it must be the duty of the state to apply these principles in making laws. It has been said that these directives are aimed at furthering the goals of social revolution, and that by establishing these positive obligations of the state, the members of the Constituent Assembly made it the responsibility of future Indian governments to find a middle ground between individual liberty and the public good, between protection of the privileges of the few and bestowing of benefits on the many, with the aim of liberating the powers of all citizens equally and building the common good. The directive principles, thus, state ideals for the country's administration and expectations for its people, which require India to establish social and economic democracy.

Though directive principles are not justiciable, and no one can go to a court of law for their violation, the judiciary in India has taken due notice of them. It has tried to strike a proper balance between fundamental rights and directive principles of state policy.

Fundamental Duties

The 1950 constitution originally did not contain any list of duties of citizens. Once it was in operation, many observers felt that there had been rather disproportionate emphasis on the rights of citizens as against their duties. They complained that the text failed to impregnate the social and political process with the inspiration of patriotic citizenship and ignored the most basic concepts of reciprocity and responsibility.

To overcome this criticism, fundamental duties of citizens were introduced into the constitution. It is the express duty of every citizen of India to abide by the constitution and respect the national flag and national anthem, as well as to cherish and observe the noble ideas that inspired India's national struggle for freedom. It is also a fundamental duty to protect the sovereignty, unity, and integrity of India and to defend the country. Every citizen has the duty to promote the spirit of common brotherhood among all the people of India, to preserve the rich heritage of India's composite culture, and to protect and improve the natural environment. Finally, the constitution makes it a fundamental duty to develop the scientific temper and spirit of enquiry, to safeguard public policy, and to strive towards excellence in all spheres of individual and collective activity.

The very fact that these fundamental duties have been inserted alongside the directive principles of state policy suggests that these are not justiciable.

ECONOMY

Having obtained political independence in 1947, India had to cope with the monumental task of implementing far-reaching socioeconomic and cultural changes, aimed to reorganize the country's feudal and colonial social structure, to put an end to economic and cultural backwardness, and to create a modern diversified economy as the foundation of its own independent development.

Although the constitution does not mention any specific economic model for the country, the directive principles of state policy establish a social welfare state. They do so by proclaiming the right of all citizens to an adequate means of livelihood. In addition, ownership and control of material resources are to be distributed so as best to serve the common good, and the operation of the economic system is not to be allowed to result in the concentration of wealth and means of production to the common detriment.

In the context of these needs and guidelines, India adopted what came to be known as a mixed economy model. The methods and instruments stipulated to meet these needs were political democracy, governmental planning, and regulation and control of the economy. The creation of a public sector and of a system of tax relief and state financial aid to the private sector in priority areas was also meant to serve these aims.

In December 1954, the Parliament declared that the objective of the country's economic policy should be a socialistic pattern of society. The process, however, remained as described. In 1976 the word *socialist* was included in the preamble of the constitution itself. From the 1980s onward, a reorientation toward liberal policy took place. This process emphasized the relaxation or removal of controls, greater competition, a larger role for the private sector, and reforms in the public sector. A major goal was the modernization of industries, especially in technical fields.

The process of liberalization and privatization has been further strengthened since the early 1990s through structured adjustments and economic reforms. India now is a member of the World Trade Organization and a partner in the process of globalization—but an advocate of a humane implementation of that process.

RELIGIOUS COMMUNITIES

India is perhaps one of the most complex countries in terms of religious-cultural plurality. Its geopolitical and historical characteristics have hardly any parallels. Its size and population, and its geographical, linguistic, religious, social, and other diversity, give it the character of a subcontinent. Eight major religious communities coexist in India, comprising four originating in southern Asia—Hindus, Sikhs, Buddhists, and Jains—and four in West Asia—Muslims, Christians, Zoroastrians, and Jews. The same multiplicity marks the linguistic scene. One linguistic survey of India identified 179 languages and 554 dialects; other studies discern more than 200 languages and about 700 dialects. These languages belong to the Indo-Aryan, Tibeto-Burman, Dravidian, and Austro-Asiatic families. Eighteen languages have been scheduled in the constitution as national languages. In this context, it has been suggested that there are four types of minorities in India: linguistic, religious, caste, and tribal.

In the context of plurality, the framers of the constitution considered a secular society and secular state as indispensable for social harmony and social peace. Various provisions in the chapter on fundamental rights clearly reveal the secular perspective. The idea of secularism emphasizes freedom of religious worship, religious tolerance, and communal harmony. It also implies allowing all the existing and even new religions to flourish, with the role of the state that of neutrality.

Religious freedom as envisaged in the constitution has two aspects. Positively, it safeguards the free exercise of religion by all persons, subject to public order, moral-

ity, and health. Negatively, it prohibits compulsion by law to accept any particular religious practice as an essential part of religion.

The constitution also recognizes the right of every religious denomination to manage its own affairs and to own, acquire, and administer properties for religious or charitable purposes. Compulsory religious instruction in educational institutions maintained or assisted by the state is prohibited, and so is the payment of tax to benefit any particular religion.

Through provision of these rights, the constitution guarantees equality in the matter of religion to all individuals and groups irrespective of their faith, emphasizing that there is no religion of the state itself.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military is kept out of politics and is formally subordinate to civilian leaders. The supreme command of the armed forces is vested in the president of India. The responsibility for national defense rests with the cabinet. The defense minister is responsible to Parliament for all defense matters.

Following the directive principles of state policy, the government is expected to promote international peace and security and encourage settlement of international disputes by arbitration. India's defense policy aims at promoting and sustaining durable peace in the subcontinent and equipping the defense forces adequately to safeguard against aggression.

The Indian constitution also makes provisions for proclamation of emergency in specific situations. This power is vested in the president. Three types of emergency situations are specified. The first is the proclamation of emergency, either for the whole of India or for a part thereof, on the grounds of a threat to the security of India or of a part thereof, either from external aggression or armed rebellion from within. The second refers to the proclamation that the government of a state cannot be continued in accordance with the provisions of the constitution; this is called the president's rule. Finally, there can be a financial emergency on the grounds that the financial stability or credit of India, or of any part of the territory thereof, is threatened.

Any proclamation of emergency by the executive must be ratified by the Parliament to remain in force. During the period of national emergency, the union government can give directions to any state, make laws on any subject, extend the normal life of the House of the People, and restrict the fundamental freedoms mentioned in Article 19. During the president's rule in a state, the functions of the state are under the powers of the union administration. During a financial emergency, the union government may direct any state to observe canons of financial propriety.

AMENDMENTS TO THE CONSTITUTION

The framers of the Indian constitution were aware that a constitution, to be more than a mere manifesto, must provide the legal instruments for change and be flexible enough to facilitate the process of development and transformation of society. At the same time, it was necessary to keep the constitution rigid enough to protect the rights of the constituent states and to assure various minority groups that no future majority would be able to use its numerical strength to negate their rights and equal position.

The Indian scheme of formal amendment of the constitution is a combination of flexibility and rigidity. The provisions of the constitution fall under three broad headings. The first category consists of those articles in which change can be effected by a simple majority of the members of the Parliament. The second category consists of those articles in which amendment requires a clear majority of the total members of Parliament and two-thirds of members present and voting. The third category consists of those basic or entrenched articles with additional safeguards, which require, in addition to special majority of Parliament, ratification by resolution passed by not less than one-half of the state legislatures. This concurrence of state legislatures is required for any vital change that affects the interest of the states.

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Amarjit Narang

INDONESIA

At-a-Glance

OFFICIAL NAME
Republic of Indonesia

CAPITAL
Jakarta

POPULATION
238,452,950 (2004 est.)

SIZE
735,310 sq. mi. (1,904,444 sq. km)

LANGUAGES
Bahasa Indonesia (official), many local languages and dialects spoken

RELIGIONS
Muslim (mostly Sunni, some Shiites, a few Sufi and Amadhiyah) 87%, Protestant 6%, Roman Catholic 3%, Hindu 2%, Buddhist 1%, other 1%

NATIONAL OR ETHNIC COMPOSITION
Javanese 45%, Sundanese 14%, Madurese 8%, Coastal Malay 7%, other (350 distinct ethnic groups) 26%

DATE OF INDEPENDENCE OR CREATION
August 17, 1945

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 18, 1945 (reinstated July 5, 1959)

DATE OF LAST AMENDMENT
August 10, 2003

Indonesia, the largest state that has a predominantly Muslim population in the world, is in many respects a wonder of heterogeneity and plurality. Countless ethnic, cultural, religious, and linguistic groups live in a state that is composed of thousands of islands. The legal system is also not homogeneous, but characterized by a blend of traditional, colonial, and modern influences.

Politically, Indonesia is a presidential democracy, which has undergone fundamental constitutional changes and reform in recent years. In regard to the constitution, after a long history of authoritarian leadership based on the power of military and security forces, redemocratization began in 1998. The process of *reformasi* is formally documented in four constitutional amendments so far, but further constitutional reform steps are being discussed by a recently established constitutional commission.

CONSTITUTIONAL HISTORY

Indonesia displays some of the oldest remains of human settlement, with evidence for human ancestors dating back about 2 million years. There is archaeological evidence that early kingdoms emerged from the fifth century C.E. Subsequently, two types of kingdoms established themselves: seafaring trading states along the coasts and territorial kingdoms based on rice production inland. After a period of domination by Hinduism and Buddhism, major social changes followed the arrival of Islam in the region beginning in the 13th century.

Portuguese traders established the first European presence in the 16th century. Starting from the early 17th century, Dutch influence in the area was established. The consolidation of the territory of Indonesia gradually took place during the time of Dutch control, at the expense of the earlier Portuguese presence and later French and British imperial probes at the start of the 19th century. Legally, the Dutch implemented a highly complex system of "legal pluralism" in Indonesia, combining *adat* (traditional), *sharia* (Islamic), and Western elements.

During World War II (1939–45) Indonesia was under Japanese control for about three years. After the defeat of Japan the leader of the Indonesian Nationalist Party, Sukarno, together with other local leaders, declared the

country to be independent on August 17, 1945. A temporary constitution (Undang Undang Dasar 1945), consisting of only 37 articles, was enacted the following day. It emphasized the office of the president, whereas parliament remained weak. Human rights were reflected in only a few short provisions, as they were seen as an inappropriate restriction of the state.

In any case, the constitution soon lost its relevance, as the former colonial power tried to restore its position through military force. Four years of intense fighting led the Dutch in the end to recognize Indonesia's independence on December 27, 1949. The first independent government ignored the 1945 constitution in favor of a short-lived federation. On August 17, 1950, another provisional constitution entered into force, making Indonesia a unitary state. This constitution provided for a parliamentary democracy with a largely symbolic presidency, and it paid substantial attention to human rights.

This constitution was still in force on July 5, 1959, when the then-president, Sukarno, reinstated the 1945 constitution by decree, after dissolving the constituent assembly that was debating a new constitution. Under the formal framework of the 1945 constitution, Sukarno followed the policy of "guided democracy" (the phrase was coined in 1957), allegedly more suited to the national character of Indonesia than any Western-style democracy.

Sukarno's regime did not survive the crises of the 1960s, when violence escalated between the military and Muslims, on the one hand, and the communists on the other. After an alleged coup attempt in 1965, Lieutenant Colonel Suharto seized control of the army and then of the state. On March 11, 1966, Sukarno was urged to sign a document giving Suharto full authority to restore order. Subsequently Suharto became the second president of independent Indonesia and established a "new order."

Under Suharto, Indonesia opened economically to the West and positioned itself on the side of the West in the geopolitical power struggle, but internally he consolidated an authoritarian regime that abolished genuine democratic structures and violated human rights on a large scale. During his rise to power between the end of 1965 and early 1966 a purge of communists left at least 500,000 people dead, according to most estimates.

In 1975, with reported backing from the United States, Indonesia invaded East Timor, a Christian country that had become independent of Portuguese rule under a radical regime. Gross human rights violations continuously occurred in annexed East Timor until Indonesia withdrew in consequence of the Timorese independence referendum in August 1999. Without ever changing the constitution of 1945, Suharto was able to control political life, including the work of parliament, courts, and the media, for more than three decades. His power eroded in the second half of the 1990s for several reasons. The Asian economic crisis of 1997, which hit Indonesia most heavily, may be seen as the final straw. Suharto resigned on March 21, 1988, and Vice President B. J. Habibie became his successor in office.

Although Habibie had been a long-term confidant of Suharto, political reforms started immediately. In regard to the constitution itself, *reformasi* began in 1999, when the next president was already in office. The 1945 constitution, which had without any explicit amendments been the formal framework for the different authoritarian regimes of Sukarno and Suharto, was substantially reshaped during this process. Technically, it was decided not to enact a new constitution (as was done in Thailand at that time), but to go the path of piecemeal reform of the existing constitution, which is still widely regarded as a symbol of Indonesia's struggle for independence. Four constitutional amendments in 1999, 2000, 2001, and 2002 attempted to redefine Indonesia as a constitutional state based on the principles of pluralistic democracy and human rights. On the institutional level the significant empowerment of parliament and the corresponding limitation of the president's authority as well as the establishment of a constitutional court are most remarkable.

FORM AND IMPACT OF THE CONSTITUTION

Indonesia's constitution is codified in a single document. The impact of the constitution was limited in postindependence Indonesia until 1998, but the recent constitutional reforms seem to suggest that its relevance is increasing. As exhaustive provisions on human rights have been included, the constitution is now also a source of substantial values; a Constitutional Court has been established to guarantee its effectiveness.

However, the constitution remains sparse, with few details about the functioning of the constitutional bodies, the lawmaking process, the judiciary, or the criteria for restricting fundamental rights. Important questions in all these fields are therefore left to the discretion of ordinary legislation. Furthermore, critics have bemoaned the lack of consistency in the constitution, a weakness that becomes more relevant as the country tries to constitutionalize the legal order and political life.

BASIC ORGANIZATIONAL STRUCTURE

Despite being an archipelago with nearly 13,700 islands (about half of which are inhabited) and despite having a substantial cultural heterogeneity, Indonesia is a unitary state (Article 1 [1]). However, since the end of the highly centralized politics of the Suharto era, decentralization has become a major topic on the reform agenda. An analyst recently suggested that Indonesia has undergone "one of the most radical decentralizations of power in the world." Chapter VI (Articles 18, 18 A, 18 B) is the constitutional outcome of this process.

The state comprises 32 provinces (including two special regions and the Jakarta special metropolitan district). The provinces themselves comprise regencies (*kabupaten*) and municipalities (*kota*). The administrative heads of the decentralized levels (governors, regents, and mayors) are now to be elected, as are the provincial and local assemblies (Article 18). A "wide-ranging autonomy" is explicitly guaranteed to all these levels. Autonomy is especially strong on the level of the 349 regencies and 91 municipalities. "Traditional communities" also must be respected (Article 18 B). On the national level, the Council of Representatives of the Regions has the exclusive function of safeguarding the interests of the decentralized levels of administration within the legislature.

LEADING CONSTITUTIONAL PRINCIPLES

Indonesia is a presidential democracy. The philosophy of *Pancasila* (Sanskrit, five principles), as stated in the preamble of the 1945 constitution, is traditionally regarded as the underlying idea of the Indonesian constitution and the philosophical basis of the Indonesian state. The five principles are "the belief in the One and Only God, a just and civilized humanity, the unity of Indonesia, democratic life directed by the wisdom of thoughts in deliberation amongst representatives of the people, and achieving justice for all the people of Indonesia."

Article 1 of the constitution may also be seen as a description of fundamental principles. According to this provision, Indonesia is a "unity in the form of a republic"; "sovereignty is in the hands of the people and is implemented according to the constitution" and is "based on the rule of law." These fundamental proclamations, together with respect for human rights stipulated in an extensive body of human rights provisions, can be regarded as a description of the leading constitutional principles of the "postreform" version of the constitution.

Indonesia has been a member of Association of South-East Asian Nations (ASEAN) since its formation in 1967, hosting the headquarters of this regional organization in Jakarta.

CONSTITUTIONAL BODIES

The set of constitutional bodies provided by the Indonesian constitution is in some respects unique. Whereas the executive branch is headed by the president, the representative organs consist of the People's Consultative Assembly (MPR), the House of People's Representatives (DPR), and the Council of Representatives of the Regions (DPD). In addition, the Constitutional Council must be mentioned as a newly established constitutional body.

The President

The president is the head of state with power to represent Indonesia internationally; he or she is also the head of the Indonesian executive branch of government. The office has undergone fundamental political and constitutional change in recent years.

According to the constitution, the candidates for presidency and vice presidency have to be citizens of Indonesia by birth. According to the new procedure the president and vice president are elected as a "single ticket" directly by the people. The candidates need an absolute majority of more than 50 percent of the votes. If no ticket wins this majority in the first round, the two tickets that receive most votes run in a second round. The new procedure was first practiced in 2004; the retired general Susilo Bambang Yudhoyono became the first directly elected president of Indonesia. The regular term is five years, and only one reelection is allowed (a restriction clearly reflecting recent history). An impeachment procedure that involves the Constitutional Court allows the early dismissal of the president and/or vice president under narrowly defined circumstances.

The Executive Branch of Government

As the head of government, the president appoints and dismisses the ministers of state. Apart from stipulating that each minister of state shall be responsible for a particular area of government, the constitution gives no details on the organization of the administration. However, it does provide that the formation, change, and dissolution of ministries must be regulated by law; this in itself limits the organizational power of the president.

The House of People's Representatives

The House of People's Representatives (Dewan Perwakilan Rakyat [DPR]) is the central body of democratic representation. Its current 550 members are elected by the people for a five-year term from 69 electoral districts. The participants in the elections are not individual candidates, but the political parties (Article 22 E [23]). The House of People's Representatives has legislative, budgeting, and oversight functions (Article 20 A). The elected representatives individually have the right to propose laws, and they enjoy immunity.

The Council of Representatives of the Regions

The 128 members of the Council of the Representatives of the Regions (Dewan Perwakilan Daerah [DPD]), sometimes also called the Regional Senate, are elected as individual candidates (Article 22 E [4]) in the provinces; all provinces have the same number of members in the Council of Representatives of the Regions. The Council of Representatives of the Regions has no full legislative

power, but it proposes laws relating to the decentralized structure of the state in areas such as taxation, religion, and education. It also participates in the deliberation of bills. Some analysts have argued that the role of the Council of Representatives of the Regions is too limited to call the Indonesian system bicameral, but considering the often restricted roles of second chambers in constitutions around the world this position seems unconvincing. The DPD also has a role in amending the constitution, as part of the People's Consultative Assembly.

The People's Consultative Assembly

In the 1946 constitution, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat [MPR]) was usually seen as the highest representative organ and the centerpiece of an "integralistic" state, reflecting the "principles of unity between leaders and people and unity in the entire nation." It consisted of the members of the People's Representative Council plus some 200 additional members (regional party representatives, appointed members, some nonparty regional representatives). In theory, the assembly had wide discretionary power to appoint and dismiss the president and to give binding guidelines for policies.

The structure and role of the People's Consultative Assembly have significantly changed during the recent reform process. It now consists of the members of the House of People's Representatives and the Council of Representatives of the Regions. It therefore has 678 members, all democratically legitimized through elections. Constitutionally it is still only required to assemble once every five years, but by amending its standing orders it began to meet annually in 2000.

The functions of the assembly have also changed. It no longer selects or dismisses the president, although it still inaugurates the president and plays an important role in the impeachment procedure. It can no longer issue broad guidelines of state policy. Its most important remaining power is to amend the constitution.

The Lawmaking Process

The authority to make laws rests mainly with the House of People's Representatives and the president. Proposals for laws can be made by them or by the Council of Representatives of the Regions in matters of decentralization. Laws are discussed by the House of People's Representatives and the president with the goal of reaching joint approval. Jointly approved drafts have to be signed by the president within 30 days; otherwise they become law automatically.

In urgent cases the president can enact a government regulation instead of a law, but this has to be confirmed by the House of People's Representatives in its next session. The details of the lawmaking process are determined by law (Article 22 A). Laws are typically accompanied by official explanations called "Elucidations," which are not formally part of the law but play an important role in the work of interpretation. Legislation is published in the *State Gazette of the Republic of Indonesia,* the Elucidations in a supplement thereto.

The Judiciary

The Indonesian judiciary must be independent (Article 24). There is a Supreme Court (Mahkamah Agung) with a system of courts underneath (district courts and appeal courts). There are special courts for religious affairs, military tribunals, an administrative court, and a commercial court. Criminal law is codified, but in civil law the courts apply a range of sources including traditional law (adapt law). An independent Judicial Commission has been established to improve judicial ethics and appointment procedures and strengthen the independence of the traditionally weak judiciary.

A Constitutional Court was established by the third amendment to the constitution in 2001. Judicial review of laws, forbidden under the Suharto regime (with the consequence that numerous unconstitutional laws were enacted), is now part of the formal constitutional framework. The jurisdiction of the Constitutional Court encompasses rulings of the constitutionality of laws, disputes between state institutions, dissolution of political parties, and the results of general elections. Individual human rights complaints cannot be taken to the court for the time being. In its brief tenure since its startup in 2003, the court has already played an important role in constitutional life; it has already declared a number of laws unconstitutional.

THE ELECTION PROCESS

General elections shall take place every five years to elect the House of People's Representatives, the Council of Representatives of the Regions, the president and vice president, as well as the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah [DPRD]). Participants in the elections to the House of People's Representatives and the Regional People's Representative Council are political parties, whereas individual candidates are elected to the Council of Representatives of the Regions. The elections must be conducted in a "direct, general, free, secret, honest, and fair manner" (Article 22 E). The constitution does not provide any details regarding the election but stipulates that a law shall regulate further provisions. An independent general election commission is responsible for organizing the elections.

POLITICAL PARTIES

Under President Suharto, the multiparty system was basically abolished. A Joint Secretariat of Functional Groups, known by the acronym Golkar, consistently held the majority of seats in parliament. Opposition groups were

merged into two parties, which were tightly controlled and weakened by internal conflicts. After the ban on political parties had been repealed in the aftermath of Suharto's resignation, more than 100 national political parties were founded. There are also regional parties with an agenda of independence or autonomy for the regions. The dissolution of parties is within the jurisdiction of the Constitutional Court.

CITIZENSHIP

The constitution does not provide details for citizenship, except stipulating that citizens shall consist of "indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law" (Article 26 [1]). Citizenship is a guarantee of equal rights and opportunities under Indonesian law. Interestingly, a provision in the human rights chapter stipulates that "every person shall have the right to citizenship status" (Article 28 E).

FUNDAMENTAL RIGHTS

The original version of the 1945 constitution lacked a catalogue of fundamental rights. Article 27 stipulated the equal status of all citizens and the right to work and to live in human dignity. Freedom of association, assembly, and expression (Article 28) was to be regulated by law. Professor Raden Soepormo, chief author of the constitution, explained: "There will be no need for any guarantee of *Grund- und Freiheitsrechte* (Basic and Liberal Rights) of individuals against the state, for the individuals are nothing else than organic parts of the state, having specific positions and duties to realize the grandeur of the state."

Even less did constitutional practice reflect any respect for the idea of human rights. Sukarno's "guided democracy" and Suharto's "new order" were both conceptually in tension with a modern fundamental rights approach. To justify the nonacceptance of the allegedly "Western" concept of human rights, President Suharto, together with the leaders of Singapore and Malaysia, promoted a concept of "Asian values" in the early 1990s. In practice, extrajudicial killings were in some cases official state policy, political parties and associations could not be freely founded, and the media were tightly controlled, to give only a few important examples of "Asian values" in action.

After the resignation of President Suharto, the era of human rights reached the Republic of Indonesia. The Second Amendment of 2000 introduced a long catalogue of fundamental rights (Article 28 A to 28 J) into the text of the constitution, which now stands clearly in the tradition of the Universal Declaration of Human Rights of 1984. The importance of this amendment cannot be exaggerated. As one analyst wrote: "This is a radical reinvention of the basic assumptions on which the Indonesian state was founded."

This catalogue consists of liberal rights, a wide range of social rights, and modern provisions such as a right to a "good and healthy environment." Some controversy arose over the prohibition of retroactive punishment (Article 28 I), which was criticized by some nongovernmental organizations as a barrier to punishing the human rights violations of the Suharto era.

Impact and Functions of Fundamental Rights

The impact of Indonesian fundamental rights in "real life" has improved during the constitutional reform process since 1998. Political, communicative, and academic freedoms have been established in practice. However, gross violations of human rights, including extrajudicial killings by security forces, continue to be reported, and the situation is particularly troublesome in areas where independence movements are strong (such as Aceh and Papua).

The mass killings in East Timor in the year 1999, which occurred when that former Portuguese colony refused to join Indonesia, were not prevented by the authorities; in fact, elements of the armed forces were involved in these atrocities. Indonesian policies to prosecute those responsible have been denounced as insufficient and "lip service" by most international observers. A leading general widely regarded as a major culprit was later a major contestant in the 2004 elections for presidency. Apart from the special case of East Timor, the accountability of authorities for rights violations seems to have increased in recent years but is still limited in consequence of a weak judiciary. In Aceh, a peace agreement between the government and the rebels negotiated in the aftermath of the devastating tsunami catastrophe of December 2004 and signed in August 2005 may pave the way for a future in which human rights are respected there.

Limitations to Fundamental Rights

The option to limit and restrict fundamental rights has its constitutional basis in one general provision, which stipulates that "in exercising his/her freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society" (Article 28 J [2]).

ECONOMY

The Indonesian constitution has traditionally been silent in regard to the economic system. Under the framework of the constitution of 1945, socialist as well as capitalist models have been pursued. A 1967 investment law contained substantial guarantees for foreign investors. In

principle, the country currently follows the model of a liberal market economy.

RELIGIOUS COMMUNITIES

The overwhelming majority of Indonesians are Muslims, making the country the largest Islamic country in the world. However, there are significant religious minorities of Christians, Hindus, and Buddhists. The belief in "one god" is mentioned in the Preamble as one of the basic principles of the state, but religious freedom is explicitly guaranteed in the constitution. The legal system has traditionally embraced religious law to a certain extent, but the recently discussed introduction of a reference to the Sharia as the relevant law for Muslims (so-called Jakarta Charter) into the preamble of the constitution has been rejected so far. However, some small but violent extremist religious groups pose a significant security threat to the country.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military forces traditionally have had a strong position in Indonesian politics. The role of the military was especially strong during the Suharto years. With the collapse of his "new order" regime, it became possible to discuss the wide-scale involvement of the military in illegal activities including terrorism and corruption. The reform process has included intensive deliberations on the role of the military in political and government life. Significant results have been achieved: the abolition of the reserved seats for members of the armed forces in the House of People's Representatives and the People's Consultative Assembly, and an explicit constitutional provision separating military and police responsibilities.

The military forces are currently around 300,000 strong. Legally there is a compulsory military service of two years, but in practice the military consists mainly of volunteers.

The president with the approval of the House of People's Representatives has the authority to declare war and make peace. The president may also declare a state of emergency. Preconditions and consequences of a state of emergency are not detailed in the constitution but must be determined by law.

AMENDMENTS TO THE CONSTITUTION

The Indonesian constitution of 1945 was not amended until 1999. Since then four substantial amendments have been adopted in order to democratize the Indonesian political system and to strengthen the rule of law and respect for the constitution itself.

Responsibility for amending the constitution lies with the People's Consultative Assembly. The preamble and the provisions relating to the form of the unitary state of the Republic of Indonesia are not amendable.

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Jörg Menzel

IRAN

At-a-Glance

OFFICIAL NAME
Islamic Republic of Iran

CAPITAL
Tehran

POPULATION
69,018,924 (July 2004 est.)

SIZE
636,296 sq. mi. (1,648,000 sq. km)

LANGUAGES
Persian and Persian dialects 58%, Turkic and Turkic dialects 26%, Kurdish 9%, Luri 2%, Balochi 1%, Arabic 1%, Turkish 1%, other 2%

RELIGIONS
Shiite Muslim 89%, Sunni Muslim 9%, Zoroastrian, Jewish, Christian, and Bahai 2%

NATIONAL OR ETHNIC COMPOSITION
Persian 51%, Azeri 24%, Gilaki and Mazandarani 8%, Kurd 7%, Arab 3%, Lur 2%, Baloch 2%, Turkmen 2%, other 1%

DATE OF INDEPENDENCE OR CREATION
April 1, 1979 (Islamic Republic of Iran proclaimed)

TYPE OF GOVERNMENT
Theocratic republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral Islamic Consultative Assembly (Majles-e-Shura-ye-Eslami)

DATE OF CONSTITUTION
December 2–3, 1979; revised June 31, 1989

DATE OF LAST AMENDMENT
No amendment

The regime of the Islamic Republic of Iran is considered by some to be democratic and progressive and by others to be absolutist, terrorist, and reactionary. These views, however, do not lead to an objective knowledge of this regime, whose power arises from very diverse sources.

A short presentation of the principles and basic mechanisms of the constitution can improve understanding of the present and future questions at stake. It must include the design of the principal institutions—the leader (*vali-ye faqih*), the president of the republic, the Council of Ministers, the Islamic Consultative Assembly, and auxiliary institutions—their powers, and their interrelations.

According to the constitution, the state of Iran is a republic, which finds its legitimacy in the authority of the nation. It is based on national sovereignty, pluralism, term limits, separation of powers, and the supremacy of the constitution. In this presidential regime, the leader is elected by indirect suffrage, the president and the members of parliament by universal and direct suffrage. The executive power is placed under the control of the legislature.

In its structure, this regime shares certain similarities with the Western democracies while departing from their liberal and secular character. The Iranian state is a republic in which Islam as the official religion provides the basic source of legitimacy for the supreme organs of the state. In spite of this essential difference, Iranian political theory claims that the people can find ways to reconcile Islam and democracy, because according to the Quran belief is not incompatible with the free will of the believers. On the contrary, the submission to the word of God does not have any value if it is not based on a free and conscious choice.

Political participation and free choice constitute the quintessence of all democracy. In the secular societies,

this participation is based on reflection of reason, whereas in the religious societies it is based on belief. However, from the moment when freedom of choice is guaranteed by law, one can talk of a similarity between the two kinds of democracy.

CONSTITUTIONAL HISTORY

The long history of Iran is full of the rise and fall of many dynasties. Indo-European tribes first entered Iran about the second millennium B.C.E. and established several kingdoms. About 728–550 B.C.E., the Medes flourished. The Persian Empire was established in 550 B.C.E. by Cyrus II the Great; it was soon to become the major power of the time. The invasion by the Macedonian king Alexander the Great put an end to the Persian Empire. Several dynasties followed, including the Sassanians, who ruled from about 226 C.E.

Arab Muslims accomplished their conquest of the region by 640. For the following 850 years the country was ruled by non-Iranian Muslim princes. Under the Iranian Safavids, who gained ascendancy in 1502, Shiite Islam became Iran's official religion. The Safavids ruled until 1736 and were followed by the Qajars dynasty.

The first constitution was promulgated in 1906.

In 1979, the Islamic Revolution led by Imam Khomeyni overthrew the Pahlavi dynasty, which had taken power after World War I (1914–18) and had alienated large parts of the people and many religious leaders. On April 1, 1979, a plebiscite was held by which 98.2 percent of the people chose an Islamic republic as the system of government.

The constitution of the Islamic Republic was passed by an assembly of experts (*khobregan*) and ratified by the voters in December 1979. It was revised by the Revision Council and again ratified by the voters in July 1989, a month after the death of Imam Khomeyni.

FORM AND IMPACT OF THE CONSTITUTION

Iran has a written constitution contained in a single document. Article 56 states that "absolute sovereignty over the world belongs to God, and it is He who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles." No laws contrary to the official religion of the country or to the constitution may be enacted.

The Islamic revolution has led to the emergence of two contradictory political approaches. The first, a liberal and democratic approach, stresses the compatibility between belief and freedom. It is shared by intellectuals, academics, officials, young people, and some of the ulemas, the learned theologians, who are opposed to absolutism. The other, traditionalist, approach rejects the principle of human freedom and demands total submission to and implementation of Islamic commandments and prescriptions. This approach is primarily shared by the merchants of the *basar* and the majority of the ulema. It adheres to the absolute authority of the leader *(velayat-e motlaqeh-ye faqih),* who is the representative of the Prophet and whose word is that of God. By attributing an absolute power to the leader this approach tends to weaken the supremacy of the constitution and national sovereignty.

The presidential elections of 1997 represented a contest between these two approaches. Despite the partiality of the media, especially national radio and television, and despite the recommendations of the majority of the ulema, who were in favor of the "absolutist" candidate, the overwhelming majority of the voters voted for Khâtami, the democratic and liberal candidate, thus confirming the victory of the partisans of Islamic democracy. This choice was confirmed in the elections for parliament in 2000 and for the president in 2001. Antidemocratic repression by the leader caused a continuous political crisis, which has exacted a high price for the internal and international social political life of the country. The 2005 presidential elections again strengthened the conservative forces.

BASIC ORGANIZATIONAL STRUCTURE

Iran is a unitary state, structured in provinces, municipalities, cities, divisions, and villages. In each of these entities, a council is elected by the local people. Article 101 provides for a Supreme Council of the Provinces composed of representatives of the provincial councils. This council has the right within its jurisdiction to draft bills and to submit them to parliament for consideration.

LEADING CONSTITUTIONAL PRINCIPLES

Islam is the official religion of the state (Article 4). The constitution explains the divine and human origins of sovereignty and provides for the division of political power in its fifth chapter.

Article 56 states that "absolute sovereignty over the world and man belongs to God, and it is He Who has made man master of his own social destiny." Thus, all regulations and laws adopted by the public authorities must be in conformity with Islam. The Council of the Guardians of the Constitution (Shora-ye Negahban), or Guardian Council, serves to ensure that they are (Article 4). Until Imam Mahdi reappears (the 12th imam, the hidden imam of Shiite teaching), it is the task of the *vali-ye faqih,* the leader, to lead the people (Article 5).

Individual and national sovereignty is guaranteed by Article 56, which states that "no one can deprive man of this divine right nor subordinate it to the vested interests of a particular individual or group." The people exercise their legal sovereignty over the state by elections and by referenda. In the political field, freedom of association ensures the organized participation of the people, thus recognizing human sovereignty. In the social field, it is equally up to the people to make sure that the activities of the authorities conform to the law.

Political power is divided into legislative, executive, and judiciary authorities. Political powers are placed under the control of the leader, the source of whose authority is divine sovereignty. The mechanisms of this control are stipulated by the constitution, which limits the leader's power.

According to the law, the leader and other officials have no privilege whatsoever before the rest of the people. The leader is responsible before the Assembly of Experts; the president before the people, the leader, and parliament; the cabinet ministers and the Council of Ministers are responsible before the president and parliament.

The law recognizes the supremacy of the legislative to the executive. The law also gives the legislative supremacy over the judiciary. The national general inspector has power to supervise the proper conduct of affairs by the executive and to take appropriate actions. It should be noted that no member of the executive enjoys any immunity before the criminal courts, which have the power to judge the president of the republic, the cabinet ministers, and their staff. The Supreme Court has the power to find the president of the republic guilty of violating his constitutional duties.

CONSTITUTIONAL BODIES

The main constitutional organs are the leader, the Islamic Consultative Assembly (parliament), the president, the Council of Guardians of the Constitution, and the judiciary. Also of high importance are the Nation's Exigency Council, the Supreme Council for National Security, and the Assembly of Experts.

The Leader

Until the reappearance of the 12th imam the leadership of the *ummah* (the people or the nation) is vested in the leader.

Opinions vary among Iranian Shiites as to the succession of leadership in the absence of the 12th imam. One camp believes that the successors of the imam must not intervene in the political and social affairs of Muslims and must care for only their personal affairs. The other camp combines religion and politics, underlining that the Quran has given laws concerning courts, taxes, war, public order, and social justice. In other words, it provides laws to guide public life. The idea of the leader in the constitution of Iran (Article 5) is based on that opinion, and his qualifications for office reflect that view. He must be a *mojtahed* (doctor in Islamic jurisprudence), virtuous and just, possessed of political and social perspicacity, prudent, and capable of leadership.

According to the 1979 constitution, the leader must have the status of an example to follow (*marja' -e taqUf*). Only a minority of religious authorities succeed in acquiring this status, and most of them refuse to intervene in the political domain. Imam Khomeyni was the exception; two months before his death on April 29, 1989, he recommended that the Council for Revision of the Constitution suppress this qualification.

According to the 1979 constitution, the leader is either recognized and accepted by the absolute majority of the people or appointed by the Assembly of Experts (Articles 5 and 107). Since only Imam Khomeyni succeeded in obtaining the near-unanimous support of the population, the 1989 revision of the constitution reserved the power to appoint or remove the leader to the majority in the Assembly of Experts, itself elected by direct and universal suffrage. The head of the judicial power controls the assets of the leader, his spouse, and his children. The law does not give any legal privilege to the leader. As any other citizen, he has to respect the law, and in case of violation, he would have to appear before ordinary tribunals. While the constitution attributes absolute authority to the leader, it nevertheless limits his powers.

In comparison to the 1979 constitution, the revised 1989 version has fewer restrictions on the powers of the leader. A number of social and political problems, especially those created by the Iraq-Iran War (1980–88), evoked interventions by Imam Khomeyni that were not provided for by the constitution. This led to the idea of expanding the powers of the leader. The Declaration of July 23, 1987, confirmed his absolute authority (*velayat-e motlaqeh-ye frqih*). The revised constitution confirmed this authority. Nevertheless, his new powers did not give him absolute power, which would imply despotism by enlarging the range of powers of the public authorities in general.

In fact, Imam Khomeyni understood "absolute authority" to refer to the state rather than any one person, in this case, the leader. Similarly, the constitution is based on the principle of the inalienable sovereignty of the people. No other authority, not even the authority of the leader, which is called "absolute," can contradict that sovereignty of the people.

The powers of the leader can be divided into two categories. As head of state, he can decide on the general policies of the state after consultation with the Nation's Exigency Council (*majma' -e tashkis-e maslahat-e nezarn*). The policies approved by the leader must be executed, and he supervises their proper execution. The leader also issues decrees for national referenda, a necessary step for all constitutional amendments and optional for important laws concerning economic, social, political, or cultural affairs.

The leader can suggest amendments or additions to the constitution, but he has to consult the Nation's Exigency Council before submitting them to the Council for the Revision of the Constitution. If the latter approves the amendments, the leader signs them and calls the referendum. He has authority to resolve differences among the legislative, executive, and judicial powers that cannot be resolved by conventional methods. In this task, he is assisted by the Nations' Exigency Council. He has supreme command of the armed forces; he appoints and dismisses the religious members of the Guardian Council, the supreme judicial authority of the country, and he appoints the head of the national radio and television network.

The leader's other major group of powers derive from his control of the legislature through the Guardian Council, which has broad responsibilities in supervising the elections to the legislature and is vested with the authority to rule on the constitutionality of laws.

Half the members of the council are clerics appointed by the leader. The council also ratifies the appointment of the president of the republic, who is elected by universal suffrage, and dismisses the president after the Supreme Court finds him guilty of violating his constitutional duties, or after the parliament votes him incompetent.

The leader also wields power over the judiciary, since he appoints its head. He can also pardon convicted prisoners, on the recommendation of the head of the judiciary.

The Islamic Consultative Assembly (Parliament)

The Islamic Consultative Assembly (parliament) is composed of 270 members, five of whom are elected by the religious minorities (Zoroastrians, Jews, and Christians). The deputies are elected by universal and direct suffrage; voters choose one representative from each local constituency. The legislative power is unicameral, but it does not hold any legal status if there is no Guardian Council in existence.

The deputies must be Iranian nationals, Muslims (except for the minority religions), loyal to the regime of the Islamic Republic, educated, between 30 and 75 years of age, and of good physical and mental health.

The elections are supervised by the Guardian Council as well as by parliament. Parliament verifies the regularity of the elections at its opening session. Members of the assembly cannot hold any executive office. Parliament has the power to pass and to interpret laws, and to control the executive. Cabinet ministers are appointed by the president but need a vote of confidence by the majority of the deputies.

Through parliament, the citizens can inform themselves about the functioning of the executive, and they can complain. Each deputy can ask for information or explanation by a cabinet minister. In order to question the president of the republic, one-quarter of the deputies must file their question before the president of the assembly, who passes on the question to the relevant cabinet minister or to the president.

The legislature uses the following means to exercise its authority over the executive: the vote of confidence; questions and inquiries; financial control (adoption of the budget and control of expenses); censure of the president, the cabinet, and cabinet ministers; and prior approval of important decisions of the executive.

After a question from a deputy, a cabinet minister must appear before parliament within 10 days, and the president within one month. The assembly has the right to investigate and to examine all affairs of the country; it can appoint an Inquiry Commission to accomplish this task.

A motion of censure against the president or cabinet ministers can be tabled by a minimum of 10 members of parliament and needs the approval of the majority of the deputies present. If censured, either the entire Council of Ministers or a particular minister subject to censure is dismissed.

The president of the republic can be censured by one-third of the deputies. The president then must appear before the assembly within one month. If two-thirds of the members declare a vote of no confidence, the leader is informed in order to make a final decision. All important governmental decisions (international treaties, bilateral changing of the borders of the country, etc.) are submitted for previous approval to the assembly. The assembly also approves the budget and supervises the expenses and income of the state.

The Lawmaking Process

The Islamic Consultative Assembly can establish laws on all matters within the limits of its competence as specified in the constitution. Bills can be initiated by a minimum of 15 deputies as well as by the Council of Ministers. The Guardian Council has the authority to veto legislation it regards as inconsistent with the constitution or Islamic law.

The President

The 1979 constitution established a threefold executive (the leader, the president of the republic, and the prime minister). The 1989 revision abolished the office of prime minister; the president of the republic now presides over the Council of Ministers. The president must be a well-recognized religious and political figure of Iranian origin and nationality. The president must also have a good record and be trustworthy, pious, and a convinced believer in the fundamental principles of the Islamic Republic.

All candidates must be approved by the Guardian Council. The presidential elections are supervised by the council and must be ratified by the leader. The president must take the oath of office before the assembly in the presence of the head of the judicial power and the members of the council. The second person in the state, after the leader, the president is head of the executive power

and directs international relations. The president receives foreign ambassadors and their credentials and signs international conventions and treaties after their approval by the assembly.

The president is the guardian of the official religion of the Islamic Republic and of the constitution and defends the independence of the nation and its territorial integrity. The president, and not the leader, is responsible for implementing the constitution.

The Judiciary

According to the 1979 constitution, the judicial power was supervised by a collective directory called the Superior Council of the Magistrature. It was composed by five magistrates of whom two were appointed by the leader after consultation with the members of the Supreme Court. Three other members were elected by the magistrates of the country. The minister of justice, nominated by the president of the republic, had the exclusive responsibility for the relationship between the judiciary and the other powers.

The 1989 revisions suppressed the collective directorate of the judiciary and put the judiciary under the supervision of a single individual, the head of the judiciary. This official is responsible for maintaining the organizational structure for the administration of justice, drafting judiciary bills, and recruiting judges. The head of the judiciary may delegate authority over financial and administrative matters to the minister of justice.

The constitution does not specify the qualifications for judges. By law, they must be of Iranian nationality, Muslims, just, of good health, and of legitimate birth and must have a degree *(ejtehad)* in law or theology. Originally, only men were allowed to exercise this function. However, thanks to changes to the law in recent years, the head of the judiciary may appoint women to some auxiliary functions in the judiciary. It, therefore, does not seem impossible that in the near future women will once again be appointed as judges.

The constitution guarantees immunity to judges, stipulating that "a judge cannot be removed from the post he occupies except by trial and proof of his guilt." However, the process does not inspire confidence. A decree of the Nation's Exigency Council is enough to authorize the removal of judges by the head of the judiciary. The head of the judiciary conveys the council's report to a commission of experts and then to a Supreme Disciplinary Commission, composed of him and four magistrates of his choice.

In fact, this body is merely an administrative filter commission; no provision exists for the judge to defend himself. The constitutionally guaranteed immunity of judges is thus endangered.

Although the judiciary is supposed to be independent of the other powers, the supremacy attributed by the law to the legislature somewhat diminishes this independence. The legislature may pursue petitions against the judiciary. On the other hand, the judiciary enjoys a privileged relation to the executive: The Administrative Court of Justice receives complaints by citizens against the administration and its officials.

Only the Supreme Court, the military courts, and the administrative courts are expressly created by the constitution. The Supreme Court supervises the correct implementation of the laws by the courts and ensures uniformity of judicial procedure. It is the only court with power to judge the president of the republic.

The special courts include the revolutionary courts, which according to the law of July 6, 1994, have authority to judge crimes against national security, conspiracy against the Islamic Republic, and espionage. The special courts of the ulema, which exclusively judge crimes committed by religious persons, were initiated by Imam Khomeyni and confirmed by his successor as leader, Ayatollah Khamenehyi.

Political and press offenses are to be tried openly and in the presence of a jury.

The Council of the Guardians of the Constitution

The Council of the Guardians of the Constitution (Guardian Council) resembles the model specified in the constitutional law of 1906. It seems also to have been inspired by the 1958 French constitution. It is made up of 12 members. Six are appointed by the leader from among clerics trained in Islamic law; the other six are jurists specializing in different areas of law, nominated by the head of the judiciary and elected by parliament. They all serve six-year terms, with half the members chosen every three years.

The council's main function is to determine the compatibility of legislation with the laws of Islam and with the constitution. The Islamic component is determined exclusively by the clerics, while the constitutionality of laws is determined by all the members. All laws passed by the assembly must obtain the approval of the council, which must examine them within 10 days. If the Guardian Council finds the legislation incompatible, it returns it to the assembly for review.

The control of the constitutionality of laws has retroactive force, but their conformity with Islam can be examined at any moment. The clerical members of the Guardian Council can abrogate laws or provisions at their will and invalidate norms established by society. The council also has the power to decide on the admissibility of candidates in elections for the legislature and the presidency, to the Assembly of Experts, and to other posts. They also supervise the elections and referenda and have the power to invalidate them.

The Nation's Exigency Council

The Nation's Exigency Council was established by a decree of Imam Khomeyni on February 6, 1988, to arbitrate between the Guardian Council and the Islamic Consulta-

tive Assembly. The new institution was legalized by a constitutional amendment. The members of the council are appointed by the leader. In general, it is composed of the six clerical members of the Guardian Council; the heads of the legislature, judiciary, and executive branches; the responsible cabinet minister; the president of the relevant assembly committee; and a dozen other personalities. The period of mandate of the members varies at the discretion of the leader.

In the past, the president of the republic has typically presided over the Exigency Council as well. When Hachemi-Rafsanjani's term as president was ending, Khomeyni in March 1997 named him to a separate five-year term as president of the council.

The constitution now allows the council to intervene only in exceptional circumstances, to protect the higher interest of the state. It also denies the council any legislative powers, but this restriction is not respected. For example, when the Guardian Council and parliament differed over labor legislation, the Exigency Council added new provisions to the law.

The term *solution of insurmountable difficulties of the regime (hall-e mo'zalât-e nezâm),* the original mission of the Nation's Exigency Council, was used during the Iraq-Iran War to justify unconstitutional actions in the face of disagreements among the authorities. When the constitution was revised, the term was given legal status. Thus, problems that cannot be solved by conventional methods are passed to the leader, who passes them to the Nation's Exigency Council. Because of its ambiguity, the term can be used as an excuse to bypass the rule of law. On several occasions, the Nation's Exigency Council has made decisions and passed laws that had no emergency character whatsoever.

The Nation's Exigency Council also has the authority to give advisory opinions on questions posed by the leader. The constitution provides two examples of such consultation: the delineation of the general policies of the state and the revision of the constitution.

The term *general policies* is open to wide interpretation. When the president of the council is personally powerful, this function allows its power to expand at the expense of the legal power of the other authorities.

The Supreme Council for National Security

The Supreme Council for National Security is presided over by the president of the republic and consists of the heads of the legislature, the executive, and the judiciary; the Supreme Command Council of the armed forces and the highest-ranking officials from the armed forces and the Islamic Revolution Guard Corps; the officer in charge of planning and budget affairs; two representatives nominated by the leader; the ministers of foreign affairs, interior, and information, and other appropriate cabinet ministers as needed.

The Supreme Council for National Security determines defense and national security policy within the framework of general policies determined by the leader; coordinates defense-related matters in political, intelligence, social, cultural, and economic life; and mobilizes the material and intellectual resources of the country to face internal and external threats. Observers warn that concentrating such power in the hands of a few politicians is not prudent.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every citizen 16 years of age and older is entitled to vote. The president of the republic, the members of parliament, the members of the Assembly of Experts, and the local Islamic councils are elected by direct and universal suffrage. The president is elected for a period of four years and is eligible only for a second consecutive mandate. The election period for members of parliament and the members of the local councils is four years; they can be reelected. The members of the Guardian Council are elected to serve for a period of six years. Only the leader of the revolution is elected for an undetermined period by the Assembly of Experts and can be removed by this assembly.

There are referenda on certain important matters such as the revision of the constitution.

POLITICAL PARTIES

The constitution states in Article 26 that political parties can be freely organized, provided that they do not violate the principles of independence, liberty, national unity, and Islamic standards. A variety of political parties exist in Iran. Political influence is also exercised by a number of informal political pressure groups.

CITIZENSHIP

Iranian citizenship is primarily obtained by birth to an Iranian father regardless of the child's country of birth. Dual citizenship is not recognized. A foreign woman who marries an Iranian man is entitled to citizenship. Foreign citizens can apply for Iranian citizenship, provided they have reached 18 years of age, have been legal residents in Iran for five years, have not evaded military service in their respective country of origin, and have not been convicted of any significant felony or nonpolitical crime in any country.

Those who have been of outstanding service and assistance to public welfare in Iran can be granted Iranian citizenship without any need to satisfy the residency requirement, provided that the government of Iran considers such citizenship as expedient. The same applies to those who have an Iranian wife along with a child born to her or have distinguished scientific standing.

FUNDAMENTAL RIGHTS

The Iranian constitution guarantees the rights of the people in its third chapter. This chapter opens with the provision that all people of Iran, whatever their ethnic group or tribe, enjoy equal rights; color, race, language, and the like, do not bestow any privilege. All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria. The dignity, life, property, rights, residence, and occupation of the individual are inviolable, except in cases sanctioned by law. All forms of torture for the purpose of extracting confession or acquiring information are forbidden by the constitution.

Numerous other rights are specified in the constitution. Thus, the investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief. Also, publications and the press have freedom of expression according to the constitution, except when it is detrimental to the fundamental principles of Islam or the rights of the public.

Special attention is paid in the constitution to the rights of women. The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals: to create a favorable environment for the growth of woman's personality and the restoration of her rights, both material and intellectual; to protect mothers, particularly during pregnancy and childbearing, and protect children without guardians; to establish competent courts to protect and preserve the family; to provide special insurance for widows, aged women, and women without support; and to award guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.

Government must provide all citizens with free education up to secondary school and must expand free higher education to the extent required by the country for attaining self-sufficiency.

Impact and Functions of Fundamental Rights

The Iranian constitution explicitly gives a wide interpretation to fundamental rights. It does not only contain rights against government abuses, such as the inviolability of life, property, or residence. It also protects the instruments of political participation. It thus guarantees the right to form parties and freedom of the press. Other rights are in effect economic, social, and cultural guarantees. Thus, government has to respect property and occupation, it has to provide social security and housing, and it must provide a level of free education.

The constitution also guarantees judicial protection. Every citizen may seek justice by recourse to competent courts.

The constitution recognizes the concept of human rights and thus extends many rights to all people. However, many constitutional rights are limited to Iranian citizens, such as the right to judicial remedy.

Limitations to Fundamental Rights

Most fundamental rights such as dignity, life, property, residence, or occupation have limits in the law. In addition, fundamental rights are guaranteed only "in conformity with Islamic criteria" (Article 20); however, these criteria are not detailed. Freedom of expression and the right to disseminate ideas over the radio and television of the Islamic Republic of Iran must also be in the best interest of the country.

ECONOMY

The constitution of Iran includes numerous provisions relevant to the economic system. It states that the Islamic Republic of Iran has as its objectives economic independence, an end to poverty and deprivation, and fulfillment of human needs while preserving human liberty. The government is expected to ensure the basic necessities for all citizens, including housing, food, medical treatment, education, and the necessary facilities for the establishment of a family. Concentration of wealth in the hands of a few individuals or groups is to be prevented, but the government must not itself become a major employer. Individuals may not inflict harm or loss upon others, through monopoly, hoarding, usury, and other "illegitimate and evil practices."

According to the constitution, the economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private. The state sector is to include all large-scale industries and sectors, foreign trade, major minerals, banking, insurance, power generation, radio and television, aviation, and shipping. All these are to be publicly owned and administered by the state. The cooperative sector includes companies concerned with production and distribution in accordance with Islamic criteria. The private sector consists of activities such as agriculture, industry or trade, and services that supplement the economic activities of the state and the cooperative sector. Ownership in each of these three sectors is protected by law insofar as it is in conformity with the constitution and does not exceed the bounds of Islamic law, contributes to the economic growth and progress of the country, and does not harm society.

The right to choose one's occupation freely and to acquire private ownership legitimately is protected by the constitution.

RELIGIOUS COMMUNITIES

Islam is the official religion of the state. According to Article 26 of the constitution, religious associations may be

freely established, whether Islamic or of the minority religions, provided they do not violate the principles of independence, liberty, national unity, and Islamic standards. No one may be prevented from participating in such an organization or forced to participate in one.

As far as religious minorities are concerned, the constitution distinguishes between their individual rights and their political rights. The constitution recognizes the individual rights and liberties of all inhabitants without distinctions as of race or religion. However, all high offices of the state (leader, president, cabinet ministers, magistrates, etc.) are reserved for Muslims. The officially recognized religious minorities (Zoroastrians, Jews, and Christians) are represented by five deputies in parliament and can obtain positions in the administration, in teaching, in universities, and as technicians.

MILITARY DEFENSE AND STATE OF EMERGENCY

The leader is the supreme commander of the armed forces. His powers include declaration of war and peace and mobilization of the armed forces, as well as the appointment and dismissal of the commanders of the armed forces. He also directs the Supreme Council for National Security, which has considerable political impact.

The army of the Islamic Republic of Iran must be committed to Islamic ideology and the people. It must recruit into its service individuals who have faith in the objectives of the Islamic revolution and are devoted to the cause of realizing its goals. The army is responsible for guarding the independence and territorial integrity of the country. No foreigner can be accepted into the army or security forces of the country.

The Islamic Revolution Guard Corps has played an important political role. The proclamation of martial law is forbidden. In case of war or emergency conditions akin to war, the executive has the right to impose necessary restrictions with the agreement of parliament.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution are initiated by the leader after consultation with the Nation's Exigency Council. The amendments are then passed to the Council for Revision of the Constitution, which refines the wording and makes the final decision on approval. The council consists of members of the Council of the Guardians of the Constitution and the Nation's Exigency Council and five members from among the Assembly of Experts; 10 representatives selected by the leader; the heads of the three branches of government; three each from the Council of Ministers, the judiciary, and university professors; and 10 members of parliament. Amendments adopted by the council must be confirmed by the leader and must be approved by the absolute majority in a national referendum.

According to Article 177 no amendments relating to basic principles of the constitution such as the Islamic character of the system and the democratic character of the government can be made.

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Seyed Mohammad Hashemi

IRAQ

At-a-Glance

OFFICIAL NAME
Republic of Iraq

CAPITAL
Baghdad

POPULATION
26,074,906 (2005 est.)

SIZE
168,754 sq. mi. (437,072 sq. km)

LANGUAGES
Arabic, Kurdish (official); Turkoman, Assyrian (official in some areas)

RELIGIONS
Muslim (Shiite 60–65%, Sunni 32–37%) 97%, Christian and other 3%

NATIONAL OR ETHNIC COMPOSITION
Arab 75–80%, Kurdish 15–20%, Turkoman, Assyrian, or other 5%

DATE OF INDEPENDENCE OR CREATION
October 3, 1932

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral legislation

DATE OF CONSTITUTION
Approved by referendum October 15, 2005, in force with the seating of the government pursuant to the constitution. Government sworn in on May 20, 2006

DATE OF LAST AMENDMENT
No amendment

Iraq's constitution establishes a new form of democratic government respecting fundamental rights after the deposition of a dictatorial regime. It sets up a federal republic with a clear division of powers among the legislative, the executive, and the judiciary. Islam is the official religion of the state and is a fundamental source of legislation. Time will tell whether the new constitution can contribute to stabilizing the country.

CONSTITUTIONAL HISTORY

Iraq was called Mesopotamia in the classical world. It is the homeland of famous ancient cultures such as Sumer, Babylon, and Assyria. The Codex Hammurabi, established by the ruler of that name (1728–1686 B.C.E.), is one of the oldest known comprehensive codified written laws in the world. In 634 C.E. the country began to be ruled by Muslim conquerors. Ali, son-in-law of the Prophet Muhammad, was killed in the country in 661. Since then Iraq has been the center of Shiite Islam. From 750, the caliphs of the Abbasid Empire ruled from Baghdad. Their rule was ended by the Mongolians, who devastated the country in 1258.

Iraq was a part of the Turkish Ottoman Empire from 1534 until 1916, when it was captured by British forces. From 1920 onward Britain ruled the country under a mandate of the League of Nations. Amir Faisal Ibn Hussain of the Hashemite dynasty was crowned King Faisal I in 1921. Iraq gained independence on October 3, 1932. A military coup d'état overthrew the Hashemite dynasty in 1958, establishing a republic with General Qassim as head of a military-led Council of Sovereignty. General Abdul Salam Aref overthrew Qassim in 1963 and partially restored a civilian government. The 1968 coup d'état by the Ba'ath Party gave General Ahmed Al Bakr power, which was peacefully transferred to Saddam Hussein in 1979.

Iraq invaded Iran in 1980, opening a war that lasted until 1990 and produced huge loss of life. Iraqi forces overran Kuwait in 1990. Under the authorization of the United Nations (UN) Security Council, United States–led forces defeated the Iraqi army and reestablished Kuwaiti sovereignty.

Accusing Iraq of illegally possessing weapons of mass destruction, supporting terrorism, and threatening world peace, the United States, supported by the United Kingdom and in coalition with a number of other supporting states, launched attacks on Iraq in 2003. They soon occupied the entire country, ending Saddam Hussein's rule.

The coalition provisional authority enacted a Law of Administration for the State of Iraq for the Transitional Period as an interim constitution on March 8, 2004. Despite ongoing intensive terrorist attacks, general elections were held for the National Assembly. The National Assembly drafted the permanent constitution approved by referendum on October 15, 2005, which came into force with the seating of the government pursuant to the constitution.

FORM AND IMPACT OF THE CONSTITUTION

The Iraqi constitution is codified in a single document. It sets out principles of democracy, rule of law, and human rights after a long period of dictatorship. It tries to provide a constitutional basis for holding together a country divided into often conflicting national and religious groups such as Sunni Arabs, Shiite Arabs, and Kurds. Time will tell whether this challenge can be met.

The constitution is the supreme and highest law in Iraq. No law that contradicts the constitution may be passed, and any law that contradicts the constitution is considered null.

The constitution entails a number of transitional guidelines that take into account some of the special challenges of transition, such as guarantees for the welfare of political prisoners of the former dictatorial regime. It also guarantees compensation to the families of martyrs and those wounded by terrorist acts. The constitution itself is open for intense amendment during the current transition period.

BASIC ORGANIZATIONAL STRUCTURE

The constitution establishes Iraq as a federal republic. The federal system is made up of the capital, regions, decentralized provinces (governorates), and local administrations. The authorities of each region include legislative, executive, and judicial bodies, which exercise their powers except in matters listed by the constitution as the exclusive preserve of the federal authorities. A fair share of the revenues collected federally are to be designated to regions and governorates, sufficient to fulfill their duties and obligations, taking into consideration the regions' resources and needs.

Provinces that are not organized into regions are granted extensive administrative and financial authority to enable them to manage their affairs according to the law.

The constitution states explicitly the powers of the federal authorities such as drawing up foreign policy, national defense policy, or financial and customs' policy. Oil and gas are the property of all the Iraqi people in all the regions and governorates. The federal government is to administer oil and gas extracted from current fields in cooperation with the governments of the producing regions and governorates on condition that the revenues will be distributed fairly in a manner compatible with the demographic distribution all over the country. A quota is to be defined for a specified time for regions that were deprived in an unfair way by the former regime or since its demise, in a way to ensure balanced development in different parts of the country.

LEADING CONSTITUTIONAL PRINCIPLES

The Republic of Iraq is an independent, sovereign state. The system of rule is a democratic, federal, representative republic. The constitution calls itself a guarantor of the unity of Iraq.

Islam is the official religion of the state and is a fundamental source of legislation. No law can be passed that contradicts the established provisions of Islam, and no law can be passed that contradicts the principles of democracy or the rights and basic freedoms outlined in the constitution. The constitution guarantees the Islamic identity of the majority of the Iraqi people, the full religious rights of all individuals, and freedom of creed and religious practices. Called by its constitution a country of multiple nationalities, religions and sects, it is part of the Islamic world.

No entity or program may adopt racism, terrorism, *takfir* (declaring someone an infidel), or ethnic cleansing; or incite, facilitate, glorify, promote, or justify thereto, especially the Saddamist Ba'ath Party in Iraq. The state is committed to fighting terrorism in all its forms and to working to protect its territory from being a base or pathway or field for terrorist activities.

CONSTITUTIONAL BODIES

The main constitutional institutions are the legislative authority, made up of the Council of Representatives and the Federation Council; the executive authority, consisting of the president of the republic and the Council of Ministers (cabinet); and the judiciary. There also are independent commissions such as the High Commission for Human Rights and the Independent Electoral High Commission. They are subject to monitoring by the Council of Representatives.

The Legislative Authority

The Council of Representatives is the parliament. It legislates federal laws, after the future creation of the Federation Council together with that council. It also oversees the performance of the executive authority, and certifies treaties or international agreements. It approves the appointments of high officials such as the head and members of the Federal Cassation (final appeals) Court, ambassadors, the army chief of staff, and the head of the intelligence service, on the basis of the recommendation of the cabinet. The Council of Representatives can relieve the president of the republic of his or her duties by an absolute majority of its members, if the president is convicted by the Supreme Federal Court of high treason or violation of the constitution or of the constitutional oath.

The Council of Representatives may withdraw confidence from the prime minister and from an individual minister by an absolute majority, removing him or her from office.

The Council of Representatives is made up of enough members to provide one seat for every 100,000 Iraqi persons. The members represent the entire Iraqi people. They are elected by general, direct, and secret ballot. The term of office of the Council of Representatives is four years.

The Council of Representatives can be dissolved by the absolute majority of its members, on the basis of a request from one-third of its members or from the prime minister and with the approval of the president of the republic.

The legislative Federation Council includes representatives of regions and governorates. The makeup of the council, the conditions for membership, and all matters related to it will be organized by law. The application of all the provisions related to the Federation Council is postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term that is held after the constitution has come into force.

The Lawmaking Process

Federal laws are legislated by the Council of Representatives. Bills can be presented by the president and the prime minister, and proposed laws can be presented by ten members of the Council of Representatives or by one of its specialised committees. Laws are in general passed by a majority of the members present. The president of the republic endorses and issues laws enacted by the Council of Representatives. They are considered validated 15 days after being sent to the president.

THE EXECUTIVE AUTHORITY

The federal executive authority consists of the president of the republic and the Council of Ministers, the cabinet. For a transitional period of one term there is a Presidency Council made up of the president of the republic and two vice presidents who together exercise the powers of the president of the republic; these powers are subject to special provisions during the transitional period. The president of the republic is the symbol of the country's unity and represents the sovereignty of the country. The president safeguards the commitment to the constitution, the preservation of Iraq's independence, sovereignty, and unity, and the security of its territory, in accordance with the constitution.

The candidate for the president's post must be Iraqi by birth of Iraqi parents, be legally competent, and have reached the age of 40. The candidate must have a good reputation and political experience and must be known for his or her integrity, righteousness, fairness, and loyalty to the homeland; he or she must not have been convicted of a crime that involves moral turpitude.

The Council of Representatives selects the president of the republic from among the candidates by a two-thirds majority. The term of president of the republic is limited to four years. The president has the power of amnesty and pardon, upon the recommendation of the prime minister.

The president assigns the candidate of the parliamentary majority to form a cabinet. The prime minister chooses members of his or her cabinet and presents the names and the cabinet's platform to the Council of Representatives. They are considered to have won confidence when the ministers and the platform are approved by an absolute majority.

The prime minister must meet the conditions set for the president of the republic, must be no younger than 35 years of age, and must have a university degree or the equivalent.

The cabinet plans and implements the general policy of the state. It also proposes draft laws and issues regulations, instructions, and decisions to implement the laws.

The president of the republic becomes the acting prime minister when the position is empty for any reason. The president of the republic must then name another prime minister within no more than 15 days.

The Judiciary

The judiciary is independent, as are individual judges, with no authority over them in their rulings except the law. No authority can interfere in the judiciary or in the affairs of justice. The federal judiciary includes the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation (final appeals court), the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are organized by law.

The Higher Juridical Council administers judicial affairs. It also nominates the head of the Federal Court of Cassation and other high-ranking officers of the judiciary.

The Federal Supreme Court is made up of a number of judges and experts in Sharia (Islamic law) and law. Their number and method of selection are to be defined by

law. The Federal Supreme Court has far reaching powers such as overseeing the constitutionality of laws and regulations. It rules also in accusations against the president of the republic, the prime minister, and the ministers. Furthermore, it endorses the final results of parliamentary general elections. Resolutions of the Supreme Federal Court are binding for all authorities.

THE ELECTION PROCESS

Citizens, male and female, have the right to participate in public matters and enjoy political rights, including the right to vote and to run as candidates. The Iraqi armed forces and its personnel are not allowed to run as candidates in elections for public office. They also must not engage in election campaigning for candidates.

POLITICAL PARTIES

The constitution guarantees a multiparty political system in Iraq as defined by law. However, the Saddamist Ba'ath Party in Iraq and its symbols are banned. A national De-Baathification Commission works as an independent body in coordination with the judiciary and the executive authorities, linked to parliament.

CITIZENSHIP

An Iraqi is anyone who has been born to an Iraqi father or an Iraqi mother. It is forbidden to withdraw Iraqi citizenship from anyone who is an Iraqi by birth for any reason. Every Iraqi has the right to carry more than one citizenship. Those who take a leading or high-level security position must give up any other citizenship. Iraqi citizenship may not be granted for the purposes of a policy of population settlement that causes an imbalance in the population composition of Iraq. An Iraqi shall not be handed over to foreign bodies and authorities.

FUNDAMENTAL RIGHTS

The Iraqi constitution guarantees extensive rights and freedoms. No law that contradicts the rights and basic freedoms outlined in the constitution can be passed.

The constitution starts its list of rights and freedoms by guaranteeing that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, sect, belief, opinion, or social or economic status. Classic human rights are guaranteed such as personal privacy, sanctity of home and the right to life in security, and protection against arbitrary detention. The constitution also guarantees economic, social, and cultural rights such as the right to work and to form syndicates or professional unions. Private property is protected. However, ownership with the purpose of population change is forbidden.

Family is declared as the foundation of society. Children have the right to upbringing, education, and care from their parents. Parents have the right to respect and care from their children. Economic exploitation of children in any form is banned.

Every Iraqi has the right to health service, and every individual has the right to live in a healthy environment. Free education at all levels is a right for Iraqis.

Freedom of opinion, press, assembly, and communication is guaranteed. Freedom of religion or belief, thought, and conscience is also guaranteed.

The state is keen to advance Iraqi tribes and clans, in conformity with religion, law, and noble human values and in a way that contributes to developing society. It forbids tribal customs that run contrary to human rights.

The constitution guarantees administrative, political, cultural, and educational rights for the various ethnicities such as Turkomen, Chaldeans, Assyrians, and others.

Impact and Functions of Fundamental Rights

The Iraqi constitution guarantees the whole range of fundamental rights, including social and cultural rights as well as the interests of tribes and clans, although the latter are guaranteed as constitutional directives and not as individual rights.

All individuals have the right to enjoy the rights enumerated in international human rights agreements and treaties endorsed by Iraq, as long as they are not contrary to the principles and rules of the constitution. Since Islam is a fundamental source of legislation and no law can be passed that contradicts the established provisions of Islam, it can probably be said that human rights must comply with Islamic principles.

Limitations to Fundamental Rights

The freedoms and liberties guaranteed by the constitution may be limited only by or according to law. The restriction or limitation must not undermine the essence of the right or freedom. A number of fundamental rights are explicitly subjected to further regulation by law, such as the free use of private property or the right to form or join syndicates or professional unions. The right to personal privacy is guaranteed as long as it does not violate the rights of others or public morals. The exercise of freedom of opinion, press, or assembly and of peaceful protest must not violate public order and morality.

ECONOMY

The state guarantees to reform the Iraqi economy on a modern economic basis, in a way that ensures the best use of Iraqi resources, by diversifying its sources of income

and encouraging and developing the private sector. The country must encourage investments in the different sectors. Public property is sacrosanct, and its protection is the duty of every citizen.

RELIGIOUS COMMUNITIES

Islam is the official religion of the state and is a fundamental source of legislation. At the same time, the constitution states that Iraq is a country of multiple religions. Discrimination based on religion is prohibited, and freedom of religion is guaranteed by the constitution.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Iraqi military forces are subject to the civil authorities. They consist of the components of the Iraqi people, keeping in consideration their balance and representation without discrimination or exclusion. They may not intervene in political affairs. The prime minister is the commander in chief of the armed forces.

The Council of Representatives has the right to approve by a two-thirds majority a declaration of war or a state of emergency when jointly requested by the president of the republic and the prime minister. The state of emergency may be declared for a period of 30 days, which may be extended by approving it each time. The prime minister is given the powers necessary to run the administration during a war or a state of emergency.

Military service is to be regulated by law.

AMENDMENTS TO THE CONSTITUTION

A constitutional amendment may be proposed by the president of the republic and the cabinet acting jointly, or by one-fifth of the members of the Council of Representatives. Amendments require a vote of two-thirds of the members of the Council of Representatives, the consent of the people in a general referendum, and the endorsement of the president.

The basic principles cited in the first chapter of the constitution can be amended as well, by the same procedure, but in that case the Council of Representatives must reiterate its support in two consecutive parliament cycles. No amendment that lessens the powers of the regions is allowed, except with the agreement of the legislative council of the concerned region and the consent of a majority of its population in a general referendum.

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Gerhard Robbers

IRELAND

At-a-Glance

OFFICIAL NAME
Ireland

CAPITAL
Dublin

POPULATION
3,917,203 (2002)

SIZE
27,135 sq. mi. (70,280 sq. km)

LANGUAGES
Irish, English

RELIGIONS
Catholic 88.39%, Protestant (Anglican, Methodist, or Presbyterian) 3.73%, Muslim 0.49%, Orthodox 0.48%, Jewish 0.05%, other stated religion 1.32%, no religion or not stated 5.54%

NATIONAL OR ETHNIC COMPOSITION
Ethnicity not recorded in Irish census, except travelers 0.6%; foreign nationals (European 4%, African 0.6%, Asian 0.6%, United States 0.3%, multiple nationality 0.1%, other or unspecified nationality 1.6%) 7.2% (2002 census)

DATE OF INDEPENDENCE OR CREATION
December 6, 1922

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 29, 1937

DATE OF LAST AMENDMENT
June 24, 2004

The republic of Ireland is a parliamentary democracy based on the rule of law and the doctrine of separation of powers among the executive, legislature, and judiciary. Bunreacht na hÉireann, the constitution of Ireland, is the basic law of the country; it states that all political and judicial power is derived from the people. No law that does not agree with the constitution can be passed. Furthermore, under the system of judicial review, the Irish High Court can strike down any preexisting law that is found to be unconstitutional.

The constitution guarantees a number of fundamental rights, mainly of a civil nature. Ireland has been a member of the European Union and its predecessors since 1973. Therefore, European law has supremacy over domestic Irish law in the areas of competence of the European Union.

The president as the head of state is independent of Parliament, although she or he is formally part of the Oireachtas by virtue of the president's role as promulgator of legislation. The president's functions are primarily symbolic and ceremonial, although they include some responsibilities relating to legislation and appointments. The central political figure is the taoiseach (prime minister) as head of the administration. The taoiseach is appointed by a majority of the Dáil (lower house of Parliament) and nominates members of the administration.

Ireland operates a liberal economic system, with a mixture of state- and privately owned utilities. Throughout its history, Ireland has maintained a relatively small military force and is militarily neutral. However, it has made significant contributions to United Nations peacekeeping, monitoring, and inspection operations.

CONSTITUTIONAL HISTORY

An independent island nation that was never conquered by the Roman Empire, Ireland became increasingly dom-

inated by Britain between the 12th and 18th centuries and was formally subsumed within the United Kingdom of Great Britain and Ireland in 1801. A number of military rebellions against British rule broke out across the 19th century, accompanied by political efforts in Ireland and in Britain to attain some form of autonomy or devolved power (home rule) for Ireland. These efforts were frustrated, particularly by the British House of Lords; however, they finally culminated in the passing of the Home Rule Act in 1914. At the outbreak of World War I (1914–18), implementation of this act was suspended until 1918.

Frustration at the delay in granting home rule was one of a number of factors that led to an unsuccessful rebellion in 1916, during which an Irish Republic was declared. By 1918, popular opinion had turned in favor of independence rather than devolution, and a war of independence ensued between January 1919 and July 1921. The war led to negotiations with the British government and the signing of the Anglo-Irish Treaty in December 1921. The treaty granted extensive home rule to two separate Irish parliaments: one in Dublin governing 26 southern counties and one in Belfast governing six northeastern counties, which had a Protestant as opposed to Roman Catholic majority. The new Irish Free State in the south was to have dominion status similar to that of other former British dependencies such as Canada.

The Irish Free State came into being in December 1922 and with it the constitution of the Irish Free State. The new constitution was subordinate to the terms of the Anglo-Irish Treaty. Some of its key elements were an oath of allegiance to the British Crown and the inclusion of a constitutional position for the British king and the governor-general, the king's representative in Ireland. These provisions and the partition of the island led to bitter disputes between rival factions of the national independence movement, leading to a civil war between 1922 and 1923 at the end of which the protreaty side triumphed.

Many of the contentious elements of the Free State constitution were removed over the following 15 years, particularly after a government led by Eamon de Valera, the antitreaty leader during the civil war, rose to power in 1932. The oath of allegiance to the Crown was removed in 1933. The role of the governor-general had already become largely formal in nature, and it was abolished formally in 1936 along with any reference to the British Crown.

In 1935, de Valera indicated to the Dáil that he had been working on a revised constitution, called Bunreacht na hEireann, which he introduced in 1937. A decision of the Supreme Court had cast doubt on the legitimacy of some of the constitutional changes that de Valera had introduced since gaining power. Besides, the extensive amendments of the Free State constitution had made it an unwieldy and patchwork document by that point. The 1937 constitution was introduced as a new document independent of the Free State constitution. The Dáil approved a draft, and the text was put before the people in a plebiscite in July 1937. It was approved by a small majority and entered into force on December 29, 1937.

One of the main weaknesses of the 1922 constitution was that it was subject to change via ordinary legislation, which deprived it of the status of "basic law" in the sense generally understood. The 1937 constitution, however, is amendable only by referendum and has proved to be remarkably robust. A key feature of the constitution is that it relies on the declaratory language of natural law. A further notable feature is the inclusion of a juridically suspended territorial claim to the six northeastern counties that compose Northern Ireland in Articles 2 and 3. These two articles were amended by popular referendum in 1998 as a preliminary requirement of the British-Irish Agreement, which attempted a political resolution of the conflict in Northern Ireland that had dominated the previous 30 years.

FORM AND IMPACT OF THE CONSTITUTION

The Irish constitution is the basic law of the state and takes precedence over all other sources of law. It cannot be amended by legislation but only by popular referendum. After Ireland's accession to the European Community, now the European Union, the constitution was amended to state that no provision of the constitution would invalidate European legislation, which is binding on the state. The various European Union treaties, however, are referenced in the text of the constitution and are subject to popular referendum as a result of a Supreme Court challenge in the 1980s.

The constitution provides a foundation for the political institutions of the state. It includes an explicit system of judicial review in which the High Court and Supreme Court can review laws and administrative practices and strike down those that are in conflict with the constitution. In general, however, the courts exercise a presumption of constitutionality, interpreting legislation as being compatible with the constitution where it is reasonably possible to do so.

BASIC ORGANIZATIONAL STRUCTURE

Ireland is a heavily centralized state and, while reference to the role of local authorities was appended to the constitution by referendum in 1999, the main administrative and economic activities of the state are exercised through an independent national civil service. There have been efforts in recent years to relocate some state agencies and some functions of the civil service from Dublin to other locations. At present, about one-quarter of the state's population lives in the Dublin metropolitan area.

LEADING CONSTITUTIONAL PRINCIPLES

Ireland is a sovereign independent parliamentary democracy, and the state is characterized by strong adherence to the separation of powers among Parliament, the executive, and the judiciary. In reality, the executive and Parliament are fused and the appointment of the judiciary is within the control of the executive.

The constitution sets out the values of a liberal republic rooted in a strong commitment to individual civil rights. The constitution is also influenced by Roman Catholic social values, as can be seen most clearly in the provisions dealing with the position of the family and in the Directive Principles of Social Policy contained as nonjusticiable principles in Article 45.

CONSTITUTIONAL BODIES

The constitution sets out the political institutions of the state, namely, the president, the administration, the Oireachtas or national Parliament, and the judiciary. It provides for other secondary institutions such as the attorney general as legal adviser to government; the Council of State, appointed by the president to assist and advise her or him in the exercise of the presidential functions; and the comptroller and auditor general, who oversees the expenditures of the Oireachtas. Important new offices of state, such as the office of ombudsperson and the Human Rights Commission, are not yet referenced in the constitution.

The President

The president is the head of state elected for a seven-year term by all adult citizens, if there is more than one candidate. The president is charged with a number of important constitutional functions including the signing of legislation, the dissolution of the Dáil, and the formal appointment of the administration. Generally, however, the president must act on the advice and authority of the administration and does not exercise executive power. The president's role is largely symbolic and ceremonial, and she or he carries out important representative duties on behalf of the state.

The Administration

The constitution provides for an administration as the executive to be formally appointed by the president on the nomination of the taoiseach or prime minister. In practice, a party, or more usually a coalition of parties, commands a majority in the Dáil, and the taoiseach generally chooses the cabinet ministers from among the Dáil members of the controlling party or coalition, although the constitution states that members of the Seanad (Senate or upper house of Parliament) are also eligible to be members of the administration. The prime minister is appointed by the president on the nomination by the Dáil.

The Oireachtas (Parliament)

The Oireachtas comprises two houses: the Dáil and the Seanad. The president is also referred to in the constitution as being part of the Oireachtas by virtue of the largely formal role of signing legislation. The Dáil consists of 165 members and is the primary legislative body.

The Seanad consists of 60 members. Of these, 43 are elected through a complex system of vocational panels nominated by specialist bodies and elected by outgoing members of the Oireachtas and members of local authorities. Eleven senators are nominated by the taoiseach and a further six are elected by university graduates. Elections take place at the same time as elections to the Dáil. The system of election generally ensures that the government commands a majority in the Seanad. The Seanad has limited legislative powers complementary to the powers of the Dáil.

Parliamentary committees play an important role, presenting reports on legislation and other matters to the two houses of the Oireachtas. The committees have powers to compel attendance before them and to request official papers from the administration. The overall administration of the Oireachtas was formerly controlled by the Department of Finance, but since January 1, 2004, it has been vested in an independent commission of the houses of the Oireachtas.

The Lawmaking Process

Legislation can generally be introduced in either house of the Oireachtas by the government, by a group of seven or more deputies in the Dáil, by the leader of the Seanad, or by a group of seven senators in the Seanad. There are five stages in the legislative process, including a first reading, a substantive debate on the bill, a committee stage, a report stage, and a final stage in both houses. The president must sign all legislation within a fixed time frame but may refer legislation to the Supreme Court when she or he believes there is a legitimate concern that the legislation may be unconstitutional.

As of August 2005, this procedure had been exercised 15 times. When the Supreme Court finds that any section of the bill is repugnant to the constitution, the president is prohibited from signing.

The Judiciary

There are four levels of courts in Ireland. The District Court, divided geographically into 24 districts, has jurisdiction in minor civil and criminal matters and in licensing matters. Appeals lie in all cases from the District to the Circuit Court, which has jurisdiction in more significant civil and criminal cases. The High Court hears appeals from the Circuit Court and has full jurisdiction in all civil

and criminal matters, including for serious crimes such as murder and rape, for which it sits with a jury as the Central Criminal Court. The High Court is the only court charged with examining whether a law enacted after 1937 is unconstitutional. Finally, the Supreme Court acts as an appeals court; it has no original jurisdiction except where proposed legislation is referred to it by the president to test its constitutionality.

THE ELECTION PROCESS

All citizens over the age of 18 have both the right to stand for election and the right to vote in any election. For local elections, a wider electorate that comprises all those legally resident in the state can vote. There is a considerable body of legislation dealing with the regulation of elections, addressing the funding of political parties and of campaigns and the recouping of certain election expenses. The primary regulatory bodies overseeing the electoral process are the Public Offices Commission and the Department of Environment and Local Government.

Parliamentary elections must take place at least every five years. Ireland operates a system of proportional representation by means of a single transferable vote in multiseat constituencies of three, four, or five seats.

POLITICAL PARTIES

There is no prescribed system of political parties set out in the constitution, but in practice parliamentary politics has always been dominated by a number of organized political parties. The rules of procedure of the Oireachtas grant privileges to groups of seven or more members in each house, and there have always been at least two major parties in the Dáil with a number of smaller parties. Governments are formed by either a majority party or, more commonly, by a coalition of two or more parties, which may include a party or parties supported by a group of independent deputies.

Generally, the right to form and join political parties is assumed as a normal product of the right to association and of the older common law. The Electoral Act of 1992 makes provision for a register of political parties. The main restriction on freedom of association in relation to political parties is contained in the Offences Against the State Act, which allows the government to declare as unlawful and suppress organizations that are engaged in "treason or treasonable activity" or that advocate violence as a means to constitutional change.

CITIZENSHIP

After independence Ireland operated a system of citizenship whereby all persons born on the island of Ireland were entitled to Irish citizenship (*ius soli*). Certain descendants of Irish citizens were also so entitled, and procedures existed for naturalization of noncitizens who lived in the state for extended periods. After the British-Irish Agreement of 1998, Article 2 of the constitution was amended to state that all persons born on the island of Ireland were entitled to be "part of the Irish Nation." This was generally considered to elevate to the constitutional level the existing statutory system of *ius soli*.

In June 2004, the administration introduced a constitutional amendment empowering the Oireachtas to regulate the citizenship rights of children born on the island of Ireland. This does not apply to the children of Irish or British citizens, who continue to have a constitutional right to citizenship. The administration also plans to introduce legislation to restrict the citizenship rights of certain categories of children born in the state to non-Irish parents.

FUNDAMENTAL RIGHTS

Articles 40–44 of the constitution set out a large number of rights and freedoms, including 21 rights specified in the text of the constitution. The Irish courts have also identified a number of rights that, although not expressly referred to in the constitution, are nevertheless protected by it. These rights are generally civil in nature, although Article 42 does provide for a right to free primary education. The rights contained in the constitution include equality before the law, the right to life, the right to protection of one's person, the right to a good name, the right to private property, personal liberty, inviolability of the dwelling, freedom of expression, freedom of assembly and association, family rights, the right to vote, the right to a fair trial, and the right to trial by jury.

In relation to international human rights norms, Ireland has a dualist legal order. International treaties to which the state is a party, including international human rights treaties, do not have the force of law in Ireland unless given legal effect by legislation or by constitutional amendment. Ireland ratified the European Convention on Human Rights and Fundamental Freedoms in 1960; it was given further legal effect by the European Convention on Human Rights Act of 2003. Ireland is also party to the main United Nations human rights covenants and conventions, but to date they have not been incorporated into domestic law.

Impact and Functions of Fundamental Rights

Under the constitution, Ireland has a strong tradition of protecting citizens' civil and political rights. The constitution is a living document and, particularly from the 1960s, the Supreme Court has taken an activist role in expanding on the rights contained in the 1937 text and applying the principles contained in the constitution to

contemporary situations, and in such a way as to reflect contemporary social and moral values.

Recent years have seen a more conservative approach by the Supreme Court, and the doctrine of unenumerated rights has received some criticism. The debate around the European Convention of Human Rights Act of 2003 has also prompted a review of the relationship between the provisions of the convention and the fundamental rights listed in the constitution.

In recent years the Supreme Court has been reluctant to impose positive duties on public bodies to vindicate the rights of citizens, particularly in the area of economic and social rights. The constitution is largely silent on this issue, and the Report Constitution Review Group of 1996 recommended against any amendment of the constitution to make economic and social rights judiciable.

Limitations to Fundamental Rights

Few, if any, of the rights contained in the constitution are unlimited or absolute. In respect of many of the rights contained in Articles 40–44, limitations are specified in the text itself. There are also many situations in which the courts must draw a balance between competing rights, and in such cases the courts generally apply the principle of proportionality, in which the limitation must be no more severe than the need.

ECONOMY

Ireland operates a successful market economy, and, in recent years, its growth rate has dramatically exceeded the average rate of both the European Union and the Organisation for Economic Co-operation and Development. The state retains a role in providing utilities, but recent years have seen moves to privatize a number of state companies in the fields of telecommunications, fuel, and transport.

Economic policy has been strongly influenced in recent years by a system of social partnership among labor, business, the state, and other interests. Under this influence, a succession of national development plans have been issued. They have included agreements on wage growth in the public and private sectors and provisions covering a wide range of social and economic policy matters. The currency of Ireland is the euro; formerly it was the Irish pound or *punt.*

RELIGIOUS COMMUNITIES

Ireland is a predominantly Roman Catholic country, with a small Protestant minority, mainly composed of the Anglican (Church of Ireland), Methodist, and Presbyterian denominations. There is also a small but well-established Jewish population. In recent years, as a consequence of increased immigration, there have been a significant increase in the previously very small Muslim population and a similar dramatic increase in the number of Orthodox Christians living in the state. Many other religious communities can also now be found, such as organized groupings of the Hindu, Buddhist, and Ba'hai faiths as well as small numbers of minority Protestant churches such as Jehovah's Witnesses, Quakers, and Mormons.

In the early years of the state, the Roman Catholic Church enjoyed considerable influence over the political organs of the state, and its role was recognized in the constitution. In 1973, the special position of the Catholic Church and the recognition of other named religious denominations were removed from the constitution. Today, the state is avowedly secular in nature, although religious, mainly Roman Catholic, organizations retain a significant role in state-funded education and, to a lesser extent, in state-funded health care.

MILITARY DEFENSE AND STATE OF EMERGENCY

Ireland has historically adopted a policy of military neutrality and has not been part of any military alliance, although in recent years the increasing activity of the European Union in the area of peacekeeping and security has been the source of some controversy in Ireland. Throughout its short history, Ireland has made a significant contribution to United Nations peacekeeping, monitoring, and inspection operations, including assignment of military forces to missions in all five countries of Central America, Lebanon, Congo, West New Guinea, Cyprus, India and Pakistan, Somalia, Kosovo, South Africa, Western Sahara, East Timor, Liberia, and Eritrea.

AMENDMENTS TO THE CONSTITUTION

Proposed amendments must be approved by a simple majority of both houses of the Oireachtas, and subsequently by a majority of those voting in a popular referendum. The constitution has been amended 27 times since 1937.

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Liam Herrick

ISRAEL

At-a-Glance

OFFICIAL NAME
State of Israel

CAPITAL
Jerusalem

POPULATION
6,780,000 (2005 est.)

SIZE
8,019 sq. mi. (20,770 sq. km) within the 1967 borders and 2,884 sq. mi. (7,470 sq. km) of the occupied territories

LANGUAGES
Hebrew and Arabic (official languages)

RELIGIONS
Jewish 79%, Muslim 17.3%, Christian 2.1%, Druze 1.6%

NATIONAL OR ETHNIC COMPOSITION
Jewish 79%, Arab 19%, other 2%

DATE OF INDEPENDENCE OR CREATION
May 14, 1948

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
No single date

DATE OF LAST AMENDMENT
July 26, 2005

The State of Israel defines itself as a "Jewish and Democratic State" and has a parliamentary system of government. The president is the head of state, but his or her function is primarily representative. The prime minister is Israel's political leader and depends on the support and confidence of the majority of parliament (Knesset) members.

Israel has not yet adopted a complete formal constitution. However, many constitutional matters have in fact been settled and are incorporated in 11 basic laws. This partial constitution has three main limitations: No legislation exists as to how a full constitution might be established, and how it would then be amended; most existing constitutional laws are not entrenched or protected from amendment by a simple majority of Knesset members; and not all recognized human rights are protected by the existing constitutional provisions.

The institutional part of the Israeli constitution is established in basic laws that define the authority of the various state bodies that make up the legislature, the government as the executive authority of the state, and the judiciary. The substantive part of the constitution is established mainly in two basic laws concerning human rights enacted in 1992. In addition to the written parts of the Israeli constitution, the Israeli Supreme Court has developed a judicial bill of rights, which affords considerable protection of human rights.

The State of Israel was established after the Holocaust of the Jewish people in Europe during World War II (1939–45), when some 6 million Jews were murdered. Immigration to the country began as a Jewish nationalist movement of return to the perceived ancient homeland, which arose outside the country and stimulated Jewish immigration into the British Palestine Mandate in the decades before World War II.

Israel is an immigrant state in the midst of a vigorous process of nation building. At the same time, it suffers social tensions between the Jewish majority and the Arab minority, between secular and religious Jews, and between Jewish immigrants of European descent and those from the Muslim world. Since the 1967 war, Israel has occupied territories conquered from Jordan, Syria, and Egypt. The majority of the Palestinian Arab population, about 3 million people, have since lived under Israeli rule in conditions of belligerent occupation.

CONSTITUTIONAL HISTORY

After Britain conquered the land of Israel (then called Palestine) from Turkey during World War I (1914–18), the Council of the League of Nations approved a mandate that allowed Britain to exercise its rule there. The mandate required Britain to act to establish a national home for the Jewish people without harming the civil and religious rights of non-Jews. The Palestine Order-in-Council of 1922 authorized the high commissioner to legislate those laws he found necessary to maintain peace, order, and government within the bounds of the mandate. This Order-in-Council was sometimes called "The Land of Israel Constitution," and it determined the rules of government and the sources of mandatory law. It included, inter alia, a slightly modified version of the British system of judicial review. Accordingly, while there was no judicial review of laws, the Supreme Court, in its function as High Court of Justice, was authorized to review the actions of administrative authorities.

On November 29, 1947, the General Assembly of the United Nations voted to end the British Mandate in Palestine and approved the "Partition Plan." According to this plan, the country was to be divided into two states: a Jewish state and an Arab state. Jerusalem was to be placed under international control maintained by the United Nations.

On May 14, 1948, the date British rule ended, the People's Council, which represented the various political segments of the Jewish settlement in Palestine, convened and proclaimed the foundation of the State of Israel. This Proclamation of Independence shaped the founding principles of the state, establishing the following central concerns:

The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.

The Proclamation of Independence was not intended to serve as a constitution. The proclamation did, however, detail the state's basic values and objectives, as well as establish its primary institutions. This included the People's Council as the legislature and the executive branch as the provisional government. The proclamation also determined that a Constituent Assembly should be elected no later than October 1, 1948, to adopt a constitution for the state.

Shortly after British departure and the Proclamation of Independence, the newly founded State of Israel was attacked by Palestinian Arabs and neighboring Arab nations, who challenged Israel's right to independence, and Israel's War of Independence began. The war caused a delay in the election of the Constituent Assembly. The elections for the Constituent Assembly, which also functioned as the first legislature (the first Knesset), were eventually held in January 1949.

During the assembly's deliberations, some members raised arguments against the immediate adoption of a constitution. They were concerned that any constitution formulated during the then-existing state of emergency would provide insufficient guarantees for the long-term protection of human rights. Also, after the foundation of the state many Jewish immigrants were expected to settle in Israel. Hence, it was argued that it would be wrong for the few citizens of the state in its first years to establish principles for the many who would later arrive. Furthermore, in the spirit of British parliamentarianism, it was argued that parliament should not limit itself by any entrenched constitution. Finally, the representatives of the religious parties argued that the true constitution already existed in the form of the Hebrew Bible interpreted as a book of laws, and that there was therefore no need for a secular one.

For these reasons and others, the Knesset reached a compromise known as the Harari Resolution on June 15, 1950, forgoing an immediate decision and authorizing the Knesset's Constitution Law and Justice Committee to draft a constitution for the state. The constitution was to be created chapter by chapter, each constituting a separate basic law.

To date, the Knesset has approved 11 basic laws. Nine of these deal with the status of state authorities: The Knesset; The Government (administration); The President; Israel Lands; The State Economy; The Army; Jerusalem, The Capital of Israel; The Judiciary; and The State Comptroller. Two, enacted in 1992, deal with human rights: Human Dignity and Liberty and Freedom of Occupation. These two basic laws have had significant impacts on public debate and on the legislative process.

Nevertheless, the endeavor to create a constitution remains incomplete. Constitutional protection of human rights remains limited since there is not yet explicit constitutional protection of such basic rights as equality, freedom of expression, freedom of religion, and freedom of movement. Moreover, the basic law Human Dignity and Liberty does not permit judicial review of laws made prior to its enactment in 1992. Furthermore, the Basic Law *Legislation,* which is supposed to set the provisions for the legislation and amendment of the constitution, has not yet been enacted.

FORM AND IMPACT OF THE CONSTITUTION

The written constitution of the state of Israel is not codified in a single document. Instead, a series of basic laws regulate many but not all constitutional matters.

The Israeli Supreme Court has played an important role in extending and completing the constitutional enterprise. First, it established an extensive judicial constitutional bill of rights. Thus, for example, the Supreme Court deduced a rule of interpretation from the Proclamation of Independence, whereby laws should be interpreted in a manner consistent with human rights. In one important decision in 1953, the court invalidated the minister of interior's decision to close a communist newspaper that the minister found harmful to public peace. The court ruled that the law authorizing the closure should be interpreted so as to authorize action only in the face of "near certain" harm. In this affair, and in many subsequent cases, the Supreme Court created an unwritten bill of rights. However, while the court could overrule secondary legislation and administrative action, it was ineffectual when faced with explicit legislation harming human rights. In other words, until the enactment of the relevant basic laws protecting human rights, explicit legislation could overpower human rights.

The Supreme Court's second contribution was to recognize the Knesset's power to create a constitution. Although the Harari Resolution implies that the basic laws would constitute a binding constitution only upon completion of the enterprise, the Supreme Court ruled that the provisions contained within the basic laws have superiority vis-à-vis contradictory provisions contained in other Knesset legislation. In a landmark decision from 1995, the court determined that the constitutive authority was passed on from the first Knesset to succeeding ones and that the Knesset "wears two hats." When it creates or amends a basic law it is exercising its authority under the hat of Constituent Assembly, and when it creates or amends regular laws it is exercising its authority under the hat of legislative authority. On the basis of these assertions, it appears that an ordinary law cannot contradict a constitutional norm in a basic law. The court further claimed the power to review the validity of ordinary laws contradicting basic laws, despite the fact that the basic laws do not explicitly grant the court such authority.

The Supreme Court's rulings on constitutional matters have had substantial political repercussions. The court is known for its judicial activism and does not hesitate to address delicate political issues.

BASIC ORGANIZATIONAL STRUCTURE

The central government is the highest executive authority of the state and decides on all major issues, including security affairs, government policy, and economics. Local authorities have the power to collect taxes for the provision of local services only. When a local authority transgresses against a human right, it must point to explicit authorization in a Knesset statute. For example, a local authority may not prohibit the opening of a cinema on the sabbath if the only motivation behind it was religious, unless Knesset legislation explicitly authorizes it to do so.

During the 1967 war, Israel conquered territories of Syria (the Golan Heights), Jordan (the West Bank and East Jerusalem), and Egypt (Sinai and the Gaza Strip). Sinai was later returned to Egypt after a peace treaty in 1979; Israeli law was applied to the territories of East Jerusalem and the Golan Heights; and parts of Gaza and the West Bank were placed under the administration of the Palestinian Authority after 1993. In 2005, Israel fully retreated from the Gaza Strip.

According to international law, these territories are under the belligerent occupation of the State of Israel. The sovereign is the military commander who is subject to the laws of war. Under Israeli internal law, the military commander is not bound by the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. However, Israel is committed by internal law to uphold the humanitarian stipulations of this convention. The military commander is fully bound by the Hague Convention on Laws and Customs of War on Land of 1907.

In addition, the military commander is bound by the principles of Israeli administrative law, including the obligation to act fairly and proportionately. Soon after the 1967 war, the Supreme Court ruled that the inhabitants of the occupied territories had the right to petition the court against decisions of the military commander. The Supreme Court often handles such petitions in matters such as the destruction of houses, the expulsion of terrorist activists, and the placing of curfews. In practice, most petitions are denied. However, the mere right of petition serves to curb offenses by the military.

LEADING CONSTITUTIONAL PRINCIPLES

The State of Israel is defined in the basic laws as a Jewish and democratic state. After widespread persecution of Jews and especially after the Holocaust of the Jewish people during World War II, the creation of a home for the Jewish people was perceived as essential to its survival. The Jewish nature of the state has both national and religious significance. In the national sense, Israel is a state that asserts its continuity with the historic Jewish people, whose primary language is Hebrew, and that offers refuge and citizenship to Jewish immigrants from all over the world. In the religious sense, Israel is a state where the sabbath, Jewish religious holidays, and kosher food laws are observed by all agencies of the government; where the official rabbinate has authority over personal and family law among Jews; and where the past and future ties between Jews and the Land of Israel, a

key tenet of the Jewish religion since its inception, find expression.

Israel is a representative democracy; the people elect their representatives to the Knesset, and these representatives determine political issues. The direct democracy of referenda is not practiced. Israel is also a democracy in the sense that both its written and its unwritten constitution evidence a commitment to protecting human rights.

Two other Israeli constitutional principles are the rule of law and the separation of powers. Government authorities have no power beyond that established in law. There is a prohibition on vague legislation and on legislation that gives officials pervasive discretion, if that would impact constitutionally protected rights. Separation of powers is apparent in the system of checks and balances among the various government authorities, especially the Knesset, the government, and the judiciary. The Israeli judiciary is independent and the Supreme Court functions as a powerful restraint on governmental power.

CONSTITUTIONAL BODIES

The president is the head of state, whose tasks are principally representational. The prime minister as head of the government is the state's political leader and depends on the confidence of the majority of parliament members, who are elected in general, national, direct, equal, secret, and proportional elections. The parliament, called Knesset, fulfills a dual task: It is authorized to create a constitution and to pass regular laws. The judiciary includes the Supreme Court, which as High Court of Justice performs an important role in the supervision of government authorities.

The President

Section 1 of the Basic Law, The President of the State, stipulates that "a President shall stand at the head of the State." The president is elected by the Knesset by secret ballot for only one term of seven years. The president's authorities are principally representational and include signing laws and international treaties approved by the Knesset and receiving the credentials of foreign ambassadors. The president generally represents values of social morality that are not under political dispute.

The president's two primary powers relate to the formation of a government and the pardon of offenders on the recommendation of the minister of justice. In exceptional circumstances, the president can pardon people even before conviction. The Basic Law The Government grants the president authority to assign the task of forming a government to a member of Knesset willing to undertake the task, after consulting the Knesset parties' representatives. The president customarily assigns the task to the candidate who has the best chance of succeeding.

The Government

The government is the principal executive body in Israel, and it serves by virtue of the confidence of the Knesset. The government is led by a Knesset member nominated by the state president to become prime minister and to whom the state president assigns the task of forming a government, which then has to obtain the Knesset's confidence.

The prime minister is the predominant figure in Israeli political life and guides the policy of the government. The prime minister has the authority to appoint ministers and to remove them from office. In rare circumstances the removal becomes obligatory. For example, it was ruled that the then-prime minister Yitzhak Rabin must remove from office a minister and a deputy minister whom the attorney general had decided to indict.

Should the prime minister decide to resign, the president is authorized to approach another candidate, who will try to win support by a majority of Knesset members. The Knesset may express its lack of confidence in the government, without dissolving itself, only by proposing a new prime minister supported by the votes of more than half of its members. This action is called "constructive lack of confidence."

The Basic Law The Government was amended in time for the 1996 elections, so that each voter would cast two ballots: one for Knesset members, the other for the prime minister. This was designed to strengthen the prime minister's status vis-à-vis the Knesset and the small political parties, and thus to increase political stability. However, the amendment failed to stabilize Israel's political system, and the law was amended again at the time of the 2003 elections; the old voting was reinstated with some alterations, including the requirement for a constructive lack of confidence.

The prime minister directs the work of the government, whose decisions are made by majority vote without need of quorum. With the Knesset's approval, the government may alter the division of labor among ministers, except with regard to the prime minister. Not only is the government accountable before the Knesset, but most ministers are also Knesset members. Members of the government have both ministerial and collective accountability.

The government has extensive powers, not limited to those explicitly granted by law, and it enjoys prerogative powers in various areas such as foreign affairs. This notwithstanding, the Supreme Court has ruled that the government may not utilize its prerogative powers to limit human rights. Ministers have the right to promulgate regulations, and the government in its entirety is authorized to establish emergency regulations that can even override explicit Knesset legislation for a period of up to three months.

The Knesset

The Knesset, Israel's parliament, consists of 120 members elected in general, secret, national, equal, and propor-

tional elections for a period of four years. Knesset members enjoy substantive parliamentary immunity from indictment for acts or utterances related to the fulfillment of their tasks. Knesset members further enjoy procedural immunity from criminal indictment for other acts, although the Knesset may revoke a member's procedural immunity, usually at the request of the attorney general, by a simple majority of the plenum.

Knesset decisions are made in the plenum by simple majority, with no quorum required. Elections for state president and no confidence votes require an absolute majority of Knesset members. The Knesset's parliamentary supervision of the government is implemented by means of written and verbal interpellations and motions for the agenda. The Knesset is entitled to form parliamentary investigation committees, and it supervises the government's financing and the state budget. The Knesset presidency, which comprises the Knesset speaker and deputies, presides over sessions and determines the urgency of the motions for agenda.

Working procedures are established in the Knesset rules and not in primary legislation. Despite being a type of secondary legislation, the rules of procedure have elevated status. Interpretation of these rules is the purview of the Knesset Committee; the Supreme Court tends not to intervene except in exceptional cases when the Supreme Court believes it necessary to prevent severe damage to the fabric of parliamentary life.

The Knesset is composed of factions based on the parties' election lists. The Basic Law The Knesset disciplines members who change factions and refuse to resign, by denying financing and barring him or her from running for subsequent Knesset. Such limitations do not apply when faction members leave to form a new Knesset faction.

The Lawmaking Process

When the Knesset passes a Basic Law it is fulfilling its role as a constitutive authority; when it passes ordinary laws it is fulfilling its role as a legislative authority. There is no significant difference between the procedures in the two cases. Legislation procedures are established in the Knesset's rules of procedure and not in basic laws or in legislation.

Except ministers and deputy ministers, every Knesset member may submit a private bill, although the procedure for passing such bills is complex. The member must first obtain the permission of the Knesset presidency, which will not move a bill that, in its opinion, is "racist in its essence, or rejects the existence of the State of Israel as the State of the Jewish People." If the budgetary cost of the private bill is high, it must win at least 50 votes at every stage of the legislation process. Finally, if the private bill passes a preliminary reading in the plenum it is referred to the relevant Knesset committee, in which it is prepared before being placed on the Knesset table for a first reading.

Administration bills, approved by the ministers' Legislation Committee, are placed directly on the Knesset table for first reading. From this point on, the procedure for private and governmental bills is identical. At the first reading stage, the Knesset votes on the proposal in general; if it is passed, the Knesset refers it to the appropriate committee, in which the bulk of legislative work is performed. At this stage, representatives of the attorney general advise as to the proposal's compliance with constitutional requirements. If approved by the committee, the proposal is passed on for second and third readings in the plenum. During the second reading, each section is voted upon separately; during the third, the proposal in its entirety is voted upon. Legislation passed by the Knesset is signed by the Knesset speaker, the prime minister, and the president.

The Supreme Court tends to avoid intervention in legislative procedures. Judicial review of a law is usually conducted only after the law has been passed in the Knesset.

The Judiciary

The Israeli judiciary enjoys institutional independence. The Basic Law The Judiciary stipulates that Israeli judges are subject to no authority save that of the law. A judge may not obey instructions from any individual or institute other than higher courts acting within their authority. The manner in which judges are appointed helps protect their independence from political influence. The Judges' Election Committee consists of three Supreme Court judges, two representatives of the Israeli bar, and only four representatives of the political system—two cabinet ministers and two Knesset members.

Israel's principal court system consists of three levels: magistrate courts, district courts, and the Supreme Court. The Supreme Court functions as the final court of appeals for matters of civil and criminal law and as the High Court of Justice. In this latter function, it hears petitions of a public or constitutional nature against state authorities. There are also a number of court branches that adjudicate matters of specific legal nature, including labor courts, family courts, religious courts, and courts for administrative affairs, which operate as part of the district courts. The decisions of all these courts can be appealed before the Supreme Court.

Although the basic laws do not grant courts specific rights to strike down laws, the Supreme Court has determined that courts are authorized to do so in cases in which laws contradict basic laws. Any court may annul a provision of law that contradicts a basic law, if necessary for resolving the legal dispute before the court. However, most rulings on constitutionality are made by the High Court of Justice. Thus far, the High Court of Justice has demonstrated restraint and has annulled few provisions of law.

Everyone has standing to submit a petition to the High Court of Justice on public matters, and almost every issue is justiciable, including issues of a distinct political or military nature. The court enjoys widespread public

faith in comparison with the Knesset and the government. However, its judicial activism has in recent years caused a certain decline of its public support. The religious public within the Jewish majority group reveals the lowest degree of faith in the Supreme Court.

One of the most noticeable examples of judicial activism is the High Court of Justice's rulings on torture. In a landmark decision from 1999, the Supreme Court invalidated the Israel Security Service's torture policy toward those suspected of terrorist acts. The Supreme Court determined that Israeli law nowhere explicitly authorizes such practices. This decision received severe public criticism for damaging the state's ability to defend against acts of terror. However, the Knesset has, thus far, elected not to amend the law so as to grant explicit authority to torture people who are being interrogated.

THE ELECTION PROCESS

The Basic Law The Knesset stipulates that "the Knesset shall be elected by general, national, direct, equal, secret and proportional elections." Every Israeli citizen 18 years or older has the right to vote for the Knesset. There are no limitations, as prisoners are entitled to vote.

The Parliamentary Elections

In Knesset elections the entire territory of the state is considered one jurisdiction. Seats in the newly elected Knesset are divided in accordance with the votes each party list of candidates wins. Elections for the Knesset are held on an earlier date when a law to that effect is passed by an absolute majority of Knesset members, or when an absolute majority of Knesset members express lack of confidence in the government. Between 1948 and 2005, there were only 16 general election campaigns for the Knesset, a fact that reflects the relative stability of the Israeli political system, although this stability has somewhat diminished in recent years. In order to obtain representation in the Knesset, a party must win at least 2 percent of all votes cast.

Any Israeli citizen of the age of 21 or older may be elected to the Knesset, except those who have been sentenced to at least five years' imprisonment for an offense against state security. Also, anyone who has held a high-ranking position in the state service or the military must observe a six-month interval between resigning the post and running for the Knesset. Dual citizenship does not preclude candidacy for the Knesset; however, an elected candidate must do everything in his or her power to be released from foreign citizenship.

In the 1960s, the Supreme Court upheld the disqualification of an Arab candidates' list that negated the existence of the State of Israel as the Jewish state, even though the Central Elections Committee had never been granted explicit legal authority to disqualify a list on such grounds. The Basic Law The Knesset was amended in 1985 and 2002 so as to allow disqualification of a candidates' list or candidate found to negate the Jewish or democratic character of the state, incite racism, or support armed struggle and terrorist acts against the state. The Central Elections Committee's decision can be appealed before the Supreme Court. In fact, this provision has thus far been used only to disqualify an extreme right-wing Jewish party and its offshoots.

POLITICAL PARTIES

In Israel, party pluralism is practiced and a large number of parties have representation in the Knesset. Israeli parties are usually perceived by law as public entities. Accordingly, in addition to the provisions of private law, party structures and procedures are subject to public law, including the obligation of equal and fair treatment. Most Israeli parties are now run in a democratic manner, and they conduct primaries for the nomination of the party's candidates for Knesset elections.

The Parties' Law of 1992 requires the registration of every party with the parties' registrar, who may refuse to register parties on the grounds that they negate the Jewish and democratic nature of the state or act to promote illegal objectives. The courts have applied a narrow interpretation to this power.

Parties elected to the Knesset obtain public funding, in proportion to the number of their Knesset members. The purpose of the public funding is to allow parties to function efficiently without becoming dependent on wealthy contributors. Parties are permitted to raise funds independently, but the law restricts a party's income from donations.

CITIZENSHIP

The central principle for acquiring citizenship in Israel is *ius sanguinis.* The adoption of this principle in Israel is based on the desire to facilitate the Jewish people's return to its land after millennia of exile. The Law of Return of 1950 affords all Jews and their non-Jewish next of kin who wish to return to the homeland a near-automatic right to acquire Israeli citizenship. This right can be limited only on those rare occasions when the visa applicant has acted against the Jewish people or represents a threat to public health or state security. The Knesset restricted the principle of *ius sanguinis* with regard to Jews in those cases in which the child of Israeli citizens was not born in Israel and does not live in Israel.

Non-Jews who were subjects of the British mandate on Palestine prior to the formation of the State of Israel and who did not leave the state during its War of Independence in 1948 became Israeli citizens, and Israeli citizenship was also granted to their children by birth. For non-Jewish foreigners, citizenship can be acquired only by virtue of residence in Israel. To be nationalized one

must (1) be in Israel, (2) remain in the state for at least three of five years, (3) be entitled to permanent residence, (4) know the Hebrew language, and (5) give up prior citizenship. Although these are not exceptionally stringent requirements, the ministry of internal affairs' traditional policy is to curtail the grant of citizenship by virtue of residency in Israel.

Citizens enjoy the right to participate in elections, to work in state service, and to carry an Israeli passport. Along with these rights, Israeli citizenship entails an obligation of allegiance to the state and obligatory military service.

FUNDAMENTAL RIGHTS

The protection of human rights is an important part of Israeli constitutional law. The bulk of constitutional protection is granted in the areas of civil and political rights. The Basic Law Human Dignity and Liberty and the Basic Law Freedom of Occupation explicitly grant that the rights to life, body, dignity, personal freedom, property, privacy, entry and exit into Israel, and occupation will be protected from violation. The main significance of the constitutional status of these rights is their supremacy over regular Knesset legislation. Complementarily, the Supreme Court's unwritten bill of rights ensures the antidiscrimination principle; the freedoms of expression, religion, conscience, movement, and association; and other liberties. This judiciary bill of rights is limited in the sense that a regular Knesset law can negate it. In addition to the constitutional and the judicial protection of rights, the Knesset has passed laws ensuring the realization of the principle of equality and the rights to privacy and reputation.

The State of Israel has not yet enacted the Basic Law Social Rights, and, for the time being, the Supreme Court provides sparse protection of these rights. The common legal opinion is that only an attack against a person's right to "minimal conditions of subsistence" constitutes a prohibited offense against the constitutional right to human dignity. Israeli law further recognizes to some extent certain group rights, in particular with regard to the Arab minority: Arabic is recognized as an official language, Islamic and Christian religious communities enjoy autonomy in affairs of matrimonial law, and lessons in schools attended by Arab pupils are taught in Arabic.

The supreme value governing Israeli constitutional law is the value of human dignity. This value is based on the proviso developed by the philosopher Immanuel Kant whereby all rational beings must be treated as ends unto themselves and not merely as means to an end. In the year 2000, the Supreme Court ruled that holding Lebanese captives as bargaining chips to obtain the release of Israeli prisoners of war and persons missing in action was unconstitutional. The court found the action a violation of the principle of personal liability, and therefore an illicit offense against human dignity.

Despite widespread agreement that human dignity ought to be protected, the meaning of this value is disputed in Israel. Some judges believe that the value of human dignity is meant to protect people's autonomy and may therefore be broadly interpreted to encompass unenumerated rights such as equality, freedom of expression, and freedom of religion. Other judges believe that the value of human dignity should be interpreted more narrowly, to bar only offenses against unenumerated rights that entail humiliation. According to the second view, since discrimination based on group identity such as sex or nationality offends human dignity, the Knesset is prohibited from doing so.

Impact and Functions of Fundamental Rights

Human rights in Israel are based on a liberal conception, which traditionally perceives such rights as negative, in that they prohibit the state from limiting human liberty. However, in recent years there is a growing tendency in Israeli constitutional law to grant rights positive meaning, namely, to require the state to act to ensure the realization of rights. For example, with regard to antidiscrimination it has been ruled that the Israeli army must bear the costs necessary to ensure the integration of women into an air pilot training course. Moreover, the state has a general obligation to practice affirmative action to remedy discrimination against women, Arabs, and disabled persons within state service.

In the past, Israeli law upheld the liberal distinction between the private and the public spheres; courts refrained, for example, from applying the antidiscrimination principle to private entities. In recent years, however, Israeli courts have tended to interpret the principles of private law in a way consistent with constitutional rights. For example, provisions established in a collective agreement that discriminated against women were annulled on the grounds that they conflicted with the private law doctrine of "public policy." Furthermore, private entities are required by legislation to uphold such rights as equality and privacy.

The human rights section of constitutional law has a tangible effect on Israeli public discourse. Constitutional protection of the freedom of expression ensures vibrant political discussion. The Supreme Court contributes significantly to the fortification of freedom of expression, in particular, and of human rights in general.

Limitations of Fundamental Rights

The prevalent assumption in Israeli constitutional law is that there are no absolute rights. The basic laws concerning human rights enacted in 1992 establish a general formula for evaluating rights limitation clauses. The Basic Law Human Dignity and Liberty stipulates: "There shall be no limitation of rights under this Basic Law except by

a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by regulation enacted by virtue of express authorization in such law."

This provision places three principle restrictions on the state's power to limit rights: Any limitation of a fundamental right must be based upon an explicit and clear provision of law, which establishes criteria under which rights may be limited. This requirement illustrates the principle of the rule of law and is meant to function as a safeguard against abuse of governmental power by the executive. The Supreme Court ruling that disallowed torture on the grounds that it was not authorized by an explicit provision of law is an example of this approach.

Second, the limitation must serve a worthy purpose. The courts tend not to permit limitations based on administrative or monetary considerations. The Supreme Court has emphasized that respecting human rights costs money. The validity of the justifying purpose is also related to the values of the State of Israel. Limitation of human rights for the purpose of preserving the Jewish character of the state may be considered legitimate.

Finally, limitations of rights must be proportional; that requirement has been interpreted in Israel as entailing three subtests: (1) The means of limitation must be rationally connected to the purpose of limitation; (2) preference must be given to those means that least drastically impair the right; and (3) the benefit derived from the limiting arrangement must be balanced against its negative consequences. The least drastic means requirement is the heart of proportionality, and most judicial intervention in governmental rights limitations is based on the existence of less drastic means to obtain the same goal.

ECONOMY

The Basic Law The State Economy contains formal elements that establish checks on the economic authorities in the executive branch. Taxes can be imposed only by law, that is, by the Knesset. The Knesset must approve the state budget and thus has final say on the distribution of state resources. If the government fails to win approval for the budget within three months of the beginning of the tax year, the Knesset is considered dissolved and new general elections will take place.

The Israeli constitution does not give substantial preference to any particular economic system. The state is nevertheless restricted by a system of economic rights. The basic laws on human rights enacted in 1992 explicitly protect two such rights: the right to own property and freedom of occupation. Social rights are not explicitly protected; however, the Supreme Court tends to require the state to act, within existing resources, to ensure that people will not live below the minimal standard of dignified subsistence. In general, though, the courts rarely challenge legislation limiting economic and social rights because, inter alia, they lack the tools to address complex economic questions.

RELIGIOUS COMMUNITIES

The State of Israel practices religious pluralism. Religious communities enjoy autonomy in managing their internal affairs, as well as authority over personal status issues including marriage and divorce. This practice derives from the Milet system that flourished under Turkish rule (up to 1917). The system is tolerant of religious minorities and allows multiculturalism. However, it permits the enforcement of religious law in matrimonial affairs on secular people who were born to a given religious community and did not change their religion. Hence, there is no legal option of civil marriage; those seeking civil marriage, for example, interreligious couples, are forced to marry abroad.

Israel is not a theocracy; Israeli law is secular and the sovereign is the Knesset, which represents the will of the people. However, there is no separation of state and religion. Thus, laws passed by the Knesset endorse some limitations originating in religious law, such as a ban on raising and selling pork (with exceptions for Christians), the import of nonkosher meat, and the display of leavened bread during the Jewish holiday of Passover. Additionally, the state establishes or supports religious institutions such as the Chief Rabbinate as well as the Jewish, Muslim, Druze, and Christian religious courts. The state also funds many religious practices including worship services.

The relationship between religion and state is based on a communitarian concept that emphasizes the importance of the connection between people and their religious communities. Alongside the advantages of this attitude, there is a concern that personal liberties might be impaired. The Israeli Supreme Court endeavors to curb the state's power to impair personal liberties while advancing religious causes. It has ruled that a governmental decision based solely on religious considerations must be supported by an explicit provision of law. The court intervenes to ensure that the allocation of resources for religious services is as equal as possible. Moreover, the Supreme Court exercises judicial review over the decisions of religious institutions and is willing to intervene if they impair citizens' fundamental rights.

Private religious schools enjoy a large degree of autonomy. In practice the state exercises little supervision over nonstate religious educational institutes even when they receive substantial state funding. The State of Israel has established state-run religious schools for the Jewish religious community. These schools are fully funded by the state and subject to its supervision. On the other hand, private schools established by the *haredi* (ultraorthodox) Jewish communities, which also enjoy state funding, are in fact subject to almost no state supervision.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Israel Defense Force is subject to government control through the minister of defense. The chief of staff is appointed by the government on the recommendation of the minister of defense. The government has the authority to control even tactical acts of the armed forces. The heads of the Mosad—the central covert intelligence agency—and the General Security Service—which collects intelligence within state borders and the occupied territories—are direct subordinates of the prime minister.

Under the Security Service Law, every Israeli citizen is obligated to serve in the army. Men serve for three years and women for two. In practice, because it was thought unreasonable to expect Arab citizens to fight against their brethren in Arab nations, compulsory recruiting has been applied only to Jewish and Druze citizens and not to Muslim and Christian Arab citizens. Students of *haredi yeshivas* (institutes of religious studies) have, since the first years of the state's existence, been exempted from military service out of consideration for this community's unique cultural characteristics. However, as the number of such students has soared, the High Court of Justice has ruled that the exemption policy must be established in explicit Knesset legislation so as to ensure democratic supervision of deviations from the principle of equal division of burden.

Israeli authorities differentiate between pacifist conscientious objectors, who are entitled to an exemption from military service, and selective conscientious objectors, who are not entitled to exemption. A selective objector is someone who does not morally object to military service in itself but refuses to perform certain actions that military service entails; an example can be the objection to serving in the occupied territories out of moral objection to the occupation. The security authorities strongly oppose selective objection, and the Supreme Court has backed their position.

From a legal perspective, the State of Israel has been in a state of emergency ever since it was founded. The Knesset is the organ authorized to declare a state of emergency and such declaration is valid for one year. In practice, the Knesset annually redeclares a state of emergency. This declaration has allowed the enactment of legal arrangements that permit the taking of acute measures such as administrative detention. Furthermore, the government is authorized to enact Emergency Regulations that can override laws for a period of up to three months. The government is required to demonstrate why the enactment of the regulations directly derives from the state of emergency.

AMENDMENTS TO THE CONSTITUTION

Most of the provisions established in the Israeli basic laws can be altered by a simple majority of Knesset members, despite their constitutional status. However, an absolute majority of Knesset members is needed to amend the Basic Laws Government and Freedom of Occupation, and some provisions of Knesset, Jerusalem, the capital of Israel, and State Economy.

Since it is so easy to amend the constitution, it has been amended to excess, according to critics, at times merely to satisfy day-to-day political needs. For example, the constitutional limit of 18 ministers was dropped in order to include additional parties in a new government. The frequent changes in the election system constitute another example.

In a further twist, the Knesset added a clause to the Basic Law The Freedom of Occupation that allows it to pass ordinary laws contradicting that basic law (a Notwithstanding Clause). Each such law must explicitly state that it is being enacted notwithstanding the provisions of the basic law, and that it is valid for only four years.

As all the basic laws, Human Dignity and Liberty, the focal point of the Israeli bill of rights, is not formally entrenched. In this case, however, the basic law enjoys relative stability, even though the Supreme Court's interpretations often raise objections in the political system. Since 1992 it has been amended only once, and then only to generally extend its reach. The relative stability of this basic law results, inter alia, from the fact that it expresses the nucleus of Israel's existence as a Jewish and democratic state protecting human dignity.

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Moshe Cohen-Eliya

ITALY

At-a-Glance

OFFICIAL NAME
Italian Republic

CAPITAL
Rome

POPULATION
56,995,744 (2005 est.)

SIZE
116,347 sq. mi. (301,338 sq. km)

LANGUAGES
Official languages Italian, German (South Tyrol), Ladin (South Tyrol), French (Val d'Aosta), Slovene (Friuli-Venezia Giulia)

RELIGIONS
Catholic majority, Protestant 0.7%, Christian Orthodox 0.17%, Jewish 0.05%, Waldenses 0.04%, Muslim and other 1.7%

NATIONAL OR ETHNIC COMPOSITION
National composition: Italian majority; other (mainly Moroccan, Albanian, Filipino, Romanian, Tunisian, Yugoslav, Chinese) 2.7%; linguistic and ethnic minorities: German, Ladin, Albanian, Catalan, Croat, French, Greek, Provençal, Sardinian, and Slovene

DATE OF INDEPENDENCE OR CREATION
March 17, 1861

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state with wide regional autonomy

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
January 1, 1948

DATE OF LAST AMENDMENT
May 30, 2003

The present Italian constitution was enacted in 1947 after the fall of the fascist regime during World War II (1939–45). The Italian state is a democratic parliamentary republic and a unitary state but with wide guaranteed regional autonomies.

The constitution prevails over any other law. In case of conflict, a Constitutional Court can be called upon to ensure its superiority.

Individual and collective fundamental rights—civil, political, and social—are guaranteed, as is the equal protection of law. The state is neutral vis-à-vis the different religions, although special relations exist with the Catholic Church and some other religious communities. A free market economy is guaranteed, but public authorities have the right and the duty to regulate it to safeguard human dignity and rights, social justice, and the public interest.

The division of powers and the independence of the judiciary are ensured, as well as pluralism of political parties. Political power is mainly entrusted to the bicameral parliament, elected by the people, and to the administration, on the basis of its parliamentary majority. The head of state has a coordinating and balancing role.

The constitution allows limitations of the state sovereignty in favor of international and supranational authorities such as the United Nations and the European Union. It bans war as a means of settling international controversies.

CONSTITUTIONAL HISTORY

Italy is a young state. For many centuries after the fall of the ancient Roman Empire "Italy" was only a "geographical

expression," its territory divided into kingdoms, duchies, grand duchies, lordships, free communes, the Papal States in the center of the country, and areas ruled by foreign powers, such as France, Spain, or the Austrian Empire.

After the French Revolution of 1789 and the Napoleonic wars, a movement started for the political unification of Italy. Unification was eventually realized during the 19th century through the annexation of the various territories to the Kingdom of Piedmont and Sardinia, ruled by the Savoia dynasty and renamed the Kingdom of Italy in 1861. The capital was first Turin, then Florence, and eventually Rome, after Italian troops occupied what remained of the ancient Papal States in 1870.

The conquest of Rome left the so-called Roman question open, because the Holy See refused for a long time to accept the loss of its secular powers. In 1929, the Vatican agreements recognized Italian sovereignty, creating an independent state, the City of Vatican, with a very small territory inside Rome, in order to ensure the full freedom and independence of the pope. The agreement also regulated the rights and the obligations of the Catholic Church in Italy.

The first constitution of Italy was simply the "statute" that the king of Piedmont and Sardinia, Carlo Alberto, had issued in 1848. That explains the centralized structure of the new state, divided into provinces ruled by governmental officials, the *prefetti* (prefects), according to the French model. The main administrative powers were entrusted to the central government, while the autonomy of the communes was limited.

The kingdom was governed by a parliamentary monarchy according to the British traditional pattern. The king was formally the head of the executive power, exercising mainly through the ministers and the prime minister, who were based in the parliamentary majority. The Parliament was composed of two houses, formally with equal powers: the Chamber of Deputies, elected by very limited suffrage (at the beginning only 2 percent of the citizens), and the Senate, whose members were appointed by the king from among various categories of officers and other personalities.

The legislative power was entrusted to the Parliament and the king, but in fact the king enacted all the statutes that the Parliament approved. The judiciary power enjoyed a certain, although not complete, independence from the executive. The constitution provided for the main civil liberties (not including freedom of association) but left wide space to the law for regulating their exercise. No control on the legislation was contemplated from the constitutional point of view so that although the constitution has never been formally amended, ordinary laws could substantially change and even nullify its provisions, as happened under the fascist regime.

With the end of World War I (1914–18), the unification of the country was completed, and even the South Tyrol area, where a German-speaking population lives, was annexed. In the following years a process of intensified democratization started but was soon interrupted.

The Fascist Party of Benito Mussolini took over power in a formally legal way in 1922 and changed the constitutional framework of the state. The head of the administration became the only strong power. The elected house was first dominated and weakened, then abolished; in its place was created an assembly ruled by the head of the administration. Political liberties and freedom of speech were suppressed; the Fascist Party became a state institution.

Italy entered World War II (1939–45) in 1940 at the side of Germany. However, in 1943, with military defeat looming, the fascist regime was overthrown and Italy signed an armistice with the Allies. For one and a half years, the country was divided, the southern part occupied by the Allies and the northern part occupied by German troops, and ravaged by the struggle between antifascist partisans and a new fascist republican regime.

Antifascist parties, assembled in a National Liberation Committee, took power in the south and made an agreement with the king to delay any decisions about the form of the new state (through a Constitutional Assembly to be elected by the people) until the end of the war. On June 2, 1946, the election of the assembly, in which women had the right to vote for the first time in a national scale, and a referendum chose a republican form of government with a majority of 51 percent of voters (54 percent of valid ballots).

For one and a half years, the assembly prepared the new constitution of the Italian Republic. It was approved with an 87 percent majority; was enacted on December 27, 1947; and took force on January 1, 1948.

The almost unanimous goal of the assembly was to build a democratic state where it would not be possible for an authoritarian regime such as fascism to take power and suppress the people's liberties. A large majority wanted the Italian Republic to be open to the interests and the participation of the poorer classes, especially the workers. Some of the parties represented in the assembly favored a socialist system; more were in favor of the "Western" democratic pattern. In fact, the structure and the principles of the constitution reflect the ideals and the fundamental rules of Western contemporary constitutionalism.

The constitution became for decades a factor of unity and consensus among the people, although the process of implementation was slow and even controversial. In these decades Italy became part of the North Atlantic Treaty Organization (NATO) (1949) and of the United Nations (1955). Italy was among the founding states of the European Communities (1951, 1957), then of the European Union (1992). The increasing transfer of powers to the European institutions took place without substantial controversy on the basis of the constitution, which did not need to be amended.

In recent years, since the old parties disappeared or were transformed and a new political system took shape, a trend toward substantive constitutional changes has gathered force. In particular, the relationship of Parlia-

ment, the prime minister, and the head of state has been challenged, and a new framework of regional autonomy has been proposed. The structure of citizens' rights and duties has remained mainly unchallenged.

Far-reaching reforms of the constitution relating to regional and local authorities were enacted in 1999 and in 2001. At present, a major bill to amend the constitution's political provisions is being debated by Parliament in a climate of strong disagreement between the current center-Right majority and the center-Left opposition.

FORM AND IMPACT OF THE CONSTITUTION

The Italian constitution is a single written document. It binds all individuals and public authorities as the strongest statutory law. It can be amended only by a special procedure.

By the same procedure, other "constitutional laws" that have the same value in the hierarchy of norms as does the constitution can be enacted. In some cases the constitution itself states that a matter must be regulated by a constitutional law; this applies, for example, to the special statutes of five regions as stated in Article 116.

Any other law must be consistent with the constitution and must be interpreted and applied, whenever possible, in a way consistent with the constitution. The Constitutional Court can declare a law unconstitutional; such a declaration has general effect, binding all judges and public authorities not to apply the law.

According to the constitution, general international law is automatically recognized as internal law in Italy and therefore has the same rank as constitutional laws. Ordinary legislation must respect the international obligations of the state. Moreover, European law is recognized not only as being directly applicable but also as having precedence over internal laws, and even over the constitution, unless it contradicts the constitution's fundamental principles.

The constitution not only is a legal document and the strongest source of the law but also expresses the fundamental political values underlying Italian society. It links the country to the constitutional tradition of modern Europe.

BASIC ORGANIZATIONAL STRUCTURE

Italy was created as a unitary centralized state on the model of Napoleonic France. Article 5 of the constitution declares the Italian Republic "one and indivisible." Immediately after World War I, however, before the fascist regime took over, the "People Party" under the Catholic priest Luigi Sturzo proposed the creation of political regions with legislative and administrative powers. After World War II, the Constitutional Assembly accepted the idea of a "regional" state, intermediate between centralist and federal patterns, and created 20 regions corresponding to the traditional partitions of the country used for statistical purposes. Five regions have special autonomy: the two main islands, Sicily and Sardinia, and three ethnically varied border regions: Valle d'Aosta, with a French-speaking population; Trentino-Alto Adige, including the German-speaking southern Tyrol; and Friuli-Venezia Giulia, with its Slovenian minority.

In fact, governmental structures were not established for the 15 "ordinary" regions until 1970. Thus, it had taken a century to give legal expression to the profound economic, cultural, and even linguistic differences among the various areas of the country. These differences have somewhat eased under the influence of the national school system and television, but they have not disappeared.

The constitutional reforms of 1999 and 2001 have deeply changed the former constitutional framework. The regions have built their own constitutional structures; each has its own council and executive board president directly elected by universal suffrage.

The central state's legislative powers are now limited to specified matters, such as foreign policy, defense, and the police. All other legislation is in the purview of the regions, although regional laws relating to such fields as town and country planning, health care, and education must be consistent with the fundamental rules established by national framework laws. Administrative functions, whether in national or regional matters, are usually carried out by local communities, except when the law specifically gives the job to the provinces, the regions, or the central government to ensure uniform implementation. Regions still lack any powers in civil and criminal law, court procedure, and constitutional matters, which all depend on centralized organization.

As a matter of fact, local government is deeply rooted in the Italian administrative tradition. A strong sense of local identity characterizes Italian communities, due in part to the long history of many large and small cities. Italy has more than 8,000 local communities.

The new text of the constitution provides for far-reaching financial autonomy and tax power for regions, provinces, and local communities, within the framework of national legislation. However, regional and local authorities still largely depend on the state budget.

LEADING CONSTITUTIONAL PRINCIPLES

Article 1 of the constitution defines Italy as "a democratic republic founded on labor." The sovereignty "belongs to the people, who exercise it in the forms and within the limits of the constitution." This means that the highest political authority resides in institutions that are elected,

directly or indirectly, by the citizens. However, these institutions are not unlimited in their authority—they must respect the constitution. The constitution not only determines the decision-making processes but also guarantees the fundamental rights of individuals and groups, asks all citizens to observe the unbreakable duties of solidarity, and ensures the equal protection of law. The constitution obliges public authorities to pursue justice in social and economic relations in order to make freedom and equality effective for all and to allow the development of each person's personality.

The republic was the system of government chosen over monarchy in the constitutional referendum of 1946, and it cannot be legally changed. The phrase *founded on labor* is a recognition of the value of labor, instead of origin or wealth, as the basis of the social role of the individual.

The government is founded on the division of legislative, executive, and judicial powers, and on the rule of law. Rule of law means that any act of public authorities that impairs the rights of individuals or groups must find its basis in a law enacted by Parliament or, when provided for by the constitution, by the cabinet, and must be consistent with the law. Further, everyone has the fundamental right to defend any specific rights claim before an independent and impartial court, constituted according to the law.

Political participation mainly takes the form of indirect, representative democracy. Nevertheless the constitution provides for some possibilities of direct democracy, that is, of referendum, both to abrogate existing laws and to accept or reject constitutional amendments and other constitutional laws approved by Parliament. The abrogative referendum has been used on many issues. For example, a law on divorce was challenged but confirmed in a referendum in 1974. More possibilities for direct democracy are provided at the regional and local levels.

Among other fundamental principles in the constitution are mutual independence of state and church, although cooperation between the two is allowed; protection of the environment; promotion of culture and science; and a ban of war as a means to solve international controversies. The constitution also favors supranational institutions that limit national sovereignty in order to promote peace and justice among people. It is on that basis that Italy has entered the European Union.

CONSTITUTIONAL BODIES

The structural bodies named in the constitution are the president of the republic; Parliament; the administration or cabinet (Council of Ministers), which includes the prime minister (president of the Council of Ministers) and other ministers; the judiciary; and the Constitutional Court.

A number of other bodies complete this list, including administrative organs with consultative and control functions. Examples of these are the Council of State, the Court of Accounts, and the National Council of the Economy and Labor.

The President of the Republic

The president of the republic is the head of state and represents national unity. He or she coordinates and guarantees the correct functioning of the constitutional system. Any citizen who is at least 50 years of age and enjoys civil and political rights is eligible to become president of the republic.

The two houses of Parliament in joint session, with the participation of regional delegates, elect the president of the republic by secret ballot for a seven-year term; reelection is permitted. A majority of two-thirds of the assembly, or after the third ballot an absolute majority of all the members, is required. This provision gives the president a wider base of parliamentary support than the cabinet, which can be backed by a simple majority.

If the president is temporarily unable to fulfill his or her duties, they are performed by the president of the Senate, as the constitution does not provide for a vice president. The president cannot hold any other office.

The president of the republic plays an important role in forming a new administration, by nominating a prime minister and appointing the ministers on the latter's advice. The president also accepts their resignation.

The president has the authority to send messages to Parliament or to dissolve the houses and call elections. He or she authorizes the submission of bills to Parliament drafted by the Council of Ministers and promulgates laws once they are approved; issues decrees that have the force of law and regulations; calls popular referenda as provided for by the constitution; nominates important state officials; confers state honors; accredits and receives foreign diplomats; and ratifies international treaties approved, when it is required, by Parliament. The president also serves as high commander of the armed forces, presides over the Supreme Council of Defense, and makes declarations of war approved by Parliament. The president also presides over the High Council of the Judiciary, grants pardons, and commutes punishments.

The president is not legally accountable for acts performed in the exercise of official functions, except high treason or fraudulent violations of the constitution. Therefore, no act of the president is valid until countersigned by the ministers, who assume responsibility for it.

Parliament

Parliament is made up of two houses—the Chamber of Deputies, which consists of 630 members, and the Senate, which consists of 315 regular members plus five members appointed by the head of state from among outstanding

citizens and the former presidents of the republic. Both houses are elected by the voters for a period of five years by a general, direct, free, equal, and secret balloting process. One or both houses can be dissolved by the president of the republic before the end of its regular term. The two houses exercise identical functions in a perfect bicameral system of legislative power and political control over the executive.

Parliament meets in joint session when electing or impeaching the president of the republic and nominating members of the panel that will try the president, when electing one-third of the members of the High Council of the Judiciary, and when electing one-third of the justices of the Constitutional Court.

Both houses generally make decisions by a simple majority of the members present, as long as there is a quorum. Particularly important decisions can be made only by a qualified majority; for example, amendments to the constitutions require an absolute or a two-thirds majority, and amnesty laws require a two-thirds majority.

Each chamber drafts its own procedural rules by absolute majority. They each enjoy accounting autonomy, which allows them to draw up and approve their own budget and to determine expenses free of any audit by external bodies. Each house acts as a judicial body in such matters as challenges to the qualifications of members and legal appeals by its public officers.

Members of Parliament enjoy privileges that guarantee their independence. As representatives of the whole nation, they are not legally bound to follow the instructions of their party or their constituents. They may not be prosecuted for opinions expressed or votes given in the exercise of their duties. The consent of the chamber is necessary to arrest or restrain a member or search his or her person or domicile, except when caught in the act of committing a crime for which arrest is mandatory.

The internal structure of each chamber is complex. Each house elects its president, by secret ballot and qualified majorities, to represent the chamber and supervise its work. Each member of Parliament must belong to a parliamentary group, with at least 20 members in the Chamber of Deputies and 10 in the Senate, or to the "mixed" group. These groups elect their own presidents, who jointly meet to schedule the activities of the chambers. Other important permanent bodies include the Committee on Election and the Committee on Privileges, as well as Standing Committees dealing with specific matters, partly coinciding with those dealt with by the ministers. There are 14 such Standing Committees in the Chamber of Deputies and 13 in the Senate. The Standing Committees must reflect the party alignment within the chamber; they are elected every two years. Each committee elects its own president, who organizes the work in coordination with the rest of the chamber.

Bicameral committees, made up of an equal number of members of the two houses, are sometimes set up, particularly to conduct parliamentary inquiries. The Parliamentary Committee for Regional Matters is the only one specifically required by the constitution.

The Lawmaking Process

Bills may be initiated by the Council of Ministers (with formal authorization by the president of the republic), by every member of Parliament, by Regional Councils, by the National Council of the Economy and Labor, and by groups of at least 50,000 voters. In practice, the Council of Ministers is the most important source of bills.

The committees in each chamber must examine each bill and refer it to the plenum; they also can be empowered to approve bills on their own, unless a qualified minority asks for plenary debate. Some kinds of laws require approval by the plenum.

A law is considered approved only when an identical bill is adopted by both chambers. If a chamber makes amendments to the text approved by the other, the latter has to reexamine the bill with regard to the amended parts.

The law is promulgated by the president of the republic, who can also send it back to the houses for one more deliberation, giving the reasons in a message. If they remain firm, the president must promulgate the law, which enters into force after being published in the official journal.

The Administration

The bodies of the administration explicitly defined in the constitution are the Council of Ministers; its president, who is the prime minister; and the other ministers. In practice, by custom or by law, there are additional organs such as one or more vice presidents of the council, vice ministers, under-secretaries of state, high commissioners, committees of ministers, and the Cabinet Council, composed of the most authoritative members of the administration.

The powers of the Council of Ministers are stated by law. Most importantly, it establishes the general lines of administration policy, which must win the confidence of Parliament, and approves the most important acts necessary to implement this policy. It is responsible for settling conflicts among ministers.

The prime minister leads the general policy of the administration and is responsible for it, by promoting and coordinating the activities of the ministers and ensuring their coherence. He or she convenes the council and determines its agenda and superintends the government. The prime minister can provide political and administrative guidelines to the ministers. They are not legally obliged to conform, as relations between the prime minister and the ministers are not hierarchical; however, the prime minister can submit the issues at any time to the Council of Ministers and thus force a dissenting minister to resign. The prime minister can also (although this is open to debate) ask the president of the republic to replace a minister.

There are two kinds of ministers: those with portfolio and those without. Ministers with portfolio head up the 14 ministries mandated by law; they are personally liable

for the actions performed by their ministry, as well as, in a collegiate way, for the resolutions of the council. Ministers without portfolio take part in the council's activities with the same rank of their colleagues; they are charged with special functions, often in support of the prime minister's activity.

The government must enjoy the confidence of Parliament at all times. The president of the republic must appoint as prime minister a person who seems likely to win the support of both houses. The person charged with forming the cabinet conducts consultations and submits the list of ministers to the head of the state, who formally appoints the prime minister and the ministers. The president may exercise an informal veto on proposed ministers. Within 10 days of its formation, the government must present its program to Parliament for an open vote of confidence, which requires a simple majority in each house.

Only if a no confidence motion, setting out its reasons, is approved by an open vote and a simple majority must the Council of Ministers resign. In practice, the stability of the administration depends on the continued unity of the ruling party or coalition. In recent years, the dominance of the two major coalitions has made for longer-lasting administrations than in the past, when the multiplicity of independent parties made sustaining governing coalitions difficult.

The Judiciary

In accordance with the continental European tradition, judicial functions are, in general, performed by professional magistrates selected by competitive examination designed to test their technical skills. They are independent of any other authority and subject only to the law.

The members of the "ordinary" judicial bodies, which deal with civil and criminal matters, have a centralized system of self-government, headed by the High Council (Consiglio superiore della magistratura), composed mainly of representatives elected from among the magistrates themselves, with other members elected by Parliament. The independence of the special courts that deal with administrative, accounting, and military matters is protected by law.

The trial system is divided into various jurisdictions, which culminate in the Court of Cassation (Court of Appeals), which guarantees the uniform enforcement of the law.

The Constitutional Court

A special feature of the 1947 constitution was the creation of an organ of constitutional justice separate from the three state powers. It was based on the model first established in Europe by the Austrian Republic.

The Constitutional Court is composed of 15 legal experts, five elected by the higher judiciary courts, five elected by Parliament, and five appointed by the president of the republic. All of them are fully independent. Their method of election reflects the dual nature of their function: the impartial interpretation of constitutional provisions and the politically charged judicial review of legislation.

The court exercises judicial review whenever a common court decides that the law it is supposed to apply in the case before it may be not consistent with the constitution. The Constitutional Court often strikes down or corrects only a part of a law; it even sometimes upholds the law only on condition that it is interpreted and applied in a certain way.

The court is also called upon to settle constitutional disputes between the central and regional powers or between the different branches of the state. It also tries the president of the republic in case of impeachment and decides whether to allow a referendum to repeal a law.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Italians above the age of 18 have the right to vote in the election of the Chamber of Deputies and, at the age of 25, to stand for this same election. Those aged 25 may also vote for senators, but they must be over 40 to stand for the Senate. These rights can be taken away only in closely defined circumstances, such as when a person has been convicted of certain criminal offenses.

Local election laws provide different rules for choosing regional, provincial, and communal councils. However, these councils, as well as most of the regional presidents, province presidents, and local mayors, are elected by direct and universal suffrage.

Parliamentary Elections

The constitution does not specify the procedures for parliamentary elections, which are left to the law. In the past, a proportional voting system led to the remarkable fragmentation of the Italian political system.

In 1993, a reform providing for a mixed electoral system for both chambers was passed. A plurality first-past-the-post system in single-member districts allocates 75 percent of the seats, and a proportional method allocates the remaining 25 percent in larger districts. In the Chamber of Deputies, the 25 percent proportional seats are allocated to party lists of candidates; the Senate allocates these seats among the losing candidates in the single-member districts.

Political Participation

In addition to representative democracy, the constitution provides some forms of direct democracy. The most important of these is abrogative referendum to repeal national laws. It can be proposed by 500,000 voters or five

regional councils. Some laws, such as fiscal legislation, are not subject to referendum.

Referenda can also be held on constitutional amendments, and on regional laws and other regional acts. Consultative referenda can be held to redraw regional, provincial, and communal boundaries. Apart from referenda, any group of 50,000 voters can propose a bill to Parliament.

POLITICAL PARTIES

Italy has a pluralistic system of political parties as a basic structure of the constitutional order. The constitution guarantees the right to form and join political parties freely, as an expression of the general freedom of association. *Parties* are defined as groups of citizens who "contribute by democratic means to determine national politics."

The only general limitation in the constitution is that party activities must be democratic. So-called antisystem parties are allowed, but the former Fascist Party is permanently banned. To guarantee impartiality in the exercise of public or institutional functions, members of the judiciary, the armed forces, and the police, and diplomatic and consular representatives abroad, can be prevented from joining any political party.

Political parties are reimbursed by law for electoral expenses. The funds are allocated in proportion to the electoral results.

CITIZENSHIP

The rules to acquire or lose citizenship are fixed in ordinary laws. The constitution guarantees only that no one be deprived of citizenship for political reasons.

Citizenship is obtained according to the *ius sanguinis*. This means that a child is born as an Italian citizen when one of his or her parents is an Italian citizen, regardless of birthplace.

Anyone born within Italian territory acquires citizenship by birth if both parents are unknown or stateless or, according to the law of the parents' state, the citizenship of that state is not transmitted by birth (*ius soli*).

Citizenship can also be obtained when a foreign child is adopted by an Italian citizen, and when a foreign or stateless person whose parent or grandparent was a citizen by birth performs military or civil service in Italy or has been living for at least two years in Italy when he or she comes of age. Citizenship can also be obtained by a foreign or stateless person who has a clean criminal record three years after marrying an Italian citizen or even after six months if he or she has been living in Italy once married. Finally, the president of the republic may accord citizenship, on request, to any foreign or stateless person after he or she has been living in Italy for a certain number of years.

Italian citizens may renounce their citizenship if they take up residence abroad, but the acquisition of the citizenship of another country does not automatically cause the loss of Italian citizenship.

FUNDAMENTAL RIGHTS

The underlying idea of the constitution is the central importance of the human being. Article 2 states that "the republic recognizes and guarantees the inviolable rights of man, as an individual and in the social groups where he expresses his personality, and demands the fulfillment of the unavoidable duties of political, economic and social solidarity." The starting point is thus the preeminent value of the human person, conceived as preexistent to the political community. Human dignity must never be violated; rights are qualified as "inviolable:" Not even a constitutional amendment can abrogate them.

Parallel to the rights guaranteed in Article 2 is the equality clause of Article 3: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, [or] personal and social conditions. It is the duty of the republic to remove those obstacles of an economic and social nature which, by limiting in fact the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country."

The constitution thus includes both formal equality—the prohibition of different treatment of equal situations or equal treatment of different situations—and substantial equality—the requirement to take measures, even affirmative actions, to compensate for social disadvantages. Even though discrimination on the ground of certain factors such as sex, race, or religion is in principle always prohibited, affirmative action, for example, for women or national and linguistic minorities may be allowed or even necessary. It is eventually up to the courts, particularly the Constitutional Court, to decide whether a difference in treatment may be reasonably justified by the difference of situations. "Reasonableness" is indeed a catch-all criterion used in constitutional jurisprudence.

Certain political rights are expressly attributed only to Italian citizens. The right to vote in parliamentary elections or the right to enter the state territory is restricted to Italian citizens, as are the rights of assembly and of association. However, such rights are provided for all persons in international charters such as the 1950 European Convention for the Protection of Human Rights and of Fundamental Freedoms legally enforceable in Italy.

Impact and Functions of Fundamental Rights

Articles 13–54 of the constitution enumerate rights and duties and often regulate them in detail. They are divided into four parts.

1. *Civil relations* include the traditional liberal rights such as habeas corpus and freedom of domicile, communication, assembly, association, religion, and expression. They also include access to courts and specific guarantees in the realm of criminal law such as the right to defense, nonretroactivity of criminal law, and the ban on capital punishment.
2. *Ethical-social relations* are rights and duties involving family and health, freedom of teaching, the right to create schools, and the right to an education.
3. *Economic relations* provisions include the rights of any form of work, and social protection in old age, illness, unemployment, or invalidism. This section covers the guarantee of property and its social function, the rights and limits of economic enterprises, and the duties of the state to the national economy.
4. *Political relations* cover the right to vote, the role of political parties, and the right to petition Parliament. All citizens are to have equal access to public charges and offices. They also have the duty to defend the fatherland, interpreted as military defense as well as civil forms of service; the duty to contribute to the public expenditure in proportion to one's wealth; and the duty to be faithful to the republic.

Some of the rights have "negative" content: They prohibit any act that illegally impairs the freedom of the citizen. For example, the constitution prohibits detention or arrest unless required by a law consistent with the conditions stated by the constitution. Other rights have "positive" content: The public authorities must allow individuals to take part in a legal procedure, for example, to take part in the election of Parliament. As for "social" rights, the practical content must be defined by law. For example, the law has to define the sums granted as unemployment compensation.

The constitution ensures that citizens may protect all their enumerated rights in court. That protection must be effective.

The constitutional protections on individual rights are essentially aimed at public authorities. However, they can also affect relations between individuals. Actions that violate human rights are prohibited and can be punished, and victims can be awarded damages in court.

Limitations to Fundamental Rights

Any right has limits, which are due to the necessity to ensure other subjects' rights of the same or another kind and to ensure the protection of public interests. In some cases the constitution defines precise limits, for example, when it specifies the reasons why printed matter may be seized. Otherwise the constitution allows limits to be defined by law, but they must be specific and within a framework and under conditions fixed by the constitution itself. The application of these limits is often reserved to judicial authorities, who must verify that the legal conditions are fulfilled.

Moreover, limitations may never affect the essential contents of the constitutionally granted rights, must not be introduced unless necessary to protect other rights or interests founded on the constitution, and must be proportional to that necessity. The problem of defining the limits is often an exercise by legislators and judges in balancing conflicting interests. It is the duty of the Constitutional Court to check that a correct and reasonable balance has been achieved by the law.

ECONOMY

The task facing the Constitutional Assembly regarding the economic system was very difficult. In the end, the constitution consents to different possibilities of economic development and defines only some fundamental principles: freedom of economic enterprise and property, on the one hand, and the need to ensure social interests and fair social relations on the other.

The constitution states that the government is responsible for correcting the market in order to direct free economic activity toward the end of social justice. The coexistence of public and private economic activities and the limitations on the rights of private companies aimed at guaranteeing the social function of the economy characterize the Italian "mixed" model as a social market economy.

Expropriation of private properties must be prescribed by law and must be in the general interest. It must be compensated, but not necessarily with the property's market value.

RELIGIOUS COMMUNITIES

The Italian constitution guarantees freedom of religion and protects its collective expressions. Religious communities enjoy "equal freedom" treatment by the law and freedom of self-organization, and they can enter into agreements with the state. The religious character or aims of an institution must not be taken by the state as the basis of any special legal limitations or special fiscal burdens for its constitution, legal status, or any of its activities.

Italy is not a confessional state—the Catholic Church is no longer established. For historical reasons, however, that church is the only religious community expressly mentioned in the constitution. The relationship between the state and religious groups is based on the principle of separation and regulated on the basis of agreements with the representatives of those groups. There are a concordat with the Catholic Church and covenants with non-Catholic communities, including the Waldensian and Methodist communities, the Jewish community, the Assemblies of God in Italy, the Seventh Day Adventist Church, the Baptist Church, and the Evangelical Lutheran Church. Agreements with Jehovah's Witnesses and the Buddhist have been signed but not yet enacted as laws.

Those religious communities that have such agreements enjoy special treatment relating to education in state schools and spiritual assistance in military institutions, hospitals, nursing homes, rest homes, and prisons. They receive financial contributions from a state fund equivalent to eight per 1,000 of the personal income tax; taxpayers decide by their signature which part of this amount is contributed to each community or to the state. Those who donate to the communities are given tax relief.

In 1989, the Constitutional Court affirmed the laicity or secular character of the state as a supreme and inviolable principle, implying impartiality of the state toward religions. Equal treatment of all religious communities has been enforced by recent judgments of the same court, especially regarding criminal treatment and financial subventions.

MILITARY DEFENSE

The constitutional provisions relating to participation in supranational organizations are inspired by the general principle that Italy condemns war as an instrument of aggression against the freedom of other peoples and as a means for settling international controversies. Thus, beyond the national territory the armed forces may be organized and deployed for the sole purpose of external defense or collaboration within the context of supranational institutions, for peacekeeping operations, and for humanitarian duties. Italy's membership in NATO in 1949 has led to strict integration of the Italian armed forces within the military system of the Atlantic organization and to the establishment of NATO bases within Italian territory.

From a strictly national perspective, the constitution's principal concern with respect to the armed forces is that the defense of the fatherland is the sacred duty of citizens and that military service is compulsory within the limits and in the manner established by law. Conscientious objection is guaranteed, with an option of alternative civil service. Compulsory military service was suspended on January 1, 2005; since then the armed forces are made up of professional or voluntary soldiers, both men and women. Compulsory recruitment can take place only in times of war or international crisis in order to supplement the professional and voluntary forces.

The constitution requires that armed forces organization be based on the democratic principles of the republic. This statement aims at preventing the armed forces from becoming a separate body within the state or adopting principles in conflict with those governing the civil society.

The president of the republic is the commander of the armed forces and presides over the Supreme Defense Council, a cocoordinating organ that comprises specific members of the government and the head of the general defense staff. The president's command is not the effective command, which is exclusively that of the organs of the executive authority, but it is a "high command," expressing the political neutrality of the armed forces and their loyalty to the Italian state and its institutions. The constitution establishes that a state of war must be deliberated by both houses, which must assign the necessary powers to the administration, and be declared by the president of the republic.

AMENDMENTS TO THE CONSTITUTION

Article 138 specifies amendment procedures more burdensome than those for amending ordinary laws. This provision guarantees the stability of the constitution.

Proposed amendments or other constitutional laws must be debated twice in each house at intervals of no less than three months. They require an absolute majority of the members of each house in the second voting.

These laws can be submitted to a popular referendum within three months of their publication, at the request of one-fifth of the members of a house, 500,000 electors, or five regional councils. The amendment is promulgated only if approved by a majority of valid votes. A referendum is not held if the law has been approved in the second reading in each house by a majority of two-thirds of the members.

Not all constitutional rules are subject to amendment. The form of republic shall not be modified, according to Article 139. The republican structure should be understood not only in the limited sense of periodical election of the head of state but in the broader context of a government structure that implements a pluralist democracy. Furthermore, judicial rulings have established that no amendment can impair the essential contents of the "inviolable" rights guaranteed by the constitution or the "supreme principles of the constitutional order," such as the laicity of the state.

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Valerio Onida and Barbara Randazzo

JAMAICA

At-a-Glance

OFFICIAL NAME
Jamaica

CAPITAL
Kingston

POPULATION
2,731,832 (2005 est.)

SIZE
4,181 sq. mi. (10,830 sq. km)

LANGUAGES
English and Patois

RELIGIONS
Protestant (Church of God 21.2%, Seventh Day Adventist 9%, Baptist 8.8%, Pentecostal 7.6%, Anglican 5.5%, Presbyterian 5%, Methodist 2.7%, United Church 2.7%, Brethren 1.1%, Jehovah's Witnesses 1.6%, Moravian 1.1%), 66.3%, Roman Catholic 4%, Rastafarianism 3.5%, other (including spiritual cults, e.g., Pocomania and Kumina) 26.2%

NATIONAL OR ETHNIC COMPOSITION
Black 90.9%, East Indian 1.3%, white 0.2%, Chinese 0.2%, mixed 7.3%, other 0.1%

DATE OF INDEPENDENCE OR CREATION
August 6, 1962

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 6, 1962

DATE OF LAST AMENDMENT
1999

Jamaica is an independent unitary state and a parliamentary democracy with the queen of England as head of state. The legislative, executive, and judicial powers are separated.

Jamaica's long history is mostly unrecorded. The inhabitants who lived there longest died off over 300 years ago. The overwhelming majority of the population today has its roots in the forced migration of slaves from western Africa. Thus Jamaica's modern history is rooted in the exploitation of slavery and colonialism.

Jamaica began to emerge from colonial rule after World War II (1939–45). Arguably, with the British queen as head of state and the British Privy Council as final court of appeal, the country has still not achieved full independence. Nevertheless, it is gaining confidence in its ability to govern itself, while it seeks closer ties with its island neighbors in an effort to compete economically in the global market.

The founding story of Jamaica is quite different from those of former colonies that fought wars of independence. Jamaica's independence was achieved through convergence, not divergence, of Jamaican and British interests. Jamaica sought political independence as an assertion of national identity. Britain sought Jamaica's independence as part of its effort to unload its duties and responsibilities and shed the stigma of colonial empire. The Jamaican constitution was preceded by a political process in which Britain cooperated.

That Jamaica has a written and codified constitution demonstrates its participation in modern constitutionalism. That it was adopted by Parliament in Britain reveals a degree of ambiguity in the process of independence. Drafting a list of fundamental rights and freedoms showed an openness to non-British models. Keeping the British Privy Council as the highest court of appeal perhaps reveals a lack of self-confidence.

Both of the dominant political parties in Jamaica have discussed constitutional reform over the past 20 years. The current effort to become part of the Caribbean Court of Justice shows a willingness to take those steps. Jamaica plays a leadership role in the Caribbean on a number of fronts, particularly with the Caribbean Community (CARICOM), as it also seeks to discern how to pursue its national interests in geographical proximity to a political and economic hegemonic superpower.

CONSTITUTIONAL HISTORY

The earliest inhabitants of the island of Jamaica for whom records exist were the Arawak, also called Taino. They migrated from Venezuela and Guyana, working their way up through the Lesser Antilles to the Greater Antilles and reaching Jamaica around 650 C.E. Later on, the Carib tribe entered the region, also from the direction of South America. Fierce fighters and cannibals, they conquered their way north through the Lesser Antilles, enslaving the Arawak, who reportedly had no weapons and had not experienced war. The Carib had not reached Jamaica when Christopher Columbus arrived on May 3, 1494, during his second voyage to the New World.

Arawak villages were each composed of several family clans headed by a chief, called *cacique,* whose hereditary yet largely ceremonial title was passed down by primogeniture. Society was communal, and materialism seems to have been an alien concept—they gladly gave what gold they had to the gold-hungry Spaniards. Columbus described the Arawak as "honest and content with what they have … peaceful and generous people."

Over 20 governors administered Jamaica for Spain over the next 150 years from the capital of Spanish Town. The duke of Veragua appointed the governors who ruled with the assistance of the *cabildo,* a council of nominated members, and the Catholic Church. Spain never developed Jamaica, considering it a provisioning station for the lucrative shipping trade between Spain and Central America. The Spaniards killed off the substantial Arawak population (some historians estimate it as high as 100,000) through hard labor, ill treatment, and European diseases. Realizing that Arawak slave labor was disappearing, the Spaniards began importing slaves from Africa in 1517.

In 1654 Oliver Cromwell devised the ill-fated "Grand Western Design" to destroy the Spanish trade monopoly in the Caribbean and sent Admiral William Penn (father of the founder of the U.S. state of Pennsylvania) and General Robert Venables to conquer the Caribbean. After the Spanish repulsed their efforts to take Hispaniola (present-day Haiti and Dominican Republic), the British settled for the weakly defended Jamaica. Before escaping to Cuba, the Spanish released their slaves and encouraged them to fight guerrilla warfare from the mountains. These Maroons (derived from the Spanish word *cimarrones,* meaning wild or untamed) fought fiercely to retain their newly found freedom. Eventually they signed a peace treaty in 1738 with the British in which, in return for peace and land, they agreed to return runaway slaves to their owners. To this day many Jamaicans think the Maroons sold out to the British instead of remaining a force for liberation.

Jamaica was caught in the middle of the European wars for the Caribbean, involving Britain, France, Spain, Portugal, and the Netherlands. Britain, because it was overextended and because the cost was low, encouraged and sponsored pirates to attack the Spanish. The British governor of Jamaica asked these buccaneers, who had formed the Confederacy of the Brethren of the Coast, to protect Jamaica. Based in Port Royal on Kingston Harbor, the pirates soon turned Port Royal into Jamaica's largest and wealthiest city with reportedly more brothels and ale houses than any other city on Earth. A massive earthquake in 1692 sent half of the city into the ocean, killing over 2,000 people.

Slavery and the plantation economy it supported reached their pinnacle around 1800, when about 21,000 whites ruled over 300,000 black slaves. The slaves were taken from many tribes on Africa's west coast, a majority of them Coromantee, Ibo, and Mandigo. Jamaica also served as a large slave market, as it supplied slaves to many of the Spanish islands after the English made peace with Spain. Jamaica experienced a number of slave revolts; the largest and last occurred in 1831 and was led by Sam Sharpe, an educated slave and lay preacher.

Slaves were set free unconditionally in 1838, toppling the plantation economy. However, the white plantocracy's political power remained, as free blacks had no political voice. By law, only titled property owners could vote, and blacks were routinely denied land claims by courts still run by white magistrates schooled in a plantation mentality.

Jamaican nationalism grew in the 20th century under leaders such as Marcus Garvey, who called for black self-reliance. However, independence was gained politically, not militarily. Britain's realization that it could no longer economically support its colonies was perhaps as important as Jamaica's pull for independence. After all, Norman Manley, the founder of the People's National Party, had stated in 1945 that he did not believe any island in the region could be an independent modern state.

In 1947, as a prelude to full independence, Britain granted much autonomy to Jamaica, even as a British colony under the jurisdiction of Parliament and the Crown. When Manley took power in 1955, he steered Jamaica into a Caribbean Federation, but Alexander Bustamante, founder of the Jamaican Labor Party, pressed for secession. In 1961, the voters supported Bustamante's position, and Jamaica withdrew from the federation, which promptly collapsed. A new constitution was drafted.

The new constitution was part of a law adopted by the British Parliament, not by a defiant group of founders breaking away from the mother country. The country remained in the Commonwealth and retained many legal, economic, cultural, and social ties with Britain.

FORM AND IMPACT OF THE CONSTITUTION

Jamaica's constitution is an act, taken before Parliament in England on July 24, 1962, and signed by the queen of England, which entered into force on August 6, 1962. It takes precedence over all other Jamaican laws. It addresses issues of citizenship, fundamental rights, the governor-general (appointed by the queen of England), Parliament, executive powers, the judiciary, finance, a public service commission and police service commission, and pension law.

BASIC ORGANIZATIONAL STRUCTURE

Jamaica is divided into three counties: Cornwall, Middlesex, and Surrey. The counties are subdivided into 12 parishes: Clarendon, Hanover, Manchester, Portland, Saint Ann, Saint Catherine, Saint Elizabeth, Saint James, Saint Mary, Saint Thomas, Trelawny, and Westmoreland. The latter subdivision also includes two contiguous corporate areas, Kingston and Saint Andrew.

Local government is administered by two bodies: elected members of parish councils and elected members of city or municipal councils presided over by an elected mayor.

LEADING CONSTITUTIONAL PRINCIPLES

Jamaica's system of government is a parliamentary democracy with a few colonial and monarchical components. The legislative, executive, and judicial powers are divided, in keeping with the principle of separation of powers and checks and balances. Government is based on the rule of law with the constitution, as interpreted by the British Privy Council, serving as the supreme law of the land. The prime minister and the cabinet effectively hold executive powers, although the British monarchy, through an appointed governor-general, carries a number of ceremonial duties. The constitution, through mechanisms such as a Judicial Services Commission, seeks to create an independent judiciary.

CONSTITUTIONAL BODIES

Jamaica's constitution creates a parliamentary democracy modeled on the British system. Jamaica remains within the British Commonwealth and reflects its English bias in that its titular head of state remains the British monarch, its highest court of appeal is the Privy Council in London, and its black speaker of Parliament wears a white wig and holds a gold scepter. The chief local bodies are the governor-general, the cabinet, Parliament, and the judiciary.

The Governor-General

The head of state for Jamaica, Queen Elizabeth II of England, is represented in Jamaica by a Jamaican-born governor-general appointed by the queen on the advice of the prime minister of Jamaica and a six-member Jamaican Privy Council. The governor-general's duties are largely ceremonial and include appointing the prime minister, who is always the leader of the majority party after each national election.

The Cabinet

Executive power resides with a cabinet appointed and led by the prime minister and responsible to Parliament. The cabinet is the principal instrument of government policy. Besides the prime minister, it consists of a minimum of 13 other ministers of government, who must be members of one of the two houses of Parliament. No more than four members of the cabinet may be members of the Senate; the minister of finance must be an elected member of the House of Representatives.

Parliament

Parliament consists of a bicameral legislature. A 60-member elected House of Representatives serves as the deliberative body for national legislation. The Senate is a nominated body of 21 members, of whom 13 are appointed by the prime minister and eight by the leader of the opposition.

The Lawmaking Process

The Senate's main function is to review legislation forwarded by the elected House of Representatives, which may override a Senate veto.

The Judiciary

The judiciary begins with specialized courts dealing with such matters as revenues, gun crime, traffic offenses, industrial disputes, and family law. The next higher level is the Resident Magistrates Courts, which exist in each parish. The next court, primarily of appeal, is the Supreme Court, followed by the Court of Appeal, which is the highest court on the island. However, the final court of appeal is the Privy Council in England—a controversial matter in Jamaica for many years. Jamaica participates in the efforts of the Caribbean Community (CARICOM) to create a Caribbean Court of Justice (CCJ) as a court of final appeal for the member countries. The Privy Council struck down as unconstitutional Jamaica's first attempt to make the CCJ the final court of appeal. It remains to be seen whether Jamaica can meet the Privy Council's requirements.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Jamaicans aged 18 and over are eligible to vote. Although a full parliamentary term is five years, the governor-general may call a national election at any time the prime minister requests; that usually occurs when timing seems propitious for the ruling party.

POLITICAL PARTIES

Jamaica has a multiparty system dominated by two political parties, the People's National Party (PNP), which was in power in 2005, and the Jamaica Labor Party (JLP). There are several minor parties including the National Democratic Movement and the communist Worker's Party of Jamaica.

The People's National Party was formed in 1938 under the leadership of Norman Manley, a barrister who headed the party for 31 years before his son, Michael, a journalist and trade unionist, took the reins. The PNP is a social democratic party, and when Michael Manley became prime minister in 1972 he tried to turn Jamaica into a democratic socialist nation. He initiated greater state control over the economy and developed closer ties to Cuba and other leftist third world states. The Reagan administration responded by cutting aid to Jamaica, encouraging foreign companies to withdraw investment, discouraging tourists from traveling there, and developing strategies to topple the Manley government. Michael Manley was considered a hero by the poorer classes, who benefited from his literacy campaign and socialist health care, and despised by the upper class, who took much of their capital out of Jamaica. Inflation went above 50 percent, foreign investors fled, unemployment and crime skyrocketed, and Jamaican society became increasingly polarized. These conditions laid the groundwork for a change in power.

The Jamaica Labor Party (JLP) was founded in 1943 by the labor leader Sir Alexander Bustamante, who, upon Jamaica's independence in 1962, was elected prime minister. Despite its name, the JLP is a conservative party with ties to the Bustamante Industrial Trade Union. In 1981, the Boston-born and Harvard-educated Edward Seaga of the JLP was elected prime minister. He inherited a country on the verge of bankruptcy and embroiled in domestic unrest. He initiated a privatization scheme, devaluation of the Jamaican dollar, and an austerity program. He severed ties with Cuba and restored close links with the United States, which in turn restored aid to Jamaica. However, his austerity program, particularly cuts in education and health care, and his association with gangs caused his popularity to wane.

In 1989 the voters returned Michael Manley, who had converted to free market economics, to the prime minister's office. He maintained Seaga's policies of deregulation and cooperation with the U.S. government until he stepped down for health-related reasons in 1992. He handed over control to his deputy, Percival James Patterson, who has since been elected in his own right three times.

CITIZENSHIP

Articles 3 to 12 of the Jamaican Constitution address Jamaican and Commonwealth citizenship. The three primary ways of acquiring Jamaican citizenship are being born in Jamaica, having a parent or spouse who is Jamaican, and proceeding through a process of naturalization.

FUNDAMENTAL RIGHTS

Chapter 3 of the Jamaican Constitution (Articles 13–26) delineates the fundamental rights and freedoms. The constitution grants every person in Jamaica the right to life, liberty, security of person, enjoyment of property, and protection of law; freedom of conscience, thought, and religion; freedom of expression, freedom of peaceful assembly and association, and respect for private and family life. In the criminal procedure area, the constitution prohibits deprivation of life or liberty absent criminal charges defined in law and guarantees a fair, speedy, and public trial before an independent and impartial court, with a presumption of innocence, legal representation, and reasonable time and facilities to prepare a defense. The constitution prohibits any laws from discriminating on the basis of race, place of origin, political opinion, color or creed.

According to the U.S. State Department, the government generally respects the human rights of its citizens. The problem areas include unlawful killings by security forces, mob violence and vigilante killings of those suspected of breaking the law, and abuse by police and prison guards of detainees and prisoners.

ECONOMY

Compared to that of most Caribbean islands, Jamaica's economy is highly developed. It has a vital financial sector with many international banks, a large skilled workforce, and a relatively broad-based economy. Nevertheless, it still struggles with poverty. The market economy is based largely on tourism, production of primary products (bauxite, aluminum, sugar, bananas, and coffee), and remittances. Other industries include textiles, agroprocessing, cement, and rum.

RELIGIOUS COMMUNITIES

The Jamaica constitution defines freedom of religion in greater detail than most constitutions. Freedom of religion includes the right to change one's religion or belief

either alone or in community with others; the freedom to manifest and propagate one's religion in public or private, in worship, teaching, practice, and observance; freedom from being required to receive religious instruction or take part in any religious ceremony or observance at any place of education; freedom of any religious body from being required to change its constitution without the consent of its governing body; freedom of religious bodies to provide religious instruction for persons of that denomination whether or not they receive government subsidies; and freedom from being compelled to take an oath that is contrary to one's belief.

Jamaica claims to have the greatest number of churches per square mile of any country, a record to which the *Guinness Book of World Records* attests. In this deeply religious country, churches are more than places of worship—they serve as important social centers in Jamaica communities. Although the country is over 80 percent Christian, there are also revivalist cults such as Pocomania and Kumina as well as Rastafarianism.

MILITARY DEFENSE AND STATE OF EMERGENCY

Although Jamaica has no official army, navy or air force, the Jamaica Defense Force includes Ground Forces, a Coast Guard, and an Air Wing, all under the control of the executive branch of government. The Jamaica Defense Force is a well-armed, efficient military unit of some 2,500 service personnel. It was modeled after the West Indian Regiment of the British Army and now works closely with the U.S. Drug Enforcement Agency.

AMENDMENTS TO THE CONSTITUTION

Article 49 of the Jamaican constitution provides for two processes for amending the constitution depending on whether the provision(s) to be amended is entrenched or not. Entrenched provisions require a two-thirds vote in both houses of Parliament; unentrenched provisions require only a simple majority of both houses. The article lists the entrenched provisions, and all other provisions are considered unentrenched.

Perhaps the most controversial decision of the last 10 years was the Privy Council's ruling that the amendment of unentrenched provisions without a supermajority was unconstitutional because it affected rights established by entrenched provisions. At issue was the replacement of the Privy Council (an unentrenched provision) by the Caribbean Court of Justice as the final court of appeal for Jamaica.

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John C. Knechtle

JAPAN

At-a-Glance

OFFICIAL NAME
Japan

CAPITAL
Tokyo

POPULATION
127,333,002 (July 2004 est.)

SIZE
145,883 sq. mi. (377,835 sq. km)

LANGUAGES
Japanese

RELIGIONS
Observance of both Shinto and Buddhism 84%, other (including Christian 0.7%) 16%

NATIONAL OR ETHNIC COMPOSITION
Japanese 99%, other (Korean 511,262, Chinese 244,241, Brazilian 182,232, Filipino 89,851, other 237,914) 1%

DATE OF INDEPENDENCE OR CREATION
Uncertain (cohesive fifth-century kingdom suggested by ancient Chinese records)

TYPE OF GOVERNMENT
Constitutional monarchy with a parliamentary government

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
May 3, 1947

DATE OF LAST AMENDMENT
No amendment

The Japanese constitution was drafted under strong influence from the American occupation army immediately after World War II (1938–45). This constitution establishes the status of *tenno* (the reigning emperor of Japan), the principle of popular sovereignty, the renunciation of war, the bill of rights, the rule of law, and the separation of powers. Since the constitution authorizes the Supreme Court's judicial review of laws for constitutionality, which lower courts also exercise, courts may invalidate laws and government actions that contradict the constitution.

The *tenno,* or emperor, is today the symbol of the Japanese people; he had sovereign power before World War II. The constitution offers him no substantial political power, although he plays an important role in enacting laws. The prime minister is the head of the executive branch and is the central political figure. The prime minister must be a member of the Diet, the bicameral legislature. Legislators are elected by free, equal, general, direct, and secret votes of the people.

The Japanese constitution guarantees religious freedom, among other rights. Separation of state and religion is prescribed. The constitution provides for a free market economy, securing property rights. It renounces war and explicitly proscribes formal armed forces. However, the Japanese government maintains a self-defense force (Jieitai) to protect the Japanese people, property, and lands. The self-defense forces have assisted United Nations peacekeeping operations in Cambodia, Mozambique, Rwanda, the Golan Heights, East Timor, Angola, and El Salvador.

CONSTITUTIONAL HISTORY

Few authentic records exist to document the beginnings of Japanese history. Legendary nonverified accounts suggest that in 660 B.C.E. Japan was founded by a descendant of the gods. Ancient Chinese records show there were several kingdoms in Japan as early as the first century.

A strong and cohesive kingdom, ruled by the great king (*daioh*), governed the main part of the land around the fifth century.

The power and sophistication of Chinese civilization at that time naturally drew Japan under its influence, and the great king asked the Chinese court to confirm his royal title. The Chinese acknowledged his status as legitimate ruler over Japan and its representative in its relationship with China. Over the centuries, Chinese and Koreans fleeing to Japan from revolutions and invasions introduced the Chinese character, thought, and legal system to their adopted country. The emergence of a strong and unified state in China (Sui dynasty) stimulated the creation of a unified Japanese state ruled by the *tenno,* a descendant of the great king, in the late sixth century.

The first written law was issued in 604; it prescribed the basic organization of the government. A complete legal system, including administrative law, criminal law, military law, family law, and tax law, was established in 701. Modeled on the Chinese legal and government system, it made provisions for local government, roads connecting the capital and other cities, and a governing system that relied on the written word. The law decreed that all land and people belonged to the *tenno;* private property was denied. A class system placed *tenno* and his family at the top, with nobles, commoners, and slaves underneath. Although the sovereign power belonged to the *tenno,* in practice he had to consult noblemen to make political decisions.

This political system broke down in the ninth century, as noblemen lessened the gap between the classes by giving their daughters in marriage to *tenno*. Exploiting struggles within the *tenno* family, noblemen exercised their power to choose a new *tenno,* who ascended the throne in his childhood. The young age of the *tenno* allowed his grandfather to grasp power easily.

The denial of private landownership began to break down, partly in order to populate and cultivate newly opened land. By the 10th century, both the *tenno* and noblemen began to possess land of their own. Despite government efforts, the number of private estates grew fast, and thanks to powerful noblemen these estates became exempt from tax. Those who cultivated previously uncultivated land remained free of taxes and government control, although they were required to donate gifts to the noblemen. In order to protect their land, owners of private estates armed themselves. These armed landowners were probably the ancestors of the warrior class, the samurai.

In 1192, the samurai began to rule Japan under their head, the shogun, who used The *tenno* as a figurehead. The imperial family and the noblemen retained their status without political power, under the tight supervision of the new government, the Bakufu or shogunate.

The government system was based on feudalism. Although the shogun was the leader of the samurai, he did not have exclusive power to rule the country. Feudal lords retained strong autonomy in their territories. In the 14th century, the authority of the Bakufu was limited to arbitrating succession disputes within samurai families. Strong leaders arose in the 16th century and tried to build a centralist military state over the whole country. The strongest, the famous Oda Nobunaga, was assassinated before he could succeed, but after his death the Tokugawa Bakufu managed to implement his goals.

Samurai-controlled government continued through the middle of the 19th century. The last ruling shogun, Tokugawa Yoshinobu, gave up sovereign power in 1867. In that era, Western countries with colonialist goals and impressive military support forced Japan to open up to international trade via one-sided treaties that denied Japan authority to set tariffs and jurisdiction over foreign criminals. The shock caused by Western, especially American, warships, with their overwhelming power, made the Japanese people aware of the many defects of the Tokugawa government. They believed a more centralist state could respond better to the military emergency. The shogunate gave way to the Meiji Restoration of a centralized state, restoring the sovereign power to *tenno*. The new government, controlled in fact by former low-ranked samurai, had to negotiate with Western countries to amend the unfair trade treaties. They realized that Japan would have to establish a Western-type legal system, to include constitutionalism, human rights guarantees, and administration by law, for that purpose. This was the chief purpose behind the Meiji constitution of 1889.

The Meiji constitution was modeled on the era's German constitutional monarchy. The *tenno* possessed sovereign power, which the cabinet ministers were obliged to support. Human rights, such as freedom of speech, religious liberty, and freedom of assembly and association, were protected, but their exercise was limited by law. The independence of the judiciary was guaranteed, and there was a special court for administrative disputes. The *tenno* was the commander in chief, with no input from the legislature and cabinet ministers except for military budget. The *tenno* also had the power to issue imperial ordinances in an emergency and to proclaim martial law. A more democratic system was established at the beginning of the 20th century, but the continued political power of the *tenno* helps explain how the Japanese army escaped political and civil control before World War II (1939–45). Militarism in Japan produced total defeat in that war.

Surrendering to the Allied powers in 1945, after they dropped nuclear bombs at Hiroshima and Nagasaki, Japan accepted the Potsdam Declaration, which provided conditions for ending the war. The declaration authorized the Allied powers, predominantly the Americans, to occupy Japan until it had created a peaceful and responsible government that obeyed the freely expressed will of the Japanese people. Led by General Douglas MacArthur, the General Headquarters of the Allied Powers was given the task of establishing such a government. It abolished the Japanese military, reformed the system of landownership, and dissolved huge business conglomerates.

The Japanese government began to work on amending the constitution in line with the declaration. Its draft, which retained *tenno* as sovereign, was considered by MacArthur too conservative to make Japan a part of the free world. He ordered his staff to prepare a more democratic and liberal draft to establish a peaceful and responsible government. This version limited the status of *tenno,* renounced war, and ended all official class privileges. The Japanese government accepted these provisions and presented the draft to the legislature, which had in the meantime been elected (by women as well as men, for the first time). After a few minor changes, the Japanese constitution was promulgated in the name of *tenno* on November 3, 1946, and went into effect on May 3, 1947. The American occupation ended in 1952. Even though Japan had recovered its sovereignty, it decided not to change the constitution. In fact, not a single amendment has been made to it.

FORM AND IMPACT OF THE CONSTITUTION

The Japanese constitution is a written constitution, codified in a single document. It is "the supreme law of the nation and no law, ordinance, imperial prescript or other Act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity." The constitution does not make any statement on the validity of international law; international law must be in accordance with the constitution to be applicable within Japan.

The constitution of Japan can be seen as a product of the revolutionary changes in Japanese society immediately after World War II, helping the Japanese people shape a new sense of human rights and democratic society. This can be seen especially in Article 9, "the renunciation of war" clause.

BASIC ORGANIZATIONAL STRUCTURE

Japan is a centralist state with 47 prefectures and some 3,000 cities. The constitution provides for local government autonomy, and each prefecture and city has its own legislature and administration. While the central state has adopted a parliamentary system, the political system in the localities is more like a presidential system: Governor and mayor are elected directly by the citizens; however, they too must either resign or dissolve the local legislature when it passes a no confidence resolution. The local legislatures are unicameral assemblies. Elections are held to choose local legislators, governors, and mayors every four years.

Although local governments enjoy some autonomy, the central state has certain powers over local governments defined by law. There is often no clear line separating the two jurisdictions, except that the judicial, diplomatic, and military powers belong to the national state. A local legislature may levy taxes for its own budget and impose special criminal provisions that apply only to its region. Some local governments, most of which are cities, allow referenda on special and general issues.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government in Japan is a constitutional monarchy with a parliamentary government. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent of political parties, and courts have judicial review of statutes.

There are several leading principles in the Japanese constitution. First, the sovereign power belongs to the people of Japan, who alone determine the nation's political decision. This emphasis contrasts sharply with the Meiji constitution, which gave *tenno* sovereign power.

The *tenno* system is the second principle. Under the constitution, *tenno* has no political power or authority. However, he participates in the lawmaking process. He appoints the prime minister as designated by parliament, the Diet, and the chief justice of the Supreme Court as designated by the cabinet. *Tenno* performs the following acts with the advice and approval of the cabinet: He promulgates amendments of the constitution, laws, cabinet orders, and treaties; convenes the Diet; dissolves the House of Representatives; proclaims the general elections of members of the Diet; certifies the appointment and dismissal of ministers of state and other officials as provided for by law; attests general and special amnesties, commutation of punishment, reprieve, and restoration of rights; awards honors; attests instruments of ratification and other diplomatic documents as provided for by law; receives foreign ambassadors and ministers; and performs ceremonial functions. All property of the *tenno* and his family, the imperial household, belongs to the state. All expenses of the *tenno* and his family are appropriated by the Diet in the budget. No property can be given to or received by *tenno* and his family; nor can any gifts be made therefrom, without the authorization of the Diet. With few exceptions, the emperors have been male, but an amendment to the Imperial House Law makes inheritance now hereditary, regardless of gender.

The constitution provides for the renunciation of war and the abandonment of military forces. Because of the hardship Japan caused to other countries and underwent itself during World War II, the constitution announces the determination that Japan will not invade or attack neighboring countries and will maintain world peace forever. As the cold war continued, however, Japan allied itself with the United States and enjoyed America's protection. Japan has also gradually built up a defensive armed force.

The Japanese constitution adopts an indirect, representative democracy, with no provision for national referendum. Some local governments allow referenda to decide local issues. Every person may sue for redress, as provided for by law, from the national or a local government, in a case when he or she has suffered damage through an illegal act of any public official.

The government is required by the constitution to guarantee a minimal standard of living to the people in a healthy and decent environment. The government and religious bodies must be definitively separated. The constitution includes provisions that guarantee the rule of law.

CONSTITUTIONAL BODIES

Apart from *tenno,* discussed previously, the political bodies described in the Japanese constitution are the parliament, called the Diet; the prime minister; and the cabinet ministers. The Supreme Court and its lower courts also play an important role in the constitutional system.

The Diet (Parliament)

The Diet is composed of the House of Councillors (Sangi-in) and the House of Representatives (Shugi-in). The House of Councillors has 242 seats. The members are elected for six-year terms, half reelected every three years. The House of Representatives has 480 seats. The members are elected for four-year terms.

The Japanese constitution defines the Diet as "the highest organ of state power," with sole lawmaking power and the authority to designate the prime minister. The Diet also has the power to approve international treaties, to determine the budget, to conduct investigations of the government, and to set up an impeachment court from among the members of both houses for the purpose of trying judges against whom removal proceedings have been instituted.

If the House of Councillors disagrees with the House of Representatives on treaty or budget issues, and a joint committee fails to reach agreement, the House of Representatives prevails.

The House of Representatives may pass a no confidence resolution against the cabinet. In such a case, the cabinet must either resign en masse or dissolve the House of Representatives within 10 days. In the latter case, the general election for the House of Representatives must be held within 40 days of the date of dissolution. The House of Councillors suspends its session while its counterpart is dissolved. However, the cabinet may in times of national emergency convene the House of Councillors for an emergency session.

An ordinary session of the Diet is convened once every year, usually starting in January and lasting 150 days. The cabinet, by its own demand or the request of a quarter or more of the total members of either house, may convene extraordinary sessions of the Diet.

Members of both houses receive appropriate annual payment from the national treasury; the amount in 2002 amounted to 21 million yen (approximately $190,000). Members of both houses are exempt from arrest while the Diet is in session, except in a case of flagrante delicto outside the house; any members arrested before the session are freed during the term of the session upon demand of the house. A member of either house may be arrested if the house so allows on the demand of the cabinet, on the basis of a court request. Members of either house may not be held liable outside the house for speeches, debates, or votes cast within.

The Cabinet

The cabinet consists of the prime minister and the ministers of state, who are appointed by the prime minister. The total number of cabinet members must be less than 17, and a majority of them must be chosen from among the members of the Diet. The prime minister and other ministers of state must be civilians.

Executive power belongs to the cabinet, although it is collectively responsible to the Diet. The cabinet, therefore, must either resign en masse or dissolve the House of Representatives when the House of Representatives passes a no confidence resolution.

The authority of the cabinet is as follows: to provide advice and approval for the official acts of *tenno,* to administer the law faithfully, to conduct affairs of state, to manage foreign affairs, to conclude treaties (prior, or in some cases subsequent, approval of the Diet is required), to administer the civil service in accordance with standards established by law, to prepare the budget and present it to the Diet, to enact cabinet orders in order to execute the provisions of this constitution and of the law (although the orders cannot prevent penal provisions authorized by the law from being applied), and to decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights. In addition, the cabinet designates the chief justice of the Supreme Court and has the power to appoint the justices of the Supreme Court and the judges of the lower courts, to convene extraordinary sessions of the Diet, to convene the House of Councillors in an emergency session in times of national emergency, to submit bills and reports on general national affairs or foreign relations to the Diet, to exercise control and supervision over various administrative branches, to expand a reserve fund for the budget, and to submit final accounts of state expenditures and revenues to the Diet.

The cabinet exercises its power through cabinet meetings, which are regularly held on Tuesday and Friday mornings. An extraordinary meeting is held occasionally.

The Prime Minister

As the head of cabinet, the prime minister organizes it. He or she appoints or removes the ministers. Representing the cabinet, the prime minister submits bills, reports

on general national affairs and foreign relations to the Diet, and exercises control and supervision over various administrative branches. All laws and cabinet orders are signed by the prime minister and countersigned by the relevant minister. Without the consent of the prime minister, a minister is not subject to legal action during his or her tenure of office.

The Lawmaking Process

As noted, the constitution of Japan confers lawmaking power on the Diet. However, local governments also have the power to enact their own ordinances within the limit of the law.

The authority to submit a bill to the Diet belongs to members of the Diet and the cabinet. At least 20 members must join to submit a bill to the House of Representatives (50 if it entails expenditure). The corresponding minimums for the House of Councillors are 10 and 20. When legislators draw up a draft bill, the legislative bureau of the initiating house checks conformity with existing laws and correctness of words and letters. Legislators then hand a draft to a political party represented in the Diet. Without a party's support, the bill goes no further; with party support, it is submitted for consideration.

A bill to be introduced by the cabinet is drafted by the ministry in charge, after consultations with other ministries and with the ruling political party(ies). In addition, the ministry may seek the opinion of advisory councils or hold public hearings. The draft is examined by the cabinet legislation bureau, which checks conformity with the constitution and other laws, its appropriateness, and correctness of words and letters. Afterward, the cabinet decides whether or not to authorize the prime minister to submit the bill to the Diet.

When a bill is submitted to either house, the Speaker of the House of Representatives or the president of the House of Councillors refers it to an appropriate committee, which conducts its own examination and decides whether or not to send the bill to a plenary session of the house.

A plenary session cannot conduct business unless one-third or more of the total membership is present. Once a quorum is present, a majority is enough to pass the bill and send it to the other house, where it undergoes the same procedures in committee and plenary sessions.

A bill becomes a law on passage by both houses. Even if it is rejected by the House of Councillors, the bill can be reapproved by the House of Representatives, by a majority of two-thirds or more of the members present. Failure by the House of Councillors to take final action within 60 days after receipt of a bill passed by the House of Representatives, time in recess excepted, may constitute a rejection of the bill and trigger a revote by the representatives.

The leader of the house that finally approves the bill then submits it via the cabinet to *tenno,* who formally promulgates a law. Promulgation must be done within 30 days by publication in an official gazette. The publication is necessary for enforcement of a law.

The Judiciary

Thanks to the adoption of French and German law at the beginning of the Meiji era, it is not surprising to find a civil law system embedded in the Japanese courts. During the U.S. occupation after World War II, the General Headquarters of the Allied Forces managed to Americanize some aspects of the legal system, especially in the constitution, criminal procedures, labor law, and family law.

The judiciary is independent of political power. As the constitution prescribes: "All judges shall be independent in the exercise of their conscience and shall be bound only by this constitution and the laws." Therefore, "judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties." An impeachment court for removing judges may be set up in the Diet, formed by members of both houses. In theory, a Supreme Court justice may also be removed by referendum at the first general election after the justice's appointment, and every 10 years thereafter, but no justice of the Supreme Court has ever been removed by this method. Retirement age is 65 for ordinary judges and 70 for justices of the Supreme Court.

The Supreme Court, composed of a chief justice and 14 justices, is the final court of appeals in all cases, including administrative cases. Executive agencies may make decisions on administrative cases, but the decisions can be reviewed by courts. The Supreme Court also exercises judicial review to determine the constitutionality of any law, order, regulation, or government act. The court considers only questions of law.

The Supreme Court is responsible for nominating judges to lower courts, who are then appointed by the cabinet. The Supreme Court also has some power to set judicial procedures, although most procedures are legislated. The court also decides matters relating to attorneys, the internal discipline of the courts, and the administration of judicial affairs.

The Supreme Court is divided into two benches: the Grand Bench and the Petty Benches. The Grand Bench, with all 15 justices attending, is required when the court reviews for the first time the constitutionality of law, order, regulation, or government act; when the court recognizes a law, order, regulation, or government act as unconstitutional; or when the court overrides its own precedence in a similar case.

Each of the three Petty Benches is composed of five justices. The Supreme Court selects law clerks from among judges of lower courts; they work for the entire court, rather than for an individual justice.

The judicial system is unitary. Below the Supreme Court are eight high courts, which have appellate jurisdiction in both civil cases, in which they review questions of law and fact, and criminal cases, in which they mainly re-

view questions of law. Fifty district courts provide the venues for most trials in general cases. In addition, 50 family courts handle family problems and juvenile delinquency cases. At the lowest level, 438 summary courts in cities, towns, and villages throughout the country (as of August 2000) have original jurisdiction over minor civil claims (not exceeding 1.4 million yen [approximately $12,700]), criminal offenses punishable by fines or other light penalties, minor theft and embezzlement, and conciliation proceedings for everyday disputes among citizens.

THE ELECTION PROCESS

Japanese above the age of 20 have the right to vote. They must be over 25 to run for a seat in the Diet or the office of local legislator or mayor. To be a councillor or governor of a prefecture, a candidate should be above the age of 30. *Tenno* and his family do not have these rights; nor do adult wards or those convicted of serious crimes. For certain criminals who have committed bribery, there is a five-year waiting period before electoral rights are restored.

The Japanese election system is based on five principles: popular election, direct election, one person one vote, free election, and secret voting. Therefore, there are no voting limits based on race, sex, economic status, or education. As of 2005, voters had to write the name of the candidate or party by hand. An electronic voting system caused serious problems at a local election in 2003, and thus it is unlikely to be introduced in national elections.

Parliamentary Elections

A general election for all members of the House of Representatives is held every four years, unless the house is dissolved earlier. Half the members of the House of Councillors are up for election every three years.

Of the 480 seats in the House of Representatives, 300 are filled in single-seat constituencies, and 180 seats are chosen by proportional representation from party lists in 11 regional blocs. To contest the regional seats, a political party must have five or more members in the Diet or must have won 2 percent or more of the votes in the most recent Diet election. Thus, each voter casts two ballots. A candidate can run for both a single-seat constituency and a regional party list in the same election.

Of the 121 seats available in each election to the House of Councillors, 73 seats are in single-seat constituency and 48 in proportional representation. For this house, a candidate may run in both categories.

POLITICAL PARTIES

The Japanese constitution does not explicitly provide for political parties, but a vigorous multiparty system has been in effect since the start of constitutional government in the middle of the Meiji era, with an interruption during World War II.

From the perspective of the constitution, a political party is simply a private association that enjoys the freedom of association clause. There is not even a comprehensive law governing the parties, though some laws have acknowledged them. The Supreme Court has recognized political parties as "important organs of parliamentary democracy."

Parties that have five or more members in the Diet or have won 2 percent or more of the votes at the most recent Diet election are financially supported by the government. Each party's subsidy is proportionate to its number of Diet members and the number of votes it won. The annual subsidy is more than 30 trillion yen (approximately $272 million). The parties can also receive contributions from individuals, companies, and interest groups, which cannot exceed 30 million yen (approximately $272,000) per party per year.

CITIZENSHIP

Anyone born to a Japanese parent or parents, no matter where, is a Japanese citizen. In addition, any minor whose parent has married a Japanese citizen or of whom the parent admits paternity acquires citizenship automatically.

A foreigner residing legally in Japan for five years or more who has no criminal record and is legally competent in his or her homeland may be naturalized with official approval. Those who marry Japanese citizens or Japanese-born Koreans or Chinese may be naturalized under more indulgent rules. Since dual citizenship is denied, a person who becomes Japanese must abandon his or her previous citizenship. A Japanese citizen who has foreign citizenship must choose between the two at the age of 22.

The constitution of Japan guarantees the freedom to give up citizenship. Those who seek to renounce Japanese nationality must first acquire the nationality of another nation.

FUNDAMENTAL RIGHTS

The Japanese constitution guarantees various kinds of fundamental rights. Traditional rights, such as free speech or religious freedom, as well as so-called social rights, are protected, including the right to education and the right to work. The constitution also guarantees labor unions the right to organize, collectively bargain with an employer, and strike.

As a first principle, the Japanese constitution states that the right to life, liberty, and the pursuit of happiness must be considered paramount in legislation and all other governmental actions. Under this provision, people have a general right to decide matters themselves to develop human dignity. Personal liberty, freedom of thought and conscience, freedom of assembly and association, academic

freedom, freedom to choose and change one's residence and to choose one's occupation, freedom to move to a foreign country and to abandon one's nationality, and property rights are also protected.

The constitution contains an equal protection clause. It bars discrimination in political, economic, or social relations based on race, creed, sex, social status, or family origin. It also provides that both wife and husband have equal rights to maintain their marriage with mutual cooperation. The constitution emphasizes individual dignity and the essential equality of the sexes on issues concerning choice of spouse, property rights, inheritance, choice of domicile, divorce, and other matters pertaining to marriage and the family.

The right to petition and access to the courts are also protected. The constitution allows every person to sue the government at any level in the case when he or she has suffered damage through an illegal act of any official. A procedural due process clause is included, as well as precise provisions concerning the rights of criminal defendants.

The constitution also addresses the duties of the Japanese nation: to work, to send one's children to school until they complete compulsory education, and to pay taxes. The duty to work carries no sanction, since obligatory labor conflicts with the prohibition of involuntary servitude.

The Supreme Court has held that many of the fundamental human rights contained in the constitution apply equally to aliens living in Japan. The rights that are thought not to apply to foreigners are the freedom to enter Japan, the right to vote, the freedom to engage in political activities, and social rights generally. The freedom to enter Japan, however, does apply to some people born in Japan, mainly to Chinese and Korean parents or grandparents who were formerly Japanese until 1945 and have remained in Japan since.

The rights guaranteed by the constitution are not fully applied to the *tenno* and his family. Since the *tenno* has no political authority, he and his family may not engage in political activities or even vote. Nor may they receive or give property or money without the authorization of the Diet, to preserve the *tenno*'s neutrality on all matters. The *tenno* and his family are not free to seek any other occupation or to divest themselves of Japanese nationality.

A corporation as a legal person is allowed to enjoy certain applicable constitutional rights. Even the freedom to engage in political activities is recognized as a right of corporations.

Impact and Functions of Fundamental Rights

For Japanese citizens, the guarantee of human rights is one of the fundamental principles of the constitution. These rights are conferred as eternal and inviolable, to be maintained through the constant endeavors of the people, who must refrain from any abuse of these freedoms. The Japanese nation should also be respected as are individuals.

With respect to equal protection, the Japanese constitution does not provide for affirmative action to achieve substantial equality between men and women. Many commentators interpret the equal protection clause as requiring equal opportunity and conditions, *not* equal results.

Some commentators have called for constitutional recognition of a right to a good natural environment. However, the courts have not recognized constitutional protection for this value.

The liberal freedoms prescribed in the constitution are regarded as concrete—citizens may sue the government if it infringes these rights. Social rights, by contrast, are understood as abstract. They are not actualized unless the government has established a system to embody them, and even then, they cannot be used to sue the state. For example, the constitution recognizes the right to a minimal standard of living in healthy and decent circumstances. This right is embodied by government programs. The government defines the minimal standards. Thus, citizens cannot sue to compel the government to make their living accord with this standard.

Constitutional rights are defined mainly as protections against government abuses. They do not generally apply to instances in which a private person infringes upon another person's right. However, there are some exceptions. Labor unions, for example, have explicit rights in the constitution to organize, collectively bargain with employers, and go on strike; private employers are not allowed to deny those rights. Although most of the constitutional rights are not applied to private relations, the constitutional values are taken into account when a civil law is applied to a civil case.

Limitations to Fundamental Rights

The constitution makes clear that human rights are not fully protected in every circumstance. It explicitly calls on citizens to refrain from abusing their rights; the rights are guaranteed only if they are exercised within the bounds of the "public interest." Public interest includes the following: the "self-limitation of human rights," in which people must refrain from exercising their rights when they infringe on the rights of others; the state's obligation to protect the nation's life, health, and safety and eliminate social harms; and an affirmative state policy such as protecting social minorities and providing economic safeguards for the poor.

Many commentators have called on Japanese courts to apply a test that was elaborated by the United States Supreme Court, to judge whether laws or state actions impair a plaintiff's human rights. A similar test has indeed been applied in a few cases in Japanese courts. However, Japanese courts prefer to impose a "balancing test," weighing the interest advanced by the law or government action against an interest advanced if the law or action is *not* applied.

ECONOMY

The Japanese constitution guarantees the right to own or to hold property. It is understood that this implies a system of private ownership. Therefore, Japan cannot be a communist or socialist state under the constitution.

Property rights are defined by laws to conform to the public interest. Governments may take private property for public use upon just compensation. It is controversial whether "just" implies total or reasonable compensation. The Japanese Supreme Court has held that compensation must be total if a government taking is for an ordinary purpose such as expanding a road or building an airport; it need only be reasonable if the taking is based on a broad policy purpose such as land reform.

In addition to the right to work, the Japanese constitution provides a right to engage in business, as well as a right to establish a company or a corporation, which is part of freedom of association. The freedom to choose and change one's residence, to choose one's occupation, and to move to a foreign country is also constitutionally protected.

The constitution is silent as to the government's authority to control land, natural resources, and the means of production. The national government used to run the national railroad corporation and the tobacco company and still operates postal services, including retail banking. The government also may take over a company in bankruptcy to prevent large economic losses.

RELIGIOUS COMMUNITIES

The Japanese constitution guarantees religious liberty, including the freedom to form religious bodies. Religious bodies have the right to exercise and propagate their religious beliefs. Religious bodies that meet the requirements to be a corporation under general law can be incorporated. Religious bodies are allowed to possess property, especially land.

The constitution provides separation of religion and the state. The state and its organs must refrain from religious education or any other religious activity. No religious body receives any privileges from the state or exercises any political authority. There must be no established state religion in Japan. No public money or other property can be expended for the use, benefit, or maintenance of any religious body.

Despite the constitutional separation of religion and the state, some relations between the two are allowed. Government offices or facilities may display symbols that have minor religious significance such as a Christmas tree or Kadomatsu, a Japanese traditional decoration usually set up on New Year's Day. In one case, the Supreme Court ruled that it is constitutional for a local government to perform a religious ceremony at the groundbreaking of a city gymnasium.

The autonomy, independence, and self-determination of religious bodies are guaranteed. The courts may not interfere in the internal affairs of a religious body unless they concern individual liberties or the public interest.

MILITARY DEFENSE AND STATE OF EMERGENCY

A unique feature of the Japanese constitution is its provision renouncing war. To protect this renunciation, the constitution states that Japan must never maintain armed forces.

The clause has been the source of controversy over decades: Does Japan, as a nation, have the right of self-defense? A strict reading of the clause might find that it does not; however, the government has long considered it does. Using a more lenient interpretation, reinforced by U.S. pressure during the cold war, the government decided to establish the self-defense forces in 1950, organized as Jiei-tai in 1954. In short, the Japanese government has decided that the constitution does not deprive Japan, as a nation, of the right of self-defense.

The prime minister is in practice the commander in chief, although the constitution remains silent on this point. The minister of defense has jurisdiction over the administration of the self-defense forces. As the constitution expressly states, the prime minister and the minister of defense must be civilians to assure civilian control over the self-defense forces.

The self-defense forces would be sent into action against military attack by order of the prime minister with the permission of the Diet. In addition, the self-defense forces may act when the police force cannot maintain internal order or when a natural disaster has occurred. In those cases, the self-defense forces are sent into action by the order of the prime minister or at the request of the governors.

There is no compulsory draft in Japan. Furthermore, the government has suggested that conscription would constitute unconstitutional involuntary service under the personal liberty clause of the constitution.

Japan has concluded a treaty for mutual cooperation and security with the United States. Under this treaty, the United States must defend Japan when Japan is attacked militarily by another country. On the basis of the treaty, the United States has placed military bases in Japan.

As the only nation bombed with nuclear weapons, Japan has rigidly maintained a policy that the country shall not hold, produce, or import nuclear weapons. Japan has joined international treaties to prevent nuclear, chemical, and biological weapon proliferation and to ban landmines.

The self-defense forces may take part in the peacekeeping operations formed by the United Nations and has done so in Cambodia, Mozambique, Rwanda, the Golan Heights, East Timor, Angola, and El Salvador since 1992, despite arguments that such peacekeeping operations go beyond the definition of "self-defense" and may be unconstitutional. The administration, in response, points

to the constitution's stress on international cooperation as justification for joining United Nations operations. In 2001, the government explicitly amended the law to allow the self-defense forces to join peacekeeping forces.

The Japanese constitution is silent with respect to the state of national emergency, and Japan has not passed any laws on the issue until recently. In 2003 and 2004, the Diet enacted a series of laws that define the role of the government in the state of national emergency. The laws do not authorize a military administration. The people are asked to cooperate with the government in a state of emergency, but the extent to which human rights might be limited is not clear.

AMENDMENTS TO THE CONSTITUTION

In the 60 years since adoption of the Japanese constitution, not a single amendment has been approved. The prescribed process is fairly difficult: Any amendment must first be approved by the Diet by two-thirds votes of all members of each house. It is then submitted to a national referendum, in which it must receive a majority. *Tenno* then promulgates the amendment in the name of the Japanese people.

The constitution does not specify any clause as unchangeable. Nevertheless, there is a strong argument that certain fundamental principles that constitute the essential identity of the constitution cannot be amended. The argument is that the constitution only authorizes amendments, not a new constitution, which would result if fundamental principles were substantially changed. These principles would include popular sovereignty, the renunciation of war, guarantees of human rights, the rule of law, and the separation of powers.

Recently, however, several major political parties have proposed an amendment draft that targets the renunciation of war clause. The draft would allow Japan to maintain armed forces more openly.

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Eiichiro Takahata

JORDAN

At-a-Glance

OFFICIAL NAME
Hashemite Kingdom of Jordan

CAPITAL
Amman

POPULATION
5,906,760 (2006)

SIZE
35,637 sq. mi. (92,300 sq. km)

LANGUAGES
Arabic (official), English widely understood

RELIGIONS
Sunni Muslim 92%, Christian (majority Greek Orthodox, but some Greek and Roman Catholics, Syrian Orthodox, Coptic Orthodox, Armenian Orthodox, and Protestant denominations) 6%, other (several small Shia Muslim and Druze populations) 2%

NATIONAL OR ETHNIC COMPOSITION
Arab 98%, Circassian 1%, Armenian 1%

DATE OF INDEPENDENCE OR CREATION
May 25, 1946 (from League of Nations mandate under British administration)

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
January 8, 1952

DATE OF LAST AMENDMENT
January 9, 1984

Jordan's system of government is "parliamentary, with a hereditary constitutional monarchy." The written constitution of 1952 states that the nation is the source of all powers. It is complemented by the 1990 National Charter, which represents a political agreement between the king and the leaders of the main political groups. The king is vested with broad executive and legislative powers; however, there is a system of checks and balances. Jordan is a centralist state, divided into 12 governorates.

The king is both head of state and chief executive. He appoints the prime minister and the cabinet. The National Assembly, consisting of a Senate and a House of Representatives, has the power to override the monarch's veto, and cabinet ministers are responsible to the House of Representatives.

Judges are constitutionally independent in the exercise of their functions. Although the National Charter calls for a constitutional court, this has not yet materialized. Legislative acts may undergo judicial review by the High Tribunal and a Special Tribunal consisting of the highest civil court judges and an administrative official.

The National Charter established a multiparty system in exchange for the parties' acceptance of the constitution and the monarchy. The constitution provides for guarantees of both first- and second-generation human rights. The constitutional economic system can be characterized as a social market economy. Islam is the religion of the state. Emergency regulations that had preserved the status quo for more than 20 years were formally erased in 1992. No constitutional amendment may affect the rights of the king.

CONSTITUTIONAL HISTORY

Jordan today is part of what is broadly called the Middle East. Because of the territory's centralized location, it changed hands many times throughout antiquity, until it fell under the control of the Ottoman Turks in 1516.

When World War I (1914–18) broke out, the Ottoman Empire (centered in today's Turkey) took the side of the German Empire and Austria-Hungary. The Allies, such as the United States, France, the United Kingdom, and Russia, held out to the Arabs the hope of postwar independence in order to gain support against the Ottoman Empire. At the same time, Britain, France, and Russia secretly agreed in the 1916 Sikes-Picot Agreement to divide the Middle East among them. Furthermore, the 1917 British Balfour Declaration promised the establishment of a national home to the Jewish people in the region.

The Ottoman Empire was defeated in World War I (1914–18). After the war, the newly formed League of Nations awarded Britain a "mandate" that included today's Jordan. A mandate was a treaty between the league's council and the mandatory power, which became accountable for establishing an independent administration at some time in the future. According to the mandates, the areas roughly comprising today's Syria and Lebanon were assigned to France. Those now comprising Israel (plus the territories of the Palestinian Authority) and Jordan were assigned to the United Kingdom.

In 1922, the British divided the Palestine mandate by establishing the semiautonomous Emirate of Transjordan east of the Jordan River, ruled by the Hashemite prince Abdullah (whose brother, King Faysal, was made king of Syria, and then king of Iraq). They continued to administer Palestine under a British high commissioner. The Transjordan draft constitution provided for a unicameral legislative council with some elected members. The cabinet members (the executive council) also sat in the legislative council but were not responsible to it.

In 1936, the British proposed a partition between the Jewish and Arab areas of Palestine. It was rejected by both the Arabs and the Jewish Zionist Congress. The British mandate over Transjordan ended on May 22, 1946. On May 25 the country became the independent Hashemite Kingdom of Transjordan under King Abdullah. The constitution was amended and a Senate was introduced.

With the proclamation of an independent state of Israel in 1948, a series of Arab-Israeli wars began. In the 1948 war Transjordan, together with Egypt, Iraq, Syria, Lebanon, and other Arab states, who had all rejected the 1947 United Nations Partition Plan creating Israel, attacked the new country. After the fighting was over, separate cease-fire agreements were signed by the various belligerents. As a result, even more of the territory of mandatory Palestine wound up on Israel's side of the armistice line (Green Line) than had been foreseen in the partition plan. The Gaza Strip and the West Bank of the Jordan were annexed by Egypt and Transjordan, respectively. Palestine ceased to exist as a political and administrative entity.

In 1950, Transjordan was renamed the Hashemite Kingdom of Jordan to include those portions of Palestine annexed by King Abdullah. Abdullah was assassinated in 1951, and his grandson, Hussein I, became king the following year. In order to obtain support on both sides of the Jordan, a constitutional revision was promised. That constitution was ratified in 1952 and is still in force today. Jordan did not play a role in the 1956 war between Israel and Egypt.

After the remilitarization of the Sinai by Egypt and the closure of the Straits of Tiran, Israel attacked Egypt in 1967. In this Arab-Israeli war, Israel faced Egypt, Jordan, and Syria while additional Arab states began to mobilize their armed forces. As a result of the war, which lasted only six days (the Six-Day War), Israel annexed East Jerusalem (annexed previously by Transjordan) and gained control of the Sinai Peninsula (Egypt), the Gaza Strip (annexed by Egypt), the West Bank (annexed by Transjordan), and the Golan Heights (Syria).

The 1967 war led to a dramatic increase in the number of Palestinians living in Jordan. Martial law was declared and parliamentary elections were postponed. In 1970, a brief civil war broke out accompanied by a conflict with Syria, which supported Palestine Liberation Army activities against Jordan. The war resulted in the elimination of the Palestinian armed presence. The 1973 Arab-Israeli War, between a coalition led by Egypt and Syria and Israel, was a war to win back territory. It resulted in another cease-fire.

In 1978, King Hussein decreed that a National Consultative Council be created to replace parliament temporarily. This council consisted of representatives appointed by King Hussein from various sectors of Jordanian society. This was justified as "a temporary measure in view of the fact that one-half of parliament's seats remained under Israeli occupation." In 1984, the deputies elected to the Ninth Parliament of 1967 voted on new members to replace those who had died since 1967 or were otherwise unable to attend because of the Israeli occupation of the West Bank.

In 1988, Jordan renounced its claims to the West Bank in order to allow the Palestinians eventually to organize a state in the territory. According to other sources, claims were already renounced in 1974, when the League of Arab States (except Jordan) recognized the Palestinians' claim to the West Bank territory. The king formally dissolved parliament, ending West Bank representation. General parliamentary elections were held the following year. The formulation of a National Charter in 1990 established the framework for organized political activity in the country. Emergency regulations that had preserved the status quo for more than 20 years were frozen and formally erased in 1992. In 1994, a peace treaty was concluded with Israel.

Jordan is a founding member of the League of Arab States (LAS).

FORM AND IMPACT OF THE CONSTITUTION

Jordan's 1952 constitution is codified in a single document consisting of 131 articles. It is supplemented by the 1990 National Charter, which represents a political agreement between the king and the leaders of the main political groups.

The constitution tops the hierarchy of domestic norms. International conventions that Jordan has ratified have the force of law and take precedence over all local legislation, with the exception of the constitution.

The Sharia Courts apply the provisions of the Islamic Sharia law.

BASIC ORGANIZATIONAL STRUCTURE

Jordan is a centralist state. It is divided administratively into 12 governorates that are headed by appointed commissioners. The country is further divided into 99 municipalities for purposes of local governance. The constitution underscores the concepts that the people of Jordan form a part of the Arab Nation and that the Kingdom of Jordan is an independent and indivisible Arab state.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution does not contain as many abstract fundamental principles as do other Arab constitutions, yet it contains some "general provisions." First, Jordan's system of government is "parliamentary, with a hereditary constitutional monarchy." Article 30 states that the king is immune from any liability and responsibility; however, the fact that Jordan is a constitutional monarchy limits the king's powers. The source of authority is the nation, specifically the people of Jordan. A system of checks and balances is provided. While the principles of the rule of law and of social justice are only implicitly included in the constitution (such as Articles 24 and 111), they are more explicitly outlined in the National Charter. According to the charter there are some "basic pillars of a state of law," such as adherence to the letter and spirit of the constitution, to the principle of the supremacy of the law, and, in the exercise of democracy, to the principles and requisites of social justice.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the king; the bicameral National Assembly consisting of the Senate and the Chamber of Deputies; and the prime minister and cabinet. There is no constitutional court to review the constitutionality of laws.

The King

The king is both the head of state and the head of the administration. He exercises his executive powers through his ministers. The king is immune from any liability or responsibility.

The king plays the key role in the political life of Jordan. He appoints the cabinet ministers and may dismiss them or accept their resignations upon the recommendation of the prime minister. The king exercises the powers vested in him by royal decree. Every decree must be countersigned by the prime minister and the relevant cabinet minister. The king expresses his concurrence by placing his signature above those of the ministers.

The king may dissolve the Chamber of Deputies and the Senate or relieve any senator of his or her membership.

Royal succession is generally organized by a system of male primogeniture within the Hashemite dynasty. This means that the royal mandate is passed to the eldest son of the reigning king. Should there be no suitable direct heir, the National Assembly selects a successor from among "the descendants of the founder of the Arab Revolt, the late King Hussein Ibn Ali."

According to a 1965 constitutional amendment, which was made after the Crown had been threatened several times, the king may also designate one of his brothers as heir apparent. Accordingly, the brother would succeed the king. However, this was not applied in practice: Prince Hassan and the brother of the present king, Prince Hamzah, both were designated as crown prince and then deposed as successor to the throne. In the absence of a crown prince, the present king's eldest son is automatically heir to the throne.

The Parliament

Technically, the legislative power of the Hashemite Kingdom of Jordan is vested in the king and the two houses of parliament, collectively referred to as the National Assembly. Parliament consists of the House of Notables or Senate, and a lower house called the Chamber of Deputies. Each parliament is formed after a general election to the Chamber of Deputies. Its maximal life is four years, but it is usually dissolved at an earlier time selected by the king.

Both houses meet simultaneously. The king summons the National Assembly to an ordinary session on the first day of October of each year. An ordinary session lasts four months, if the king does not prolong it, adjourn it, or dissolve the Chamber of Deputies.

The Senate

The Senate consists of the senators and their speaker, who are all appointed by the king for four-year terms. It is thus viewed as an extension of the king's legislative powers. The Senate members must number no more than half the number of deputies.

In 2003, the Senate consisted of 55 members, including their speaker. In law and fact, many of the senators are chosen from designated categories of public figures, such as present and past prime ministers, former deputies, former senior judges and diplomats, and retired military generals.

The Chamber of Deputies

The number of deputies is not fixed by the constitution. In 2003, it consisted of 110 members, elected by secret ballot in a general and direct election. Prior to 1988, both houses had an equal number of representatives from each bank of the Jordan River.

The real influence of both chambers in the legislative process is small. Decisions by each house are made by a majority of votes of the members present, excluding the speaker, who has a deciding vote in the case of a tie. Any senator or deputy may address questions or interpellations to the cabinet ministers concerning any public matter.

The Council of Ministers

The Council of Ministers consists of the presiding prime minister and an unspecified number of ministers. They are collectively responsible before the Chamber of Deputies with respect to the public policy of the state. In addition, each minister is responsible for the specific affairs of his or her ministry.

Should the Chamber of Deputies pass a vote of no confidence, either on individual ministers or the Council of Ministers as a whole, the responsible ministers must resign. However, this requires an absolute majority of all members of the house; the vote may be held only at the request of the prime minister or by no fewer than 10 deputies.

The Lawmaking Process

In theory, 10 or more senators or deputies may propose any law. In practice, most laws are government-sponsored proposals. The prime minister refers any governmental proposals to the Chamber of Deputies and the chamber is entitled to accept, amend, or reject the proposal. Each proposal is referred to a special committee of the lower house for consideration. If the deputies accept the proposal, they refer it to the executive administration to draft it in the form of a bill and resubmit it to the house for approval. A bill approved by the Chamber of Deputies is then passed on by the speaker of the Senate. No law is promulgated unless passed by both the Senate and the Chamber of Deputies and ratified by the king.

Should either house twice reject any draft law and the other accept it, the two houses hold a joint meeting chaired by the speaker of the Senate to discuss the matters in dispute. The draft law is acceptable if backed by a two-thirds majority of the members of both houses present. If the draft law is rejected, it cannot be resubmitted during the same session of parliament. Every draft law passed by the Senate and the Chamber of Deputies is submitted to the king for ratification.

The king either grants consent by royal decree or returns the bill unapproved with justification for his refusal. Should both houses, meeting jointly, pass the bill by a two-thirds majority, it becomes an act of parliament without the consent of the king. This majority constitutionally overrides the monarch's veto. A law generally enters into force after its promulgation by the king and 30 days after the date of its publication in the *Official Gazette*.

The Judiciary

The constitution provides for an independent judiciary. In practice, some political pressure and interference by the executive remains.

The Jordanian judicial system comprises three branches: civil, religious, and special courts. Religious courts' jurisdiction extends to all matters of personal status, including marriage, divorce, and inheritance. Civil courts hear all civil and criminal matters not reserved for the religious courts. They have a four-tiered hierarchy. At the top of their judicial hierarchy is the Court of Cassation (final appeals), which is composed of seven judges.

The special State Security Court is composed of both military and civilian judges. It has jurisdiction over offenses against the state and drug-related crimes.

Although the National Charter called for a Constitutional Court, it has not yet materialized. Legislative acts may instead be judicially reviewed by the Special Tribunal (Diwan Khass) consisting of the president of the highest civil court, two of its judges and one senior administrative official, who are appointed by the Council of Ministers. It also includes a member delegated by the ministry that is involved in the needed interpretation. The Special Tribunal may interpret the constitution at the request of the prime minister or the leader of either house. The High Tribunal is competent to try members of parliament accused of penal code violations. It is composed of the president of the Senate, three Senate members who are elected by that body, and five judges who are selected from among the highest courts in order of seniority.

THE ELECTION PROCESS

According to the Law of Election to the Chamber of Deputies, voters must be at least 19 years of age. Suffrage has been universal since 1973, when women were enfranchised.

Parliamentary Elections

Deputies are elected in 20 different constituencies. Voters used to have as many votes as there were seats to be filled within the district, but not all voters made use of all their votes. In 1993, Jordan's Law of Election was adjusted to the principle of "one person, one vote"; every voter is restricted to only one vote, no matter how many seats are allocated in his or her particular constituency. Those candidates who receive the highest vote totals fill these seats (single nontransferable vote). A number of seats were later reserved for certain minority candidates—Christians, Circassians, a few tribal seats, and six for women.

In general, the king may prolong the term of the Chamber of Deputies for a maximal period of two years.

POLITICAL PARTIES

Jordan now has a pluralistic system of political parties. Jordanians are constitutionally entitled to establish societies and political parties provided that their goals are lawful, their methods peaceful, and their by-laws not contrary to the provisions of the constitution.

Political parties had been allowed in the past, but were not allowed to run as such in the 1989 elections. However, they were formally included in the 1991 National Charter, and the 1992 Political Parties Law made political party pluralism legal once more. The number of political parties has increased. In practice, however, the parties remain marginal. Tribal interests, which have traditionally dominated Jordan society, are also represented in the current parliament.

CITIZENSHIP

Jordanian nationality is defined by law. Citizenship is primarily acquired by descent. A child acquires Jordan citizenship if he or she is born of a Jordanian father, regardless of the child's country of birth. Preference is given to certain groups of Arab descent, including West Bank Palestinian refugees. Dual citizenship is recognized. The Palestinian community is estimated at more than half of the total citizen population (although not according to official sources).

FUNDAMENTAL RIGHTS

Chapter 2 of the constitution deals with the Rights and Duties of Jordanians. The constitution distinguishes between rights that apply to every person as a human being and those fundamental rights that apply to Jordanians only. Personal freedom is guaranteed for everyone. Jordanians are assured equality before the law. Their rights and duties are equal regardless of race, language, or religion. Jordanians have the right to hold meetings and to express opinions. The constitution also guarantees some economic, social, and cultural rights. The government undertakes to ensure work and education within the limits of its capacity and to ensure a state of tranquility and equal opportunity to all Jordanians.

The National Charter further confirms these rights and addresses some matters, such as human rights, to which no direct reference is made in the constitution.

Impact and Functions of the Fundamental Rights

Observers have noted a general improvement in human rights in Jordan. The state of emergency, which had a negative impact on the exercise of fundamental human rights, was formally erased in 1992. Limited censorship is constitutionally provided for by martial law or a state of emergency. The 1993 Press and Publications Law removed restrictions on the publication of information about the military and security forces, although some restrictions still exist in other laws. Antiterrorism laws further restricted freedom of expression in 2001.

The constitution prohibits unlawful and arbitrary arrest and detention. However, in practice, allegations of arbitrary arrest and detention, of a lack of transparent investigations, and even of torture within the security services continue.

Jordan has ratified the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both have precedence over national legislation.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. Some rights are guaranteed within the limits of the law, while others are assured only as long as they are exercised consistently with public order or morality. The free exercise of all forms of worship and religious rites is in a sense limited in two ways: It must be "in accordance with the customs observed" and must not be "inconsistent with public order or morality."

ECONOMY

The Jordanian constitution does not specify an economic system. However, certain provisions must be considered as legislative guidelines. No property of any person may be expropriated except for the purposes of public utility and in consideration of a just compensation. Work is the right of every citizen; the state is obliged to provide work opportunities for all citizens by directing and improving the national economy. Taken as a whole, the Jordanian economic system can be described as a social market economy. In fact, the government has made substantial progress in implementing market-based reforms in a mixed economy.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed by the constitution, which provides for free exercise of all forms of worship and religious rites and forbids discrimination on the basis of religion. However, the constitutional text also declares that the king must be a Muslim and that Islam is the state religion of Jordan. Islamic Sharia norms influence the personal status law.

Muslims who convert to other religions often face threats from their family, Muslim religious leaders, and society. Under Sharia law, converts may legally be denied their property; however, in practice this principle is not applied.

MILITARY DEFENSE AND STATE OF EMERGENCY

The government suspended universal male conscription in the 1990s; however, the 1986 Compulsory Military Service Act, which required all male adults to perform military service for two years, was not formally repealed. Exemptions were available for only sons or those whose family members had died in service, or on health grounds. Voluntary recruitment is open to men and women.

The king is the supreme commander of land, naval, and air forces. The king declares war, concludes peace, and ratifies treaties and agreements, such as the peace treaty concluded with Israel in 1994.

The constitution provides that in the event of an emergency necessitating the defense of the kingdom, a Defense Law shall be enacted giving power to the person specified therein to take such actions and measures "as may be necessary," including the suspension of the operation of the ordinary laws of the state.

In the event of an emergency of such a serious nature that normal emergency action may be insufficient for the defense of the kingdom, the king may by a royal decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the kingdom. When martial law is declared, the king may by decree issue such orders "as may be necessary" for the defense of the kingdom, notwithstanding the provisions of any law in force.

The emergency regulations authorized the Jordanian government to censor the press and other publications, ban political parties, and restrict the rights of citizens to assemble for political meetings and peaceful demonstration. These regulations, which had preserved the status quo for more than 20 years, were frozen and formally erased in 1992.

AMENDMENTS TO THE CONSTITUTION

The process of amending the constitution is not different from the general lawmaking process, except that bills must pass by a two-thirds majority of the members of each house. In the event of a joint meeting of the Senate and the Chamber of Deputies in accordance with Article 92, the amendment bill shall be passed by a two-thirds majority of the members of both houses. In both cases the amendment does not enter into force unless ratified by the king.

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Michael Rahe

KAZAKHSTAN

At-a-Glance

OFFICIAL NAME
Republic of Kazakhstan

CAPITAL
Astana

POPULATION
15,074,200 (2005 est.)

SIZE
1,052,089 sq. mi. (2,724,900 sq. km)

LANGUAGES
Kazakh (official), Russian

RELIGIONS
Muslim 9.6%, Protestant 5.6%, Russian Orthodox 4%, Catholic 0.4%, other 0.4%, unaffiliated 80%

NATIONAL OR ETHNIC COMPOSITION
Kazakh 57.2%, Russian 27.2%, other (made up largely of Ukrainian, Uzbek, German, Tatar, and Uigur) 15.6%

DATE OF INDEPENDENCE OR CREATION
December 16, 1991

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 30, 1995

DATE OF LAST AMENDMENT
October 7, 1998

Kazakhstan is a presidential republic with a division of executive, legislative, and judicial powers. The constitution of the country provides for guarantees of human rights, and it is generally respected by the public authorities.

The president of the Republic of Kazakhstan is the head of state and its highest official. The president, who determines the main directions of domestic and foreign policy, is a very strong political figure with a huge influence on all state bodies.

The bicameral Parliament is the main legislative body. Some members of the Parliament represent political parties. The Supreme Court is the highest judiciary body. Among state bodies that are not included in the legislative, executive, and judicial branches are the Constitutional Council and the procurator general. Religious freedom is respected, and state and religious communities are separated. The economic system can be described as a developing market economy. The military is subject to the civil government in terms of law and fact.

The current constitution was adopted in 1995. It determines the basic principles of state organization, state-citizen relations, and fundamental individual rights and freedoms in the new political, economic, and cultural situation since the collapse of the Soviet Union and the first years of independence.

CONSTITUTIONAL HISTORY

Kazakhstan does not have a long constitutional history, although various political-state unities existed on the modern territory of the country, including the Turkic kaganat, Kipchak khanat, Mogulistan, and Ak-Horde. The Kazakh khanate of the 15th–18th centuries is considered to be the beginning of Kazakh statehood. The nomadic style of life explains peculiarities in the organization of political power in that system: concentration of power in the hands of the khan or ruler, especially in land, military, and judicial issues; seasonal mutability of the khan's

actual power; dominance of customary law; and absence of developed institutions of political power such as a tax system or a regular army.

The annexation of the Kazakh lands into the Russian Empire was a long and complicated process that began in the 18th century. Eventually, all Kazakh lands were under the state-political protectorate of Russia. Russian authorities introduced their own system of state administration and legislation in the Kazakhstan territory.

The October Revolution (1917) in Russia brought about a new stage in political development. In 1920, under Soviet decree, Kazakhstan for the first time received its own formal state system. The country was included as an autonomous republic in the Union of Soviet Socialist Republics (USSR). In 1926, the Constitution of the Kazakh Autonomous Soviet Republic was adopted. In 1936, the Kazakh autonomous republic was reorganized into the Kazakh Soviet Socialist Republic, one of the highest-level components of the USSR. In 1937, the constitution of the new republic entered into force. All these constitutions had formal democratic provisions, but in practice many of them were not realized. The Communist Party leadership and rules were much more important than any other political-legal institution. Communist ideology permeated all state-legal systems.

Modern constitutional development began in 1990 when Kazakhstan adopted the Declaration on State Sovereignty. The next step was the adoption of the constitutional law On State Independence of December 16, 1991, as the Soviet Union collapsed and communist ideology imploded. The newly independent country needed a new organization of state power and a new legal system, as the old party-state system could not meet the requirements of political and legal development.

The first constitution of independent Kazakhstan, in 1993, was the legal act that accomplished this task. For the first time in the country's constitutional history, provisions were included on the separation of powers, the priority of the individual in relation to the state, and the equality of state and private property. Kazakhstan took on the appearance of a parliamentary republic, as compared with the acting constitution at the time, in which Kazakhstan was proclaimed a republic with a presidential form of government. During the preparation of the constitution, the framers paid special attention to the constitutional experience of the United States and France.

The constitution of 1993 existed for only two years. In 1995, a new constitution was adopted by a national referendum. The main change was the strengthening of presidential power. Some democratic practices were curbed; this alteration was justified by the problems of the reform period and the need for a strong power to effect a smooth transition to a new society.

FORM AND IMPACT OF THE CONSTITUTION

Kazakhstan has a written constitution, codified in a single document. The constitution takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Kazakhstan. The first and only amendments were adopted in 1998.

The chief importance of the constitution lies in its laying the legal grounds for independence and its commitment to new principles of organizing society, with the goal of a democratic, secular, social state based on the rule of law.

In reality, many constitutional provisions remain declarative only. The presidential orders and regulatory acts of high officials count for much more than the constitution for other state officials, despite the constitution's formal legal superiority on the entire territory of the republic. Many administrative regulations have revised constitutional norms or limited them with very complicated procedures. However, in legal terms, all laws must comply with the provisions of the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Kazakhstan is a unitary state and a presidential republic, with a very strong presidential power. The president has influence on all branches of state powers, especially on executive bodies.

The main territorial division is the *oblast*. There are 14 *oblasts* and two cities with separate status—Astana, the current capital, and the former capital, Almaty. There is also a city with a special status under the jurisdiction of both Kazakhstan and Russia—the space center Baykonyr.

There is no real system of self-government on the local level. All local bodies are state bodies. The local legislative body is elected by the people, but the main power is in the hands of the local executive. All higher local officials are appointed by the president.

LEADING CONSTITUTIONAL PRINCIPLES

Under Article 2 of the constitution, the Republic of Kazakhstan proclaims itself a democratic, secular, legal, and social state whose highest values are the individual and his or her life, rights, and freedoms. The word *proclaims* means that the country is in the process of establishing such principles. Taking into account deep political and social changes, it may take a long time for democracy and the social welfare orientation of the state to prevail.

Kazakhstan's system of government does have some of the features of a democracy: The people elect the president, Parliament, and local legislative bodies; they can petition state bodies; they have access to the civil service; they can create political parties and other public associations in order to participate in political life; and finally, the constitution of the country was adopted by a national referendum.

That Kazakhstan is a secular state means that religious organizations are separate from the state. Under the Kazakhstan approach, religion is a private matter. Religious organizations have no governmental functions and no right to interfere in the affairs of the state. There is no state religion or state religious organization.

The phrase *social state* means that the state ensures a minimal standard of living and gives social guaranties in employment, health, education, and other areas. A *legal state* follows the rule of law, meaning the supremacy of the constitution and the leading role of law. The principle of rule of law also refers to limitation of the state by law. It entails mutual responsibility between state and individual, an independent court system, and human rights and freedoms.

One of the key constitutional principles is the separation of powers. There is a division of the executive, legislative, and judicial power, based on checks and balances.

Some other fundamental principles in the constitution are public concord and political stability, economic development for the benefit of all of the nation, Kazakhstani patriotism, recognition of ideological and political diversity, the right to public associations, equality before the law, equal protection of state and private property, respect for the principles and norms of international law, a policy of cooperation and good-neighborly relations between states, noninterference in the internal affairs of other countries, peaceful settlement of international disputes, and renunciation of the first use of military force.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, Parliament, the administration (cabinet), the Constitutional Council, and the Supreme Court. The constitution also mentions the National Bank, the procurator general, and some other bodies.

The President

The president is the head of state, its highest official, who determines the main directions of domestic and foreign policy and represents Kazakhstan within the country and abroad. The president of the republic ensures the coordinated functioning of all branches of state power and the responsibility of the institutions of power before the people.

The president appoints and dismisses the prime minister, who is the head of the administration; ministers; and other higher executive officials. The president also appoints judges (except Supreme Court judges), seven members of the Senate, and the heads of the local state authorities.

The president determines the structure of the administration and creates and abolishes ministries and other administrative agencies. The president may annul or suspend the administration's acts in whole or in part.

The president signs laws. In fact, the president has the right to issue laws if parliament so decides, for a term not exceeding one year. The president may issue decrees having the force of laws (if Parliament failed to consider the draft of a law that the president declared urgent or priority-driven, one month from the day of its submission). The president calls for regular and extraordinary elections to the Parliament of the republic, convenes the first session of Parliament, and calls extraordinary joint sessions of the chambers of Parliament.

The president conducts foreign negotiations and signs international treaties, signs ratification instruments, and receives letters of credentials and recalls from diplomatic and other representatives of foreign states.

The president acts as the commander in chief of the armed forces of the republic and appoints and replaces their highest commanders. In the case of aggression against the republic or immediate external threat to its security, the president may impose martial law on the entire territory of the republic or in particular areas.

The president also resolves issues of citizenship and political asylum and issues pardons.

The president of the republic is elected for a seven-year term by the citizens of the republic. No one may be elected as president more than twice in a row. The president can be prematurely released from office in case of continued incapacity due to illness. The president can also be discharged from office for high treason. In both cases, Parliament makes the final decision.

The Parliament

The Parliament of the Republic of Kazakhstan is the highest representative body of the republic performing legislative functions. Parliament also establishes state awards; issues honorary, military, and other titles; appoints high-ranked positions and diplomats; and defines state symbols. Parliament decides on issues of state loans and other international economic and other assistance. It issues amnesties, ratifies international treaties, and approves the appointment of some higher officials by the president.

Parliament consists of two chambers acting on a permanent basis: the Senate and the Majilis. The Senate is the higher chamber. It is composed of two deputies elected from each *oblast* and major city and from the capital of the republic. Elections are conducted at a joint session of the members of all representative bodies of the respective *oblast* or city. Seven members of the Senate are appointed by the president.

The Majilis is the lower chamber; it consists of 77 members, who are elected by citizens. The term of office is six years for Senate members and five years for Majilis members.

The president may dissolve Parliament for certain reasons: a vote of no confidence in the administration, the repeated refusal of Parliament to give consent to the appointment of the prime minister, and political crisis resulting from insurmountable differences between the

chambers of Parliament or between Parliament and the other branches of state power.

The Administration

The administration (cabinet) has the executive power, leads the system of executive bodies, and exercises supervision of their activity. Members of the cabinet are the prime minister and deputies, ministers, and other officials appointed at the president's discretion.

The cabinet resigns when a newly elected president takes office. At all times, the president has the right to terminate the powers of the administration and release any of its members from their offices. The release of the prime minister from office denotes the termination of the powers of the entire cabinet.

The Constitutional Council

The Constitutional Council is a body of constitutional supervision. It reviews and considers the laws adopted by Parliament with respect to their compliance with the constitution before they are signed by the president. Similarly, it reviews the international treaties with respect to their compliance with the constitution before they are ratified. It is the official interpreter of the constitution, and it can declare existing laws unconstitutional in case of court appeals. The Constitutional Council also reviews the fairness of presidential and parliamentary elections and of national referendum.

The Constitutional Council consists of seven members whose powers last for six years. In addition, the former presidents of the republic have the right to be lifelong members of the Constitutional Council.

The chairperson and two other members of the Constitutional Council are appointed by the president. Two members are chosen by the chairperson of the Senate, and two by the chairperson of the Majilis. Half of the members of the Constitutional Council are elected every three years.

The Lawmaking Process

The right of legislative initiative belongs to the members of Parliament and to the administration. It is exercised exclusively through the Majilis.

A draft law, if considered and approved by the majority of all members of the Majilis, is transmitted to the Senate, which has 60 days to consider it. If the majority of all members of the Senate approve the draft, it is submitted to the president; if not, it is returned to the Majilis. If the Majilis approves the draft by a majority of two-thirds of all members, it is transferred once more to the Senate for a second discussion and voting. A twice-rejected draft may not be submitted again during the same session.

The president signs laws submitted by the Senate within 15 working days and promulgates them. He may also return it or its separate articles to Parliament for a second discussion and vote.

The Judiciary

The judiciary in Kazakhstan is formally independent of the executive and legislative branches. Judicial power is exercised through the constitutional, civil, administrative, criminal, and other forms of judicial procedure as established by law. In cases stipulated by law, criminal procedure requires the participation of a jury.

The only courts of the republic under the constitution are the Supreme Court and local courts. However, specialized courts that handle military, economic, administrative, and juvenile matters can be created by law. Currently, military, economic, and administrative courts do exist in Kazakhstan.

The Supreme Court and higher local courts consist of three collegiums: Criminal Collegium, Civil Collegium, and Supervising Collegium. These courts as a rule are not involved in political life. They do, however, sometimes make decisions based on political expediency and official government opinion.

The courts have no special constitutional jurisdiction, and judges cannot declare acts unconstitutional. However, if a court finds that a law or other regulatory legal act infringes on the constitutional rights and liberties of an individual, it can suspend legal proceedings in the case and ask the Constitutional Council to declare that law unconstitutional.

THE ELECTION PROCESS

All Kazakhstan citizens over the age of 18 have the right to vote in the elections.

Presidential Elections

The president of the republic is elected by universal, equal, and direct suffrage by secret ballot. A citizen of the republic is eligible for the office of president if he or she is over 40 years of age, has a perfect command of the Kazakh language, and has lived in Kazakhstan for not less than 15 years.

The candidate who receives more than 50 percent of the votes is deemed elected. If no candidate receives that percentage, a second round of elections is held between the two candidates who obtained the largest number of votes. The winner of the second round is deemed elected.

Parliamentary Elections

Sixty-seven members of the Majilis are elected in single-member constituencies, which are based on the administrative-territorial division of the republic with approximately equal numbers of voters. Ten members are elected from party lists according to a system of proportional representation, with a unified national constituency. Any citizen of the Republic of Kazakhstan who has reached the age of 25 can be elected a member of the Majilis.

A candidate is deemed elected if he or she receives more than 50 percent of the votes cast in a single-member constituency. If none of the candidates receives the necessary number of votes, a second round of voting is held between the two candidates who obtained the highest number of votes. The winner of the second round is deemed elected. A party must receive at least 7 percent of the votes to be eligible to receive any of the 10 party list mandates.

The Senate is elected on the basis of indirect electoral right. The majority of its members are chosen by the members of local representative bodies, and seven are appointed by the president. To be a member of the Senate, one must be a citizen of the Republic of Kazakhstan for not less than five years and be at least 30 years of age. He or she must also have a higher education, must have at least five years' work experience, and must have been a permanent resident for not less than three years in the constituent territory—*oblast* or city.

Local Elections

Local representative bodies—*maslikhats*—are elected by the population on the basis of universal, equal suffrage by secret ballot for a four-year term. Any citizen of the Republic of Kazakhstan who has reached 20 years of age can be elected as member of a *maslikhat.*

POLITICAL PARTIES

Kazakhstan has a pluralistic system of political parties. This is one of the new phenomena in political life after years of Communist Party domination.

Article 5 of the constitution states that the Republic of Kazakhstan shall recognize ideological and political diversity. Currently, there are 11 political parties registered by the Ministry of Justice. A political party must have at least 50,000 members in order to be registered.

Some political parties are progovernment and others are in the opposition. A pluralistic political system has only begun to develop, and the parties so far lack any strong impact in political life. Because many citizens are apolitical, potential parties may lack a serious social base.

Political parties that are based in other states or receive funds from foreign legal entities, foreign citizens, foreign states, or international organizations are not permitted in Kazakhstan. Religious parties are also banned.

Political parties, as may any other public associations, may be liquidated by courts if they violate the law. There are no special rules regarding banning of political parties.

CITIZENSHIP

Citizenship of Kazakhstan is acquired mainly by birth, although special procedures exist for acquiring citizenship. For birth, there is a combination of the "right of the blood" (*ius sanguinis*) and "right of the soil" *(ius soli),* with descent playing the greater role.

Noncitizens are not eligible to vote or to stand for office. They cannot create political parties or any other public association or be members of political parties. They also have no access to civil service.

FUNDAMENTAL RIGHTS

In Article 1, the constitution declares that the highest values of Kazakhstan are the life, rights, and freedoms of the individual. The majority of human rights and fundamental freedoms relate to both individuals and citizens, including the right to life, to personal freedom, to freedom of conscience, and to freedom of speech. However, there are some exceptions; for example, only citizens of Kazakhstan have the right to form associations.

There are constitutional provisions regarding social rights as well; in this case, too, some rights apply to everyone and others only to citizens of Kazakhstan. For instance, everyone has the right to freedom of labor, but only citizens have the right to protection of health.

There is also a group of political rights for citizens of Kazakhstan: the right to participate in running the affairs of the state, to address public bodies personally, to vote and stand for election, and to participate in national referenda.

In contrast to Soviet times, the modern constitution is very attentive to the protection and assurance of personal rights. Kazakhstan does not want to repeat the experience of Soviet constitutions, when the state formally ensured many rights and freedoms, but those rights remained mere declarations. One of the reasons Kazakhstan has hesitated to sign international covenants on human rights is the state's incapacity to provide these rights to the fullest degree. Only in 2003 did Kazakhstan sign two major human rights documents: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Today, people actively defend the rights and freedoms described in the constitution. People have started to believe that these are not mere words on paper but real legal possibilities.

Under the constitution, rights and freedoms of individuals and citizens may be limited only by law, and only to the extent necessary for the protection of the constitutional system and the defense of the public order, the human rights and freedoms of others, or the health and morality of the population. Any restrictions to the rights and freedoms of citizens on political grounds are not permitted.

Fundamental rights do not only apply to the relations of the individual and the government; they also have effects among private persons.

ECONOMY

The constitution contains some provisions that can be seen to characterize the economic system. The Republic of Kazakhstan recognizes and protects both state and private property. This is an absolutely new condition in comparison with Soviet times, when state property dominated to an enormous degree.

One constitutional provision that still arouses much public opposition and many disputes is private landownership. Under the constitution, land may be privately owned on terms, conditions, and limits established by law. Other natural resources such as mines, oil, water, and wildlife are owned by the state.

Article 26 of the constitution guarantees freedom of enterprise and free use of one's property for any legal activity. Monopolistic activity is to be regulated and limited by law, as is unfair competition. The article explicitly provides that property, including the right of inheritance, shall be guaranteed by law.

The constitution also provides that everyone has the right to work and to a free choice of occupation and profession. Involuntary labor is permitted only after court sentencing or under conditions of a state of emergency or martial law. Everyone also has the right to safe and hygienic working conditions, to just remuneration for labor without discrimination, and to social protection against unemployment. The constitution also recognizes the right to pursue individual and collective labor disputes, using methods stipulated by law, and guarantees the right to strike.

Some civil constitutional freedoms have an economic aspect. For instance, freedom to form associations includes the right to organize trade unions or other professional communities. Taken as a whole, Kazakhstan's economic system can be described as a transitional economy from a state to a social market economy.

RELIGIOUS COMMUNITIES

Everyone has the right to freedom of conscience, exercised either individually or jointly through religious communities. Freedom of conscience is traditionally associated with freedom of religion in political and legal terminology. The constitution does not define a particular status of *religious community*. Activities of foreign religious associations within the territory of the republic, including the appointment of heads of religious associations by foreign religious centers, can be carried out only in coordination with the respective state institutions.

There is no established state church. All religious organizations, including the two main ones—Islam and Russian Orthodoxy—are equal from a legal point of view. Religious communities have the legal status of civil law corporations. There is a requirement for mandatory registration of religious communities.

The principle of separation of religious organizations and the state is not explicit in the constitution, but it has been included in special legislation regarding religious organization. Despite the principle of separation, the state and religious communities have begun to cooperate in certain areas, a striking new phenomenon after many years of suppression of religious freedom under communism.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution contains only a few provisions regarding military defense and state of emergency, just enough to determine that the civil government dominates the military. The president is commander in chief of the armed forces. The president also imposes martial law and the state of emergency and decides on the use of the armed forces.

Parliament declares war and peace. On the president's proposal, it also decides about deploying the armed forces of the republic abroad, to fulfill international obligations in support of peace and security. The administration is responsible for developing the defense capability of the state.

In case of martial law, the military authorities can assume all police and security powers in the republic. In case of a state of emergency, the president can create special bodies within the state administration that are not subject to military command. The president can also use armed forces to help guard special objects and territories, suppress illegal military activity, and rescue people.

The defense of the Republic of Kazakhstan is, according to the constitution, a sacred duty and responsibility of every citizen. Citizens of the republic perform compulsory military service and can also enlist on contract. The term for compulsory military service is 12 months (24 months for officers). Kazakhstan does not provide for alternative service by conscientious objectors.

AMENDMENTS TO THE CONSTITUTION

The process of amending the constitution is complicated in comparison with changing other laws. Amendments may be passed by a national referendum called by the president, either on the president's own initiative or at the recommendation of Parliament or the cabinet. The proposal is passed if at least half of those voting approve.

If the president rejects a referendum request from Parliament, that body can still adopt the amendment by a majority of four-fifths of all the members of each chamber. In such a case the president can either sign the amendment or submit it to a referendum. In such a referendum, at least half of all citizens who have the right to vote must approve.

Certain constitutional provisions are not subject to change. Article 91 says, "The unitary status and territorial integrity of the republic, and the forms of government may not be changed."

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Roman Podoprigora

KENYA

At-a-Glance

OFFICIAL NAME
Republic of Kenya

CAPITAL
Nairobi

POPULATION
34,707,817 (July 2006 est.)

SIZE
224,961 sq. mi. (582,646 sq. km)

LANGUAGES
English and Swahili (both official), local languages (e.g., Gikuyu, Kalenjin, Kamba, Luhya, Luo, Meru, Taita, Giryama, and Gusii)

RELIGIONS
Catholic, Protestant (unofficial combined estimate) 80%; Muslim, Jewish

NATIONAL OR ETHNIC COMPOSITION
Kikuyu, Luhya, Luo, Kamba, Meru, Taita, Giryama, Gusii, other Kenyan ethnic groups, European, Asian, and Arab

DATE OF INDEPENDENCE OR CREATION
December 12, 1963

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Single-chamber parliament

DATE OF CONSTITUTION
December 12, 1963

DATE OF LAST AMENDMENT
July 2001

Kenya became independent on December 12, 1963, and was established as a parliamentary democracy based on the rule of law with a clear separation of powers among the executive, legislature, and judiciary. The founding fathers wrote a constitution that was based on liberal democratic values and followed the Westminster model.

The country was first organized as a federal state, but after only one year, constitutional changes turned the country into a strong unitary state with a strong presidency and weak local governments. According to the constitution, the president is the head of state, head of government, and commander in chief of the armed forces of the republic. Presidential and parliamentary elections are held simultaneously every five years.

The status of fundamental rights in Kenya has been problematic. The country is a secular state, and freedom of religion is guaranteed. Kenya supports a free market economy.

CONSTITUTIONAL HISTORY

What is today known as Kenya was founded as a British colony in 1920. Before then, European settlers, explorers, missionaries, and traders had been involved in farming, adventure, Christian evangelism, and trade, especially after 1895, when Kenya became a British "protectorate." Through a variety of methods (including treaty making with native chiefs and sheer use of force), the colonial establishment disenfranchised African natives and seized their land, relegating them to the "native reserves." During this period, the vast African majority had no role in political processes, structures, or decisions.

The 1920s saw the birth of African nationalism and protests against colonial rule. Agitation for the political and economic emancipation of Africans intensified in the late 1940s and reached its crest in 1952, when the Mau Mau war began. The outbreak of the war precipitated a serious legitimacy crisis of the colonial state.

The war achieved two things: First, it convinced both local colonial officials and the imperial authorities in London of the need to embark on far-reaching constitutional reforms to contain African discontent and lay the basis for eventual independence. Second, it involved the imperial government more intricately in the management of local affairs, and as a result the process of constitutional change was taken over and supervised directly from Britain, which gave the process new impetus. Despite this, the Mau Mau was quashed, and eight leaders associated with or sympathetic to it were arrested and detained after a state of emergency was declared on October 20, 1952. Among these was Jomo Kenyatta, who would later become the first president of the independent Republic of Kenya.

The Mau Mau war resulted in two constitutional dispensations fundamental to Kenya's history: the Lyttleton (1954) and Lennox-Boyd (1958) constitutions. The first, named after the colonial secretary of the British government at the time, produced two remarkable constitutional changes: First, it increased African representation in the Legislative Council (LEGCO). Second, it provided for separate racial representation as a way of controlling African political participation. The Lennox-Boyd constitution sought to achieve two conditions required for the establishment of a truly multiracial society in Kenya—to end racialism and to secure protection for migrant minorities. Protection of minority interests would become a significant issue in Kenya's constitutional development in the years ahead.

In spite of its significant innovations, African leaders in the LEGCO rejected the Lennox-Boyd constitution and demanded total control of the government based on African majority representation. They also wanted Jomo Kenyatta and others released and called for a combined nonracial electoral roll based on universal adult suffrage.

After these protests, the first constitutional conference was convened at Lancaster House, London, in January 1960. By this time, Britain had softened its stance as a result of increasing international pressure to decolonize from both the United States and the Soviet Union, and from the growing bloc of non-Western states. The twilight of the colonial state had arrived, and bargaining for the independence constitution had begun in earnest.

A constitution for Kenya, referred to as the Macleod constitution in honor of the then colonial secretary, was crafted on the Westminster parliamentary system (the so-called decolonization export model). It also sought protection for minorities. While the former caused little controversy, the latter was subject of serious disagreement insofar as it sought to guarantee European settlers' interests in an independent Kenya.

Under the Macleod constitution, significant progress toward independence under African majority rule was made. Specifically, the ban on political parties was lifted. In April 1960, the Kenya African National Union (KANU) was formed. Its leaders were James Gichuru (acting president), Oginga Odinga (vice president), and Tom Mboya (secretary-general). Ronald Ngala and Daniel arap Moi, who had been elected to party office, declined to take up their positions, arguing that KANU was a party for the major ethnic communities such as the Kikuyu and Luo, and that the "smaller tribes" needed a voice of their own. Ngala and Moi teamed up with Masinde Muliro and others to found the Kenya African Democratic Union (KADU) in the same year. Kenyatta was released in 1961 and took the presidency of KANU.

Meanwhile, political pressure continued to mount in favor of an independence conference that would hammer out a final constitution leading to self-government. The pressure resulted in the Second Lancaster Constitutional Conference, held between February 15 and April 6, 1962. The conference, attended by 37 Africans, 14 Europeans, 11 Asians, and three Arabs, resulted in the "Self-government Constitution." Under it, the prime minister was to be appointed by the governor from among members of the House of Representatives most likely to command majority support. The legislature was renamed Central Legislature and was bicameral, consisting of the lower house (House of Representatives) and the upper house (Senate). Under this constitution, Kenyatta was named prime minister.

The Third Lancaster Constitutional Conference was held in September/October 1963. The conference was now between governments: the Kenyan government and the British government. This conference led to the adoption of the Independence Constitution in 1963. It was strongly federalist. Kenya became a republic in 1964 with Jomo Kenyatta as the first president of a largely unitary parliamentary democracy. A series of amendments led to the adoption of the current constitution, enacted as Act No. 5 of 1969. Jomo Kenyatta's presidency ended on August 22, 1978, when he died, and Daniel Arap Moi succeeded him.

Agitation began in the late 1980s and early 1990s for the reintroduction of multiparty politics, which had been banned in 1969 as a matter of fact and in 1982 by law. The clamor led to a constitutional amendment in 1991 to legalize multiparty democracy. The first two multiparty elections, held in 1992 and 1997, respectively, were won by KANU, but conditions were to change in the 2002 elections, which swept into power the National Rainbow Coalition (NARC) with Mwai Kibaki as the third president of the Republic of Kenya.

In the twilight years of Moi's rule, civil society and opposition politicians began to put pressure on the government to overhaul the constitution. In 2000, the Constitution of Kenya Review Commission (CKRC) was established under an act of parliament to review the constitution. In 2003, the commission adopted a draft constitution for parliament to promulgate. However, political differences (notably over the establishment of the prime minister's office and Islamic courts) have led to a stalemate. Yash Pal Ghai, an internationally acclaimed Kenyan-born professor who chaired the commission, resigned on June 29, 2004, throwing the process into further crisis.

Kenya is a member of the East African Community (EAC); the Common Market for Eastern and Southern Africa (COMESA); the African Union (AU), formerly known as the Organization of African Unity (OAU); and the United Nations (UN).

FORM AND IMPACT OF THE CONSTITUTION

Kenya has a written constitution, contained in a single document, the Constitution of Kenya, Act No. 5 of 1969. It is the supreme source of law in Kenya, and all other laws inconsistent with it are void to the extent of the inconsistency. The constitution symbolizes the aspirations of the people of Kenya and is, in addition to the flag, the national anthem, and the coat of arms, a symbol of national unity. There is no permanent constitutional court. However, where a question as to the interpretation of the constitution arises in proceedings in a subordinate court, such matters are referred to the High Court of Kenya, whose decision on the constitutional issue is binding and final.

Apart from the constitution, the other sources of law in Kenya are, in order of hierarchy, acts of parliament including delegated legislation; principles of the common law and equity; and African customary law insofar as it is not repugnant to justice or inconsistent with any written law. Courts can overturn these sources of law if they contradict the constitution. Although Kenya actively participates in regional and global affairs, the constitution is silent on the relationship between domestic and international law.

BASIC ORGANIZATIONAL STRUCTURE

Kenya is a unitary state with a strong central government and relatively weak local authorities. For administrative purposes, the country is divided into eight provinces, which in turn are divided into 70 districts. The provinces and districts differ considerably in geographical area, population, size, and economic strength. The administration of the country is highly centralized, with all legislative, executive, and judicial administration headquartered in Nairobi, the capital city. The local authorities (city, municipal, and county councils) make by-laws only for their areas of influence, in addition to collecting rates (property taxes) and providing services such as water and garbage collection.

LEADING CONSTITUTIONAL PRINCIPLES

The present constitution of Kenya does not have a preamble from which the country's constitutional principles may be distilled. In addition, the constitutional text does not contain any general principles upon which the state is established, except the statements that "Kenya is a sovereign Republic" (Article 1) and that "The Republic of Kenya shall be a multiparty democratic state" (Article 1A). Immediately after these two provisions, the constitution describes the organs of state, their powers, and functions.

However, the two provisions mentioned indicate that Kenya is based on three constitutional principles: The country is a democracy and a republic and is based on multiparty politics. Democracy in Kenya is exercised through general presidential, parliamentary, and local government elections held every five years. The constitution does not provide for ways of exercising direct democracy through, for instance, a referendum. While the statement that Kenya is a republic may be taken to mean that Kenya is not a monarchy, the provision that Kenya is a multiparty state enshrines in the constitution the norm that political pluralism is legitimate in the country.

Besides the above explicitly stated principles, one can note from the constitution two implied principles: the doctrine of separation of powers and that of the rule of law. The constitution sets up the three organs of state (executive, legislature, and judiciary) in separate chapters (Chapters 2, 3, and 4, respectively), which detail the powers and functions of each, suggesting that these organs were designed to function separately so as to act as checks and balances against one another.

The principle of the rule of law may be inferred from the supremacy clause (Article 3), which raises the constitution over all other laws and norms. The clause may imply not only that there is a hierarchy of laws, but also that the law is the basis for running the affairs of the country. The Bill of Rights in Chapter 5 of the constitution (Articles 70 to 84) also presupposes that the country is to be run on the basis of the rule of law as opposed to arbitrariness and abuse of fundamental rights and freedoms. That all persons are protected against unlawful deprivation of property (Article 75) or unlawful arrest and detention (Article 72) supports the view that the constitution establishes a system based on the rule of law.

Kenya is a secular state, with no formal, expressed relationship between state and religion. However, freedom of conscience, including the freedom of thought and of religion, is guaranteed in Article 78 of the constitution.

CONSTITUTIONAL BODIES

The predominant constitutional organs are the president, the executive or cabinet, and the parliament.

The President

The president, as the head of the executive arm, is vested with inordinately powerful functions, when compared with those of the other constitutional organs of state. The

president is the head of state and commander in chief of the armed forces of the republic (Article 3). The president appoints and dismisses the cabinet. Although the attorney general, the auditor and comptroller general, and judges enjoy security of tenure, they are appointed by the president without requirement for parliamentary approval.

Many have viewed two constitutional provisions as vesting too much power in the presidency. First is Section 24, by which the president is empowered to constitute or abolish any office in Kenya and to hire or fire any person into/from those offices. Abuse of this power in the past has led to the establishment of numerous largely unnecessary offices, commissions, and task forces at the taxpayers' expense.

Then there is Section 25 of the constitution, which states that "every person who holds office in the Republic of Kenya shall hold that office during the pleasure of the president." Literally, this means that the president can dismiss any officer (including lower-cadre personnel) directly and without any procedure or reason for such dismissal. A senior civil servant was in this manner fired in the early 1980s, and the High Court of Kenya endorsed the dismissal. The president may pardon criminal offenders on the basis of the doctrine of prerogative of mercy.

The president is elected for a term of five years and can be reelected only once. To be elected president, one must be a citizen of Kenya, be at least 35 years old, and be registered in some constituency as a voter for parliamentary elections. The president is elected on the basis of simple majority. The office of the president may fall vacant in four ways: death of the incumbent, resignation, removal on the basis of incapacity, or nullification of the incumbent's election by an election court.

The Executive

According to the constitution, the executive authority of the government of Kenya vests in the president. In practice, the president runs the government with the support of the cabinet, which consists of the president, the vice president, and ministers.

The president selects the vice president from among the ministers, who are elected members of parliament. The vice president is the principal assistant of the president. This office may become vacant if the president so directs, if the holder of the office ceases to be an elected member of parliament otherwise than by dissolution of parliament, or if a new president is elected.

The number of ministers is not limited by the constitution. Although there is a provision empowering parliament to regulate the number of ministries (Article 16), this power has never been utilized. The president appoints ministers from among members of parliament (elected or nominated) and allocates their responsibilities.

There are four ways through which a vacancy may occur in the office of minister: (1) by the direction of the president, (2) if the holder of the office ceases to be a member of parliament otherwise than by reason of dissolution of parliament, (3) if a minister who before the dissolution of parliament was a member of parliament is not reelected into parliament in the ensuing general election, (4) immediately when a new term of the presidency begins, even if it is a reelection of the same president.

Parliament

According to Article 30 of the constitution, the legislative power of the Republic of Kenya vests in the parliament, referred to in the constitution as the National Assembly. Parliament is composed of 210 elected members, each representing a constituency and elected on the basis of simple majority; 12 members appointed by the president on the recommendation of political parties represented in parliament; and two ex officio members, the attorney general and the Speaker. The ex officio members have no voting rights in parliamentary debates.

Any person is qualified to be elected to parliament who is a citizen of Kenya and is at least 21 years old. This person must be a registered voter and be able to speak and, unless prevented from doing so by blindness or other incapacity, read the official languages of Swahili and English. He or she must be nominated by a political party, be of sound mind, and not be a public servant or judge or member of the armed forces of the Republic of Kenya, nor an undischarged bankrupt, nor under the death sentence or serving a prison term exceeding six months. To be a nominated member of parliament, one has to have the same qualifications as those of the elected members. The 12 positions for nomination are shared by the ruling party and opposition parties, depending on the strength (in terms of numbers) of parties in parliament.

A member of parliament vacates the seat if he or she ceases to be a citizen of Kenya or misses eight consecutive days of parliamentary sitting without the Speaker's permission, although the president may exempt a member from this requirement. Also, the elected Speaker, or any member, ceases to be member of parliament if he or she changes allegiance from the party that sponsored him or her to parliament while the party is still represented in parliament.

The Lawmaking Process

All legislative power in Kenya vests in parliament. Other entities, especially local authorities and ministers, can make delegated legislation, but the ultimate lawmaking responsibility is with parliament. The legislative power of parliament is exercisable by bills passed. The administration or any individual member of parliament can sponsor bills.

According to the standing orders of parliament, bills must undergo a number of stages. There is the first reading, in which only the title of the bill is read as a way of notifying members of parliament of the intended legislation. In the second reading, the bill and a memorandum of reasons for the bill are introduced to the house. Voting takes place, and if the bill receives the support of a simple

majority, then it advances to the committee stage. Here, the whole house can transform itself into a committee, or it may form a committee that will report its recommendation to the whole house.

In the committee stage, the bill is given a clause-by-clause consideration, after which the matter is taken back to the whole house for voting. If a simple majority passes the bill, then the attorney general publishes it as an act and presents it to the president for assent. A two-thirds majority must support bills that amend or alter the constitution.

Within 21 days of receiving the bill, the president must inform the Speaker if it has been accepted or refused. In case of refusal, the president must specify which provisions of the bill are considered inappropriate and must recommend amendments. Parliament can either accept the president's recommendation(s) and resubmit the bill for presidential assent or refuse the recommendations of the president by a two-thirds majority resolution and then resubmit the bill as it was. In this case, the president is compelled to assent to the bill within 14 days of passing the resolution. A law passed by parliament cannot go into effect until it is published in the official *Kenya Gazette,* but parliament may postpone implementation; it may also make laws with retrospective effect, with the exception of laws pertaining to criminal matters.

The Judiciary

The judiciary in Kenya is independent of the legislature and the executive. The highest court in Kenya is the Court of Appeal, consisting of the chief justice and 11 judges (the number is set by an act of parliament). All 12 enjoy security of tenure, meaning that they can be removed from office only by special procedures and for special reasons set out in the constitution. While the president appoints the chief justice at his or her discretion, the judges of appeal are appointed by the president with the advice of the Judicial Service Commission, established under Article 67 of the constitution.

The jurisdiction of this court is purely appellate and relates to criminal or civil matters, on questions of law or mixed law and facts. It cannot entertain appeals against findings of facts only. Under the doctrine of judicial precedent followed in Kenya, the decisions of the Court of Appeal are themselves a source of law and are binding on all other courts in cases in which the facts and legal issues are similar. The Court of Appeal, can, however overturn its own decision, for instance, if it finds that the decision was wrong. A bench of three, five, or seven judges hears the cases.

Below the Court of Appeal is the High Court, which enjoys unlimited original (first instance) jurisdiction in all civil and criminal matters. It is also empowered to hear election petitions and to determine all constitutional matters. Its decisions in constitutional matters are final, and decisions of this court are binding on all subordinate courts. The High Court comprises judges, whose number is decided from time to time by an act of parliament. High Court judges also enjoy security of tenure. They are appointed by the president with the advice of the Judicial Service Commission. The chief justice of the Court of Appeal is also a member of the High Court. One or more judges can constitute a High Court Bench. At the same level with the High Court is the Industrial Court, which deals with labor disputes.

Below the High Court are subordinate or magistrate courts, which deal with both criminal and civil matters. Within the subordinate courts there are specialized courts and tribunals, such as the Kadhi courts, which deal with civil matters of personal law involving Muslim disputants. There is a Court Martial that handles cases involving members of the armed forces with a provision of appeals to the High Court only. Finally there are a number of quasi-judicial tribunals such as the Insurance Tribunal or the Rent Tribunals.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Kenyan citizens over the age of 18 have the right to vote in presidential, parliamentary, and local government elections. Kenyan citizens can stand for election if they have attained the age of 21 years (parliamentary and local elections) or 35 years (presidential elections).

Parliamentary Elections

The Kenyan parliament consists of one chamber. General parliamentary elections are held once every five years, but a by-election may be occasioned by death, resignation, or defection of a member of parliament to a political party other than the one that sponsored the member. Candidates are elected through direct popular vote in single-member districts.

POLITICAL PARTIES

Kenya has a pluralistic system of political parties, as provided in Article 1A of the constitution. Political parties, therefore, play an important role in Kenya's constitutional order. One cannot be elected to a local governmental authority, parliament, or the presidency without being supported by a particular political party.

Political parties are the vehicle for the people of Kenya to express their will, since they typically vote not only on the basis of individual competence, but also, perhaps largely, for the philosophy or ideals of the candidate's party, as expressed in its manifesto. The parties rely on membership fees and donations, although bills have been advanced for full government funding of all political parties.

CITIZENSHIP

Kenyan citizenship is primarily acquired by birth. Children whose parents are Kenyan automatically become Kenyans. Further, the constitution states that a child born outside Kenya will be a citizen of Kenya if his or her father is a citizen of Kenya. A woman who marries a citizen of Kenya can become a citizen, but only if she applies for citizenship. Thus, while men automatically pass Kenyan citizenship to their children wherever born, the same right does not accrue to women. Many have argued that this amounts to discrimination on the basis of sex, contrary to Section 82(3) of the constitution, but courts have yet to endorse that view.

Kenyan citizenship can also be attained by registration. A person who has been ordinarily resident in Kenya for a period determined in the relevant act of parliament can apply to be registered as a citizen of Kenya, provided the applicant is a citizen of another Commonwealth or African country that reciprocates this opportunity to Kenyan citizens resident in those countries. Applicants must be at least 21 years old, or an application can be made on their behalf by their parent or guardian.

Finally, Kenyan citizenship may be acquired by naturalization. To be naturalized, an applicant must be at least 21 years old, have ordinarily and lawfully resided in Kenya for a period of 12 months immediately preceding the application, must be of good character, must prove adequate knowledge of the Swahili language, and must show that if naturalized, he or she intends to continue residing in Kenya.

Citizenship acquired by registration or naturalization can be revoked. Grounds for revocation are set out in the constitution and include disloyalty or disaffection toward Kenya or assistance in any form of Kenya's enemies at war.

FUNDAMENTAL RIGHTS

Chapter 5 of the constitution of Kenya deals with fundamental rights and freedoms. The rights and freedoms protected are all of a civil and political nature except, perhaps, the right to property under Article 75, which can be categorized as a socioeconomic right. Conspicuously missing from Kenya's Bill of Rights are the other socioeconomic rights such as those related to health, education, or housing, but also the more controversial "group" or "people's" rights such as the right to a clean and healthy environment, the right to development, and the right to peace.

Impact and Functions of Fundamental Rights

Kenya, as do most African states, lacks a long history of constitutionalism and respect for human rights. The colonial administration oversaw a government with blithe disregard for the equal rights of all as envisaged in the 1948 Universal Declaration of Human Rights and other international agreements.

The postcolonial governments, however, have not fared any better in the area of human rights. Although the postindependence constitution has a Bill of Rights for the benefit of all, respecting and protecting these rights have been among the most serious challenges that have faced the governments of Jomo Kenyatta, Daniel arap Moi, and now Mwai Kibaki.

Despite constitutional guarantees, many people were detained without trial and others fled to exile in Western countries for fear of persecution, simply for holding views contrary to those of the governing elite. The period between 1982 and 1991 especially saw the outlawing of publications, the closure or censure of perceived antiestablishment media houses, and a major deterioration of the economy leading to tremendous abuse of internationally recognized socioeconomic rights.

Despite the freedom of association and assembly, the formation of parties other than the then-ruling KANU was prohibited in practice between 1969 and 1991. It was only allowed again after much pressure from donor countries and civil society–sponsored agitation with attendant arrests, detentions, and police shootings of demonstrators. The gains made since 1991 have been threatened, especially since 2004, when Mwai Kibaki co-opted members of the opposition into his government, threatening to restore single-party (or no-party) rule. The constitutionally protected right to freedom of association was greatly abused on July 3, 2004, when the police forcibly prevented opposition and civil society groups from holding a meeting of the constitutional review commission after almost 10 years of pressure.

Limitations to Fundamental Rights

Article 70 of the constitution contains a general limitation clause. It provides that while every person in Kenya is entitled to fundamental rights and freedoms without distinction, these are subject to the rights and freedoms of others and to the public interest.

Apart from this general limitation, various rights have their own "internal" limitations. For instance, the right to life is not violated when a death sentence imposed by a court of law is carried out, or if death arises as a result of lawful use of force to effect a lawful arrest or to defend any person or property from violence. Similarly, freedom of expression is subject to the interests of defense, public safety, public order, public morality, or public health, among other limitations.

ECONOMY

The Kenyan constitution does not specify the country's economic system. However, certain constitutional provisions,

especially in the chapter on fundamental rights and freedoms, may shed light on the economic system envisaged by the drafters. For instance, Section 75 protects the right to property. No person may have his or her property or interest therein deprived without compensation. This presupposes a free market economy. Similarly, the right to form and join trade unions or other associations in order to pursue one's interests is protected.

RELIGIOUS COMMUNITIES

The constitution enshrines the right to freedom of conscience, and this includes freedom of thought, freedom of religion, and freedom to change one's religion or belief, either alone or in community with others. This right also incorporates the right to manifest and propagate, both in public and in private, one's religion or belief in worship, teaching, practice, and observance.

There is no state religion, presupposing that all religions, including atheism, are to be treated equally. Every religious community is entitled, at its own expense, to establish and maintain schools.

Unofficial figures estimate that 80 percent of the Kenyan population are Christians. Of these, the majority are Roman Catholics. Mainstream Protestant churches include Anglicans, Presbyterians, and Methodists. There are Pentecostal churches, Jehovah's Witnesses, and the Seventh Day Adventists as well. The remaining 20 percent of the population are Muslims, Hindus, and "new age" faiths such as the Theosophical Society. There are also traditionalists and atheists.

MILITARY DEFENSE AND STATE OF EMERGENCY

Interestingly, the constitution does not contain provisions relating to the establishment, administration, and discipline of the armed forces, leaving this to an act of parliament—the Armed Forces Act. However, under Article 4 of the constitution, the president is commander in chief of the armed forces of the republic.

Article 85 of the constitution authorizes the president to put in operation the provisions of the Preservation of Public Security Act. Under this act, a state of emergency may be declared in exceptional circumstances when the life of the nation is threatened. The effect of a state of emergency is that fundamental rights and freedoms except those specified as nonderogable are suspended in order to enable the government to deal with the emergency in question.

A state of emergency must last only for a specified period. In emergency situations when Kenya is at war, parliament can extend the state for up to 12 months at a time, for a maximum of five years (Article 59).

AMENDMENTS TO THE CONSTITUTION

Amendment of the Kenyan constitution is relatively difficult. Whereas passage of ordinary legislation requires a simple majority of members of parliament actually present and voting, any bill to amend the constitution must be supported by at least two-thirds of all the members of parliament excluding ex officio members.

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Kithure Kindiki

KIRIBATI

At-a-Glance

OFFICIAL NAME
Republic of Kiribati

CAPITAL
Tarawa

POPULATION
100,798 (2005 est.)

SIZE
Land area: 313 sq. mi. (811 sq. km)
Sea area: 1,371 sq. mi. (3,550 sq. km)

RELIGIONS
Roman Catholic 52%, Protestant (Congregational) 40%, some Seventh-Day Adventist, Muslim, Bahá'i, Latter-Day Saints, and Church of God

LANGUAGES
I-Kiribati, English (official)

NATIONAL OR ETHNIC COMPOSITION
Predominantly Micronesian, minority Polynesian

DATE OF INDEPENDENCE OR CREATION
July 12, 1979

TYPE OF GOVERNMENT
Republican

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 12, 1979

DATE OF LAST AMENDMENT
No amendment

Kiribati is an island nation of 33 atolls located in the Pacific Ocean near the equator. Formerly the Gilbert Islands Colony of the United Kingdom, Kiribati was granted self-rule in 1971 and independence in 1979.

Kiribati has a written constitution. Its system of government is that of a democratic republic. The government has three branches, following the principle of the separation of powers: The executive is led by a president or Beretitenti, who is the head of state and chief of the administration; the legislature or Maneaba ni Maungatabu has a single chamber; and the judiciary is independent.

Kiribati has a small and isolated economy. As a consequence of internal migration approximately half of the population now resides on the main island of Tarawara.

CONSTITUTIONAL HISTORY

Kiribati was inhabited by people from Micronesia about 3,000 years ago. Polynesian people subsequently invaded Kiribati; frequent intermarriage between the two ethnic groups produced strong Polynesian influence on Kiribati's Micronesian culture. Europeans arrived in the 16th century, and the British established a protectorate in Kiribati in 1892. In 1900, Banaba island became part of the British protectorate after the discovery of phosphate. In 1916, the Ellice Islands and the islands of Kiribati became a British colony—the Gilbert and Ellice Islands Colony.

From 1941 to 1943, the Japanese occupied Kiribati. Tarawa was the site of a major battle of the Pacific war in 1943.

Moves toward self-government began in 1963 with the appointment of a local executive council and an advisory council. This council was replaced by a house of representatives that had powers of recommendation, which was in turn replaced by a legislative council of 23 elected members in 1971.

In 1975, the Ellice Islands separated from the colony to form the state of Tuvalu. Kiribati acquired independence as a republic within the Commonwealth on July 12, 1979.

FORM AND IMPACT OF THE CONSTITUTION

Kiribati has a written constitution, which is the supreme law of the country. Any act of the legislature that is inconsistent with the constitution is void to the extent of the inconsistency. The High Court has jurisdiction to enforce the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Kiribati has a unitary state system, but it is administratively divided into three units; the Gilbert Islands, the Line Islands, and the Phoenix Islands. There are six districts and 21 island councils.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution states, "Kiribati is a sovereign democratic republic." The preamble of the constitution sets out some guiding principles for implementation as follows: "(1) the will of the people shall ultimately be paramount in the conduct of the government of Kiribati; (2) the principles of equality and justice shall be upheld; (3) the natural resources of Kiribati are vested in the people and their Government; and (4) we shall continue to cherish and uphold the customs and traditions of Kiribati."

CONSTITUTIONAL BODIES

The predominant constitutional organs are the president; the cabinet; the Maneaba ni Maungatabu (House of Assembly); the judiciary, including the High Court; and the Public Service Commission.

The President

The president or Beretitenti is both the head of state and chief of the administration. The president is elected by popular vote for a four-year term. The legislature nominates presidential candidates from among its members, and those candidates compete in a general election. The president appoints a vice president from the ministers of the cabinet.

The Cabinet

The constitution states, "The executive authority of Kiribati shall vest in the cabinet, which shall be collectively responsible to the Maneaba ni Maungatabu for the executive functions of the Government." The cabinet consists of the president, the vice president, not more than eight other ministers, and the attorney general. The president appoints the ministers from among the members of the legislature.

The Parliament

The House of Assembly or Maneaba ni Maungatabu consists of a unicameral chamber with members elected by popular vote plus one ex officio member—the attorney general—and one member appointed to represent Banabans who live on Rabi Island (Fiji).

The Lawmaking Process

The Maneaba ni Maungatabu has power to make laws consistent with the constitution. A bill needs the assent of the Beretitenti to become law; the Beretitenti may withhold assent only on the grounds that the bill is inconsistent with the constitution.

The Judiciary

The High Court is the guardian of the constitution. It interprets and applies the law according to constitutional principles. Judges are appointed by the Beretitenti acting on the advice of cabinet given after consultation with the Public Service Commission. The system of courts is, in descending order, the Court of Appeal, the High Court, and the magistrates' courts.

Public Service Commission

The Public Service Commission is responsible for advising the Beretitenti on the appointment, removal, and disciplinary control of persons working in offices paid by public money.

THE ELECTION PROCESS

The constitution divides Kiribati into electoral districts, with boundaries and number of candidates to be provided by legislation. It expressly reserves one seat of the legislature for the Banaban community.

Article 64 of the constitution provides that people entitled to register to vote must be citizens of Kiribati over the age of 18, resident within an electoral district. A person is qualified to stand for election to Maneaba ni Maungatabu if he or she is a citizen of Kiribati and is over the age of 21.

POLITICAL PARTIES

There are no organized political parties in Kiribati. Candidates and voters tend to group themselves informally.

CITIZENSHIP

Every person born in Kiribati is a citizen by birth. The constitution also states that "Every person of I-Kiribati descent . . . has the right to become a citizen of Kiribati."

FUNDAMENTAL RIGHTS

The constitution provides for the protection of the fundamental rights and freedoms of individuals. For example, privacy of home and property, freedom of expression, and property rights are protected.

Limitations to Fundamental Rights

The rights and freedoms are not absolute. They are subject to limitations based on public interest and restrictions in a period of public emergency.

Impact and Functions of Fundamental Rights

The entrenched rights and freedoms, in the form presented by the constitution, are alien to the culture of Kiribati. That culture operated without courts or written laws and depended for its survival on a strong sense of community and cooperation. The emphasis was therefore on duties to the group rather than on the rights of individuals. Dispute resolution within the community was by reference to acceptance and respect for the local social norms and ultimately a respect for the expression of those norms by those more senior in the social hierarchy.

Christianity entered this environment in the 19th century. It was rapidly and comprehensively accepted to the point that it superseded traditional rules in the areas it addressed.

In the late 20th century, the notion of universal human rights was introduced into the formal legal system. At most points, the content of those human rights is consistent with the Christian views of the people of Kiribati. However, there remains a cultural resistance to the introduced human rights system, not least because of its emphasis on individualism and the notion of rights. There is a strong residual sense in the community of social duties and a respect for the interest of others before self-interest.

There is little litigation on human rights matters; however, in the judicial context the system operates in a manner not very dissimilar to that in Europe or North America. The most active part of the judicial system relates to criminal law, and the rules of due process are fully operative.

ECONOMY

There are no constitutional provisions regarding the economy. Copra, fish, remittances from workers abroad, and tourism (principally to Kiritimati and Tarawa) are the main sources of locally generated income. Some of the problems are Kiribati's remoteness from international markets, the shortage of skilled workers, and inadequate infrastructure (e.g., power supply, water supply, waste disposal). However, Kiribati has successfully managed its financial resources through the Revenue Equalization Reserve Fund (RERF), which was established in 1956 by the colonial administration with royalties from mining of the Banaba phosphate deposits. The Revenue Equalization Reserve Fund now operates as a special fund under Article 107 of the constitution.

RELIGIOUS COMMUNITIES

Freedom of thought, conscience, and religion is protected by Article 11 of the constitution. The population is almost exclusively Christian, as 52 percent are Roman Catholic and 40 percent are Congregationalist Protestant.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides in Article 126 that no disciplined force shall be established other than the Kiribati Police, the Prison Service, the Marine Protection Service, and the Marine Training School.

AMENDMENTS TO THE CONSTITUTION

The constitution can be altered by an act of parliament passed with the special majority of two-thirds of the total membership of parliament. Amendments regarding fundamental rights and freedoms of individuals additionally require a referendum within the national electorate, and a two-thirds majority is needed to support change. Any amendment relating to Banaba island can be made only if the Banaban representative in the legislature does not vote against it.

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Anthony Angelo

KOREA, NORTH

At-a-Glance

OFFICIAL NAME
Democratic People's Republic of Korea

CAPITAL
Pyongyang

POPULATION
22,800,000 (2004)

SIZE
47,000 sq. mi. (120,410 sq. km)

LANGUAGE
Korean

RELIGIONS
Generally atheism

NATIONAL OR ETHNIC COMPOSITION
Korean; small Chinese and Japanese populations

DATE OF INDEPENDENCE OR CREATION
September 9, 1948

TYPE OF GOVERNMENT
Communist state

TYPE OF STATE
Extremely centralized state

TYPE OF LEGISLATURE
Unicameral Supreme People's Assembly

DATE OF CONSTITUTION
September 9, 1948

DATE OF LAST AMENDMENT
September 5, 1998

North Korea is one of the rare states that do not assemble their legal codes in the form of a single book. Furthermore, it is a state strongly closed to the outside world; information is fragmentary and hard to get. As a result, knowledge of its statutory laws is limited, and its judicial decisions are not accessible at all. The following overview of North Korea's constitutional history and constitutional law is as full and accurate as can be obtained given these obstacles.

CONSTITUTIONAL HISTORY

From 1910 to 1945, the old Korean Kingdom had been governed by Japan. The first constitution of the Democratic People's Republic of Korea was adopted on September 9, 1948, three years after the Russian occupation of the northern half of the Korean peninsula after World War II (1939–45); in the south the American military government ended the same year. The 1948 constitution consisted of 104 articles in 10 chapters. Since then North Korea has revised its constitution eight times, twice in 1954 and once each in 1955, 1956, 1962, 1972, 1992, and 1998. Each time, articles of the constitution were revised and administrative districts adjusted; one revision lowered the voting age.

The 1972 revision instituted a president-centered state system. In both structure and content the new so-called Socialist Constitution was entirely different from the former constitution; it focused solely on socialism and *juche* (self-reliance) ideology. It declared that North Korean society had completely embraced socialism, thereby institutionalizing Kim Il Sung's despotic rule. The document created a Central People's Committee and the Government Affairs Committee.

With the collapse of world communism in the 1990s, North Korea amended its constitution for the seventh time in April 1992. Juche was now the sole guiding ideology, replacing Marxism-Leninism. In structural terms, the defense committee of the Central People's Committee was upgraded to a state organ called the National Defense Commission. The commission became the most powerful body in the country, and North Korea became a military dictatorship.

In September 1998, the North Korean constitution was amended for the eighth time, on the occasion of Kim Jong-Il's official succession to power. The amended constitution was entitled the Kim Il Sung Constitution in an effort to perpetuate the late Kim Il Sung's legacy and lend credibility to the government. The power of Kim Jong-Il, the chairman of the National Defense Commission, was greatly reinforced by his new position as general secretary of the Korean Workers' Party, the ruling party. He now commands both the party and the military, giving him absolute power. At the same time, the constitutional amendment reduced Kim Jong-Il's state management responsibilities by creating a Supreme People's Assembly Executive Committee Chairmanship to handle foreign affairs and by authorizing the prime minister to take care of administrative affairs, including economic matters.

FORM AND IMPACT OF THE CONSTITUTION

The North Korean constitution is a single document that contains 166 articles. The document, in its most recent form, concentrates political power in the person of the chairperson of the National Defense Commission, allows private property ownership on a limited scale, and aims at economic autonomy, while opening a wider window for foreign investment. North Korea adopted a Civil Code on September 9, 1990. The Criminal Code, last revised on February 5, 1987, still serves as a tool for enforcing the socialist state ideology. Although the North Korean constitution contains some mention of international law, its ties to such law remain weak.

BASIC ORGANIZATIONAL STRUCTURE

The state is administratively divided into eight local principal authorities and four special cities.

LEADING CONSTITUTIONAL PRINCIPLES

North Korea is a Communist state, ruled by a one-man dictatorship. It does not embrace the ideas of separation of power or checks and balances among political powers. The name for communism as practiced in North Korea is *juche,* Kim Il Sung's interpretation of Marxism-Leninism that emphasizes nationalism and human beings as the prime mover to nature.

The current constitution is equipped with a new preamble, which describes the socialist principles of the state: The Democratic People's Republic of Korea is a socialist fatherland of Juche which embodies the ideas of and guidance by the great leader Comrade Kim Il Sung. The great leader Comrade Kim Il Sung is the founder of the DPRK and socialist Korea. . . . The DPRK and the entire Korean people will uphold the great leader Comrade Kim Il Sung as the eternal President of the Republic, defend and carry forward his ideas and accomplishments and complete the Juche revolution under the leadership of the Korean Workers' Party of Korea. The DPRK Socialist Constitution is a Kim Il Sung Constitution which legally embodies Comrade Kim Il Sung's Juche state construction ideology and achievements.

However, it is interesting to note some striking "Confucian" expressions, which could hardly be understood from the viewpoint of socialist ideology. The preamble of the constitution puts it as follows: Comrade Kim Il Sung regarded "believing in the people as in heaven" (*Iminwichon*) as his motto, was always with the people, devoted his whole life to them, took care of and guided them with a noble politics of benevolence (*Indokjongchi*), and turned the whole society into one big and united family. . . . Comrade Kim Il Sung was a genius ideological theoretician and a genius art leader, an ever-victorious, iron-willed brilliant commander, a great revolutionary and politician, and a great human being.

The North Korean constitution thus shows a tension or perhaps a harmony between socialist and Confucian language in describing the official ideology.

CONSTITUTIONAL BODIES

The structure of the state is composed of the Supreme People's Assembly, the National Defense Commission, the Presidium of the Supreme People's Assembly, the Administration Council or cabinet, the Public Prosecutor's Office, and the judiciary. All of these institutions ultimately serve to support the one-man dictatorship. The Korean Workers' Party dominates all organs of government.

The Supreme People's Assembly

The highest organ of state power is the Supreme People's Assembly, which exercises the legislative power. The constitution stipulates that other constitutional bodies are accountable to the Supreme People's Assembly; they are controlled by the assembly's decisions. The assembly is composed of deputies elected on the principle of universal, equal, and direct suffrage by secret ballot for a term of five years.

The assembly has supreme sovereign power, including the authority to amend and supplement the constitution; adopt, amend, and supplement laws; and establish the basic principles of the state's domestic and foreign policies. The assembly also elects or removes members of various other constitutional bodies, examines and approves the state plan for the development of the national economy and the report on its progress, and examines and approves the report on the state budget and on its implementation.

Furthermore, the assembly receives reports on the work of the cabinet and other national institutions. Finally, it decides on the ratification or abrogation of treaties.

The Supreme People's Assembly holds regular sessions. The laws and decisions of the assembly are adopted when more than half of the deputies attending signify approval by a show of hands. The assembly also works through committees such as the legislation committee and the budget committee.

The National Defense Commission

The highest military organ of state power is the National Defense Commission. The chair of the commission directs and commands all the armed forces and guides defense affairs as a whole. Kim Jong-Il is the current chair of the National Defense Commission, as well as the secretary general of the Korean Workers' Party. The National Defense Commission has the responsibility and power to guide the armed forces and guide the state in defense matters as a whole. It creates or dissolves other institutions in the defense sector and has the power to proclaim a state of war and order mobilization.

The Presidium of the Supreme People's Assembly

During the intervals between sessions of the Supreme People's Assembly, its Presidium is the highest organ of power. The term of the Presidium is the same as that of the assembly itself. It has the power to convene sessions of the assembly and to examine and adopt bills, regulations, and various state plans for the national economy. It interprets the constitution, laws, and regulations in force; supervises state organs; works with deputies of the assembly; and elects or removes judges of the Central Court. The Presidium can also create or reorganize administrative units and districts.

The Cabinet

The cabinet is the administrative and executive body of the assembly and the general state management body. The 1998 constitution designated the cabinet responsible for oversight of the national policy implementation. The cabinet is staffed with loyal Korean Workers' Party officials who have some administrative and technical expertise. There are one premier, two deputy premiers, 27 ministers, and four directors of key state institutions. The eight provincial governors and heads of special administrative districts also are members of the cabinet. The cabinet's term is the same as that of the Supreme People's Assembly. Its main responsibilities are to adopt measures to execute state policy and to institute, amend, and supplement regulations concerning state management on the basis of the constitution and the laws. The cabinet is also charged with maintaining social order, protecting state and social cooperation, and guaranteeing citizens' rights. Furthermore, the cabinet concludes treaties with foreign countries and conducts external activities. Article 120 of the constitution states that the premier of the cabinet represents the government of the Democratic People's Republic of Korea.

The Lawmaking Process

Laws are enacted by the Supreme People's Assembly when more than half of the deputies present approve. However, when the assembly is not in session it is up to the Presidium of the Supreme People's Assembly to adopt bills.

The Judiciary

The judicial system consists of two elements: courts and prosecutors. The judicial system's primary role is to protect "the state and socialist system."

The constitution states that the North Korean judiciary is independently administered through the Central Court, the Courts of the Provinces (or of the municipalities directly under central authority), municipal and county courts, the separate military courts, and traffic and transportation courts. The Central Court is the supreme court of the Democratic People's Republic of Korea and supervises trial activities of all lower courts. However, Article 162 of the constitution stipulates that the Central Court is accountable to the Supreme People's Assembly.

Concerning the mechanism of dispute resolution in North Korea, the government relies heavily on the socialist law-abiding lifestyle of the North Korean people. Even though they have no written legal code, the people learn the laws through regular village meetings, which prevent them from violating laws. Regardless of the statistics, North Korea seems to be a rather stable and self-regulating society.

THE ELECTION PROCESS

All citizens who have reached the age of 17 have the right to vote in elections and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views, or religion. Citizens serving in the armed forces also have the right to vote in elections and to be elected. However, a person who has been disenfranchised by a court decision or legally certified to be insane does not have the right to vote in elections or to be elected.

POLITICAL PARTIES

The constitution states that the government shall guarantee conditions for the free activity of democratic political parties and social organizations. However, the constitution also declares that the Democratic People's Republic of Korea shall conduct all activities under the leadership

of the Workers' Party of Korea. In reality, the North Korean government is under the rigid control of the Korean Workers' Party, to which all government officials belong, and only a few minor parties are allowed to exist in name only. Kim Il Sung has spelled out ten rules that govern the conduct of those who wish to become and remain members of the Korean Workers' Party.

CITIZENSHIP

The terms for becoming a citizen of the Democratic People's Republic of Korea are defined by the Law on Nationality. A citizen is under the protection of the Democratic People's Republic of Korea regardless of his or her domicile.

FUNDAMENTAL RIGHTS AND DUTIES

Chapter 5 of the constitution lists the fundamental rights and duties of citizens, which are based on the collectivist principle "One for all and all for one." Article 64 proclaims that the state shall effectively guarantee genuine democratic rights and liberties as well as the material and cultural welfare of its citizens. The subsequent articles spell out specific rights such as freedom of speech, of the press, of assembly, of demonstration, and of association. Citizens have the right to work, to relaxation, to free medical care, and to education.

The constitution also provides for specified duties of citizens. The constitution demands political and ideological unity and solidarity. Highest value is accorded to organizations and collectives. Individual citizens are called upon to observe the laws of the state and the socialist standards of life strictly, thus ultimately defending their honor and dignity as citizens of the Democratic People's Republic of Korea. Work is considered not only as the fundamental right, but also as the fundamental duty of citizens. Finally, national defense is defined as the supreme duty and honor of citizens. Therefore, citizens must defend the country and serve in the army as required by law.

Impact and Functions of Fundamental Rights

The constitution outlines a wide range of rights, but in reality, with the government totally controlled by the Korean Workers' Party and dominated by Kim Il Sung, the state can freely control its citizens. Punishment of any "political crime," for example, is severe. Free speech and freedom of press may be guaranteed in one section of the constitution, but elsewhere in the same document North Koreans are required to observe "socialist norms of life."

Limitations to Fundamental Rights

The people are required to follow the collectivist principle of "one for all and all for one." This orientation constitutes a basic and general limitation to all individual human rights in Korea. North Korea's huge army and weapons of mass destruction impose enormous burdens on the people. The Western idea of human and individual political rights are alien to the North Korean people. Individuals who assert their personal desires and claim "rights" vis-à-vis the state and ruler are perceived as disloyal and subversive. They are easily categorized as the "enemy of the state" and purged, either through execution or banishment to the labor camp. Many North Korean people follow the outward flow of refugees such as to China and Mongolia. In 2004 the United States enacted the "2004 North Korean Human Rights Act" and the United Nations has passed resolutions three times since 2003 for the improvement of the human rights in North Korea.

THE ECONOMY

The Democratic People's Republic of Korea relies on a socialist system of production and on the principle of a national economy totally independent from other countries. Consequently, the means of production are owned only by the state and social cooperative organizations. In theory, the property of the state belongs to the entire people. Because there is no limit to the property that the state can own, the North Korean government basically owns all natural resources, railways, airports, transportation, communication organs, major factories, enterprises, ports, and banks. The constitution also allows social cooperative organizations to possess such property as land, agricultural machinery, ships, and medium or small factories and businesses. The state aims to replace all cooperative ownership with state ownership to "enhance the ideological consciousness and the technical and cultural level of the peasants, and increase the role of the property of the entire people in leading the cooperative property so as to combine the two forms of property systematically, shall consolidate and develop the socialist cooperative economic system by improving the guidance and management of the cooperative economy and gradually transform the property of cooperative organizations into the property of the people as a whole based on the voluntary will of all their members."

People may own some private property or savings. This may include the "socialist distribution of the results of labor" (wages), additional benefits from the state and society, and the products of personal sideline activities such as the kitchen gardens of cooperative farmers. Article 25 claims that the Democratic People's Republic of Korea considers the material and cultural well-being of its people as the supreme principle of its activities; therefore, the wealth of society is used entirely for the benefit of the working people. Taxes have been abolished.

The constitution stresses the importance of holding onto the *juche* ideology and strengthening self-sufficiency, so as to maintain a national economy independent from other countries within a completely socialist society. Since the technical revolution is deemed vital to the development of the socialist economy, the state asserts that it shall give top priority to solving the problems of technical development and accelerating scientific and technical development. This is meant ultimately to free the working masses from backbreaking labor, to narrow the differences between physical and mental labor, and to eliminate differences between urban and rural areas and class distinctions between the working class and the peasantry. Furthermore, Article 29 states that the working masses are freed from exploitation and suppression and that they do not have to worry about unemployment. The working day for most people is set at eight hours, although that can vary, depending on difficulty and conditions of work. The minimal working age is 16.

According to the constitution, the Democratic People's Republic of Korea has a planned economy. The national economy is managed according to the "Taean Work System," a form of socialist management in which the economy is purportedly operated and managed in a scientific and rational way, with reliance on the collective power of the producing masses, and in which agriculture is managed by using industrial methods.

Regarding foreign trade, the Democratic People's Republic of Korea emphasizes the principles of complete equality and mutual benefit. The state alleges that it will promote the establishment of equity and contractual joint venture enterprises with foreign corporations or individuals within "a special economic zone." Nevertheless, the state also pursues a tariff policy in order to protect and maintain the national economy independent from other countries. North Korea's future economic development remains tied to the question whether the regime will conform to international norms and win support of international financial institutions.

RELIGIOUS COMMUNITIES

Article 68 guarantees freedom of religion as follows: "Citizens have freedom of religious beliefs. This right is granted by approving the construction of religious buildings and the holding of religious ceremonies. No one may use religion as a pretext for drawing in foreign forces or for harming the state and social order."

In reality, however, North Korea has severely persecuted various religious communities in line with Communist ideology. The Christian churches in particular have suffered severe persecution, because they were thought to be agents of the "imperialistic Americans." Most Buddhist temples and Confucian shrines were also destroyed.

From 1945 to 1953, when the Korean War ended, several million North Koreans fled to the South for religious reasons. Christian churches have flourished and attracted millions of adherents in South Korea. To compete, the North Korean government quietly supports a new nationalistic religion, the Chondogyo (Eastern Learning). It is very hard to know how many religious communities are surviving and acting underground in the North. Since the 1990s, North Korean government propaganda has claimed that North Koreans fully enjoy freedom of religion. Although some Catholic and Protestant churches have been established in Pyongyang, it is highly likely that these churches were built solely for propaganda purposes.

MILITARY DEFENSE

National defense is proclaimed as the supreme duty and honor of citizens. Citizens are required to defend the country and serve in the army as regulated by law. North Korea strains to maintain a decisive advantage over the South and to be ready for full mobilization at a moment's notice. The North Korean military has the motto "National defense by self-defense." Article 60 of the constitution states: "The State shall implement the line of self-reliant defense, the import of which is to arm the entire people, fortify the country, train the army into a cadre army and modernize the army on the basis of equipping the army and the people politically and ideologically."

National defense seems to be the ultimate goal of the nation; Article 34 suggests that even the national economic development plans are formulated and implemented ultimately "in order to strengthen the national defense capability."

AMENDMENTS TO THE CONSTITUTION

The constitution is amended and supplemented with the approval of more than two-thirds of the total number of deputies to the Supreme People's Assembly.

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Chongko Choi

KOREA, SOUTH

At-a-Glance

OFFICIAL NAME
Republic of Korea

CAPITAL
Seoul

POPULATION
47,900,000 (2005 est.)

SIZE
85,774 sq. mi. (222,154 sq. km)

LANGUAGES
Korean

RELIGIONS
Buddhist 25.3%, Protestant 20%, Catholic 7%, Confucianist 0.6%, unaffiliated or other 47.1%

NATIONAL OR ETHNIC COMPOSITION
Korean (one ethnic family)

DATE OF INDEPENDENCE OR CREATION
August 15, 1945

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 17, 1948

DATE OF LAST AMENDMENT
October 29, 1987

The Republic of Korea is a democratic republic based on the rule of law, a separation of powers, and a system of checks and balances. Sovereignty resides in the people, from whom all state authority derives. In order to protect freedoms and rights to the maximal extent, the constitution also provides for the independence of the three branches of government: the executive, the legislature, and the judiciary.

The constitution of Korea was adopted on July 17, 1948, and has been amended nine times. The Constitution of the Republic prescribes a presidential system for the executive branch of the government. The presidential system was designed to achieve strong and stable leadership based on a popular mandate.

The traditions of a royal regime and a Confucian hierarchical system, the historical experiences of Japanese invasion and colonial rule, and an autocratic period of rule by military authorities made it difficult to achieve democratic ideals and the rule of law and to realize the ideals and spirit of the constitution.

However, economic development and the advent of civilian government opened a new era in Korean democracy and constitutionalism. The Constitutional Court, established in 1988, has also contributed to the constitutional ideal and played an important role in protecting the people's concrete constitutional rights.

CONSTITUTIONAL HISTORY

The Constitution of the Republic of Korea was first promulgated on July 17, 1948, after independence from Japanese colonial rule. It has been amended nine times. The original constitution entailed detailed constitutional provisions for the protection of fundamental rights, as well as separation of powers, influenced by Western constitutions. However, there were numerous difficulties in adapting constitutionalism in South Korea. Frequent amendments of the constitution and the extension of the tenure of presidents were both meant to provide an aura of legitimacy to a regime that gained power by a coup d'état.

The original 1948 constitution underwent its first revision in 1952, when President Syngman Rhee tried to extend his term by instituting martial law. He altered the

constitution to allow a direct popular vote for the presidency and additionally to provide for a bicameral legislature. Under the original constitution, the president was elected by a unicameral National Assembly.

In 1952, the assembly was controlled by political parties opposed to Rhee. Despite this opposition, Rhee succeeded in revising the constitution. It was the height of the Korean War (1950–53), and the assembly met in the temporary capital of Pusan, where the administration had taken refuge. Rhee declared and enforced martial law to repress all political activity. The assembly's vote for the constitutional revision was taken in the middle of the night with all 166 members standing in an atmosphere of fear. The amendment bill passed, as expected, without a dissenting vote. As a result, Rhee was reelected president by a popular vote.

The second constitutional revision, pushed through in 1954, enabled Rhee to enjoy an unlimited term as president. In this case, an egregious irregularity allowed the revision to pass with one vote less than the constitutionally mandated two-thirds majority of the National Assembly. Ultimately, however, Rhee's constitutional manipulations failed to guarantee him the presidency once he lost popular support in 1960.

The fall of Rhee's government by a popular revolt entailed another constitutional change. The rush in drafting a new constitution, however, failed to accommodate differing views or to provide procedural justice. This third revision adopted a parliamentary system to replace the presidential system. This change so drastically altered the constitution that the new government was dubbed the Second Republic. A fourth revision, also in 1960, accommodated legislation for the retroactive punishment of those found guilty of election irregularities, corruption, and misappropriation of public property. This amendment was a result of popular pressure and provided a constitutional exception to the principle prohibiting retroactive penalties.

The fifth amendment, in fact a full rewrite, was imposed in 1962 by the military government that followed the coup d'état of 1961. This amendment restored the presidential system and the unicameral legislature. The sixth amendment, written in 1969, raised the presidential term limit to three, thus enabling Park Chung Hee to seek a third consecutive term. The seventh amendment in 1972, a second rewrite, effectively allowed President Park Chung Hee to rule for life, by removing term limits and introducing indirect elections of the president through an electoral college. Under this constitution, the president was truly all-powerful, with the authority to fill one-third of the seats in the National Assembly, to dissolve the National Assembly, and to issue emergency decrees that could easily be used as means to oppress opposition groups or individuals.

The eighth amendment, the third rewrite, was passed in October 1980 by the military government of Chun Doo Hwan, who took power after the assassination of President Park Chung Hee in October 1979. The amendment provided for a single seven-year term for the president, while maintaining the system of indirect elections and thus shielding Chun Doo Hwan from the risk of defeat in a popular election.

In the latter part of the 1980s, public protests against the authoritarian military government intensified. The political authorities faced a dilemma—whether to extend their rule by extraordinary means, such as martial law, or whether to accommodate popular sentiments. Unlike previous regimes, those in power took the latter option. The 1987 constitutional revision represents a dramatic departure from previous changes in both its political process and its meaning.

The 1987 rewrite was the last amendment to date. It restored popular elections for president and limited the president to a single five-year term. The same year, South Korea experienced its first peaceful transfer of power since independence.

The 1987 constitution, which became effective on February 25, 1988, strengthened the power of the National Assembly, considerably reduced the power of the executive, and provided for stronger protection for basic rights. In particular, a European-style Constitutional Court was established as a venue for citizens to seek redress when basic rights are infringed. The Constitutional Court has played a decisive role in firmly establishing constitutionalism in Korea.

FORM AND IMPACT OF THE CONSTITUTION

South Korea has a written constitution codified in a single document that takes precedence over all other national laws. Article 6(1) states: "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." Therefore, international law is generally regarded as domestic law, and as must domestic law it must be in accordance with the constitution to be applicable within Korea. The constitution of Korea is the supreme law; all other must comply with its provisions.

The Constitutional Court has played an important role by reviewing the constitutionality of laws and controlling the exercise of governmental power. Today, the constitution is firmly rooted in the mind of the people as a supreme law of the state and a source of fundamental values for society.

BASIC ORGANIZATIONAL STRUCTURE

Korea is not a federal system. The Korean constitution foresees the decentralization of the nation, but Korea has a tradition of a highly centralized government.

Local governments, in the words of Article 117 of the constitution, "shall deal with matters pertaining to the well-being of local residents, shall manage properties, and may establish their own rules and regulations regarding local autonomy as delegated by national laws and decrees." This constitutional provision, however, remained largely unfulfilled until July 1995, when the nation elected governors and mayors for provincial and local governments for the first time in more than 30 years. Before, local governments were no more than administrative districts of the central government. The heads of local governments were appointed by the central government, and their capacity for autonomous decision making was virtually nonexistent.

Currently, there are 16 provincial-level governments and 235 municipal governments, including 72 *si* (city) governments, 94 *gun* (county) governments, and 69 *gu* (autonomous district) governments. Provincial governments, although they have some functions of their own, basically serve as intermediaries between the central and municipal governments.

LEADING CONSTITUTIONAL PRINCIPLES

Korea's system of government is a parliamentary democracy. There is strong division among the executive, legislative, and judicial powers based on checks and balances.

The Korean constitutional system is defined by a number of leading principles. Sovereignty in Korea is held by the people, and all governmental authority is derived from the people. Korea is a democratic republic, a social and cultural state, based on the rule of law. In Article 1(1), the constitution states: "The Republic of Korea shall be a democratic republic." This means that Korea is a nation based on freedom and democracy and there shall be no monarchy. Article 1(2) states: "The sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people."

Sovereignty held by the people is generally realized by indirect, representative democracy. However, Article 72 says: "The President may submit important policies relating to diplomacy, national defense, unification and other matters relating to the national destiny to a national referendum if the president deems it necessary." The constitution, therefore, provides for the possibility of direct democracy, which can prevent distortion of the people's true opinions.

The principle that Korea shall be a social state means that the government must take action to ensure a minimal standard of living for every citizen. This principle does not imply any denial of private property. According to Article 34 of the constitution: "(1) All citizens shall be entitled to a life worthy of human beings. (2) The State shall have the duty to endeavor to promote social security and welfare." This principle is also realized by Article 23(2), which states: "The exercise of property rights shall conform to the public welfare."

The rule of law is also a fundamental principle. All state actions impairing the rights of the people must have a basis in parliamentary law and must respect the priority of human rights and substantial equality.

The idea that the state must support culture in order for it to flourish and promote world peace is a constitutional principle in Korea. Article 9 of the constitution provides: "The state shall strive to sustain and develop cultural heritage and to enhance national culture." Article 5(1) further provides: "The Republic of Korea shall endeavor to maintain international peace and shall renounce all aggressive wars."

CONSTITUTIONAL BODIES

The constitution provides for a three-branch governing system, whereby administrative functions are under the executive branch, headed by the president, lawmaking functions are the preserve of the National Assembly, and judicial functions belong to the courts. Structurally, these three branches are highly independent of each other.

The members of the National Assembly are elected by the people, and the National Assembly's leaders and officers are chosen by the members themselves. As for the president, he or she is not required to obtain the approval of the National Assembly in appointing top executive officials, except the prime minister and the director of the Board of Inspection and Audit. The head of the Supreme Court, the chief justice, although appointed by the president with the consent of the National Assembly, has the power to recommend to the president the appointment of other Supreme Court justices and has the power to appoint all other judges.

It is not the Supreme Court but the Constitutional Court that has the authority to render judgments regarding the constitutionality of laws, impeachments, and the dissolution of political parties. The Constitutional Court also adjudicates jurisdictional disputes between government agencies, between national and local governments, and between different local governments.

The Executive (The President)

The president is the head of state and represents the state in international affairs. He or she is also the head of the executive branch, and the commander in chief of the armed forces. In case of the president's death or disability, the prime minister temporarily acts as president according to an order of succession provided by law. The Korean constitution gives many powers to the president, in order to maintain the functional effectiveness of the state and unify various administrative opinions.

The power and duties of the president are defined in the following six areas: First, the president, as head of state, symbolizes and represents the whole nation in

both the governmental system and foreign relations. The president receives foreign diplomats; presents awards, decorations, and other honors; and performs pardoning functions. Upon inauguration, the president takes an oath to safeguard the independence, territorial integrity, and continuity of the state, as well as to protect the constitution. In addition, the president is entrusted with the unique duty to pursue the peaceful unification of the Korean Peninsula.

Second, the president, in the capacity of chief executive, enforces all laws passed by the legislature and issues orders and decrees for the enforcement of these laws. The president has the full power to direct the State Council and oversee a varying number of advisory organs and executive agencies. The president is authorized to appoint public officials, including the prime minister and the heads of executive agencies.

Third, the president, in the capacity of commander in chief of the armed forces, has extensive authority over military policy, including the power to declare war.

Fourth, the president is the chief policymaker and chief lawmaker. The president may propose legislative bills to the National Assembly or express views to the legislature, in person or in writing. The president cannot dissolve the National Assembly; rather, it is the National Assembly that may hold the president accountable under the constitution by means of the impeachment process.

Fifth, the president is vested with extensive emergency powers. In case of internal turmoil, external menace, natural disaster, or severe financial or economic crisis, the president can take emergency financial and economic action or issue orders that have the effect of law. The president can exercise these powers only when there is insufficient time to convene the National Assembly and the actions or orders are absolutely essential to maintaining national security or public order. The president must subsequently notify and obtain the concurrence of the National Assembly. If the National Assembly declines to do so, the measures are nullified.

Sixth, the president is empowered to declare a state of martial law in accordance with the provisions of law in time of war, armed rebellion, or similar national emergency. The exercise of such emergency power is, however, subject to subsequent approval of the National Assembly.

The president is elected for a single five-year term by popular vote through universal, equal, direct, secret balloting and cannot be reelected. The president must be at least 40 years of age and have been resident in Korea for over five years.

The Legislature (The National Assembly)

Legislative power is vested in the unicameral National Assembly. The assembly is composed of 273 members, each serving a four-year term. Assembly members elected by popular vote compose five-sixths of the membership, with the remaining seats distributed proportionately among parties winning five seats or more in the direct election. The proportional representation system is aimed at appointing assembly members who will represent national interests rather than local interests.

To be eligible for election, a candidate must be at least 25 years of age. One candidate from each electoral district is selected by a plurality of votes. An assembly member is not held responsible outside the assembly for any opinions expressed or votes cast in the legislative chamber. During a session of the assembly, no assembly member may be arrested or detained without consent of the assembly except in the case of a flagrant criminal act.

Except as otherwise provided in the constitution or law, the attendance of more than one-half of the entire assembly members and the concurrent vote of more than one-half of the assembly members present are necessary to make decisions of the National Assembly binding.

The National Assembly is vested with a number of functions under the constitution, the foremost of which is making laws. Other functions of the assembly include approval of the national budget; matters related to foreign policy, declaration of war, the dispatch of armed forces abroad, or the stationing of foreign forces within the country; inspection or investigation of specific matters of state affairs; and impeachment of the president.

The Lawmaking Process

Bills may be introduced by members of the National Assembly or by the executive. A bill passed by the National Assembly is sent to the executive, and the president promulgates it within 15 days.

The president can object to a bill and request that it be reconsidered. The president gives a written explanation for this request; however, he or she may not request the National Assembly to reconsider the bill in part, or with proposed amendments.

If the National Assembly repasses the bill in the original form with the attendance of more than one-half of the total members and with a concurrent vote of two-thirds or more of the members present, it becomes law.

The Judiciary

The judicial power is vested in courts composed of judges who are independent of the executive and legislative branches. There are three tiers of courts in Korea: the district courts, which include the specialized family courts and the administrative courts. The high courts and the district courts are divided into geographic districts. The Court Organization Act grants the courts general jurisdiction to preside over civil, criminal, administrative, electoral, and other litigious cases.

The act also allows for decisions in noncontentious cases and other matters that fall under their jurisdiction, in accordance with the relevant provisions. In addition, military courts may be established under the constitution as special courts to exercise jurisdiction over criminal

cases in the military. Nonetheless, even in these cases the Supreme Court retains final appellate jurisdiction.

The most important issue in the judiciary is the independence of the courts—of the judiciary as an organization, and the justices as individuals. Article 103 of the constitution provides: "Judges shall rule independently according to their conscience and in conformity with the Constitution and Law." According to Article 105, the term of office of the justices of the Supreme Court is six years, and they may be reappointed. The term of office of other judges is 10 years, and they may be reappointed as well. Also in Article 106(1), the constitution guarantees that except by impeachment, or by a serious criminal sentence, no judge can be removed or suspended from office or suffer a reduction in salary or any other unfavorable treatment except by disciplinary action.

Constitutional Court

The Constitutional Court was established in September 1988, as provided in the Constitution of 1987, as a key component of the constitutional system. It was founded on the lessons of past constitutional history and with the clear goal of protecting basic rights and restraining the abuse of state power.

The court is empowered to interpret the constitution and to review the constitutionality of all statutes, to make judicial decisions on impeachment or on dissolution of a political party, and to pass judgment in disputes over authority or constitutional complaints. The court is composed of nine justices. The term of office for the justices is six years and is renewable.

Despite its relatively short history, the Constitutional Court has succeeded in firmly establishing both the constitutional adjudication system and itself as a constitutional institution. The mature awareness of the people and the favorable political environment also contributed to the increasing activity of the court. The high volume of cases demonstrates the court's present and future significance in implementing its goals, safeguarding the constitution, and protecting basic rights. Now the constitution is firmly rooted in the life of the people as the supreme law of the state.

THE ELECTION PROCESS

Any Korean national who is at least 20 years old as of the date of an election has the right to vote and the obligation to exercise his or her right in a sincere manner by participating in an election. Any Korean national of at least 40 years of age may declare himself or herself a candidate for the presidency, and anyone at least 25 years old, except those barred by law, may run for the National Assembly, a local government post, or a local council seat.

The National Election Commission is an independent constitutional agency established for the purpose of managing fair elections and referenda and administering affairs related to political parties and political funds. Political parties or candidates found to be violating election laws receive a fine and a warning or are ordered either to halt or to correct their activities. If the warning or injunction is not heeded, the party in violation is prosecuted, or the case is turned over to an investigative agency.

POLITICAL PARTIES

Political parties in Korea have developed in conjunction with the democratization process and the diversification of society. They are an essential ingredient of the modern democratic political system. The constitution guarantees the multiparty system and the freedom to establish political parties. Article 8 defines the important role and function that political parties play in the republic: "Political parties may be organized freely and multiple parties shall be allowed. The objectives, organization and activities of a political party shall be democratic. Political parties shall have an organization conducive to participating in the process of forming the people's political opinions." The constitution also declares that the purpose, organization, and activities of all political parties shall be in line with democratic principles. If the purposes or activities of a political party are contrary to the fundamental democratic order, the government may bring an action against it to the Constitutional Court for its dissolution, and the political party shall be dissolved in accordance with the decision of the Constitutional Court.

CITIZENSHIP

Korean citizenship is primarily acquired by birth. A child acquires Korean citizenship if one of his or her parents is a Korean citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

Korean constitutional law defines fundamental rights in its second chapter, Rights and Duties of Citizens. This chapter guarantees civil rights and human rights. The starting point for fundamental rights in the constitution is the guarantee of human dignity and the pursuit of happiness. Article 10 says: "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." After this provision, the constitution guarantees numerous specific fundamental rights. The rights guaranteed by the constitution can be classified as rights to freedom and equality, as well as social rights, among others.

Article 12 states that all citizens shall enjoy personal liberty and includes detailed provisions for the protection against unlawful imprisonment. Individuals may not be punished, placed under preventive restrictions, or subjected to involuntary labor "except as provided by law and through lawful procedures."

The constitution also provides for other freedoms such as the freedom of residence, occupation, privacy, conscience, religion, speech, press, and assembly. The constitution also guarantees the right to property, the right to vote, and the right to a public trial.

An equal treatment clause is contained in Article 11(1), which provides that "all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." The principle of equality stipulated by Article 11(1) of the constitution does not imply imposition of absolute equality without any differential treatment. Rather, it stipulates a relative equality prohibiting differential treatment without reasonable basis in legislation and enforcement of the law. Therefore, differential treatment or inequality with a reasonable basis does not violate the principle of equality.

The constitution guarantees basic social rights and thereby imposes on the state a duty to shape substantive conditions for everyone to exercise his or her basic rights by his or her own means. Article 34(1) of the constitution states: "All citizens shall be entitled to a life worthy of human beings." Also there are specific provisions including protection of working women from unjust discrimination; state protection for citizens incapacitated by disease, old age, or youth; environmental protection measures; housing development policies; and "protection for mothers."

Also the constitution guarantees people's inherent, but unlisted, rights. Article 37(1) provides that "freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution."

Impact and Function of Fundamental Rights

The Korean constitution provides for many basic freedoms that guarantee people's rights and liberties. These basic freedoms have distinct essences and functions, and their values are not uniform. For example, the protection of freedom of speech is stronger than that of the right to a healthy environment.

It is a leading opinion that the impact of fundamental rights applies only to the government, not to private citizens. There is no specific constitutional provision addressing this issue. Article 68(1) of the Constitutional Court Act provides that "any person who claims that his or her basic rights, guaranteed by the Constitution, have been violated by an exercise or non-exercise of governmental power may file a constitutional complaint."

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limitation. The Korean constitution states the specific requirements for possible limitation of fundamental rights. Article 37(2) states that "the freedoms and rights of citizens may be restricted by Law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated."

The most important principle regarding the limitation of fundamental rights is the principle of proportionality. Laws restricting a fundamental right must not use excessive means to accomplish and facilitate the legislative purpose; this is called the appropriateness of means. Also, the means must be that which is the least restrictive of basic rights, among other equally appropriate means that could accomplish the legislative purpose; this is referred to as the minimal restriction. Finally, there must be an appropriate relationship of proportionality between the extent of restrictions on basic rights and the weight of the public interest accomplished; this is the idea of balancing of interests. Additionally, restrictive laws must not deny the essential content of the right to property.

ECONOMY

The Korean constitution espouses the principle of the free market as a basis for the Korean economy. Article 119(1) of the constitution states that "the economic order of the Republic of Korea shall be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs," thereby declaring the adoption of a free market economy based on the right to private property, the principle of private autonomy, and the principle that the liabilities for general torts are allocated according to fault.

The constitution, however, also adopts the principle of a social state. Article 119(2) provides that "the State may regulate and coordinate economic affairs in order to maintain balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power, and to democratize the economy through harmony among the economic agents." Furthermore, Article 34(1) stipulates that "all citizens shall be entitled to a life worthy of human beings," and Article 34(5) pronounces that "citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by law."

In sum, while the economic order adopted by the constitution can be classified as a free market economy based on the protection of the right to private property and respect for free competition, it also has characteristics of a social market economy in that the state is expected to

regulate and coordinate the economy to prevent the possible adverse effects of a free market economy, to promote social welfare, and to achieve social justice.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed by the Korean constitution. Article 20(1) states that "all citizens shall enjoy the freedom of religion," and Article 20(2) stipulates that "no state religion shall be recognized, and church and state shall be separated."

Freedom of religion may include the freedom of belief in religion, religious activity, religious assembly, missionary work, or others. The freedom of belief and religion is regarded as an absolute one, but others can be restricted for the maintenance of law and order, or for public welfare.

There is no state religion, all public authority must remain strictly neutral in its relations with the religious communities, and all religions must be treated equally. In a case arguing that administering the judicial examination on a Sunday violated the freedom of religion and the right of equality, the Constitutional Court held that, unlike in numerous Western countries, where the Christian culture forms the basis of society, in Korea, Sunday is merely a holiday, not a day set out for specific religious service. Therefore, the state's decision to administer the judiciary examination on Sunday does not unreasonably discriminate against the complainant's religion in relation to other religions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are charged with the "sacred" mission of national security and defense. The Republic of Korea endeavors to maintain international peace and renounces all aggressive wars. Korea is seeking unification and follows a policy of peaceful unification based on the principles of freedom and democracy in the presence of a divided nation. This goal is specifically mentioned in Article 4 of the constitution and underlined by several other articles.

In Korea, all citizens have the duty of national defense, and general conscription requires all men above the age of 18 to perform basic military service for more than two years. Woman can volunteer. In addition, there are professional soldiers who serve for fixed periods or who pursue military careers.

The president is commander in chief of the armed forces. However, to declare war, dispatch the armed forces to foreign states, or station alien forces in the territory of the Republic of Korea, the consent of the National Assembly is required.

The president may proclaim martial law under the conditions prescribed by law, to cope with a military necessity, or to maintain public safety and order during a mobilization of the armed forces in time of war, armed conflict, or similar national emergency. Under martial law, limits may be put on the need for warrants or on freedom of speech, the press, assembly, and association, and special measures may be taken on the powers of the executive and the judiciary by law.

The president must notify the National Assembly on the proclamation of martial law without delay. When the National Assembly asks that martial law be lifted, by the concurrent vote of a majority of all its members, the president must comply.

AMENDMENTS TO THE CONSTITUTION

The Korean constitution has been designed to make amendment difficult. A proposal to amend the constitution can be introduced only by a majority of all the members of the National Assembly or by the president. The National Assembly must decide upon the proposed amendments within 60 days of the public announcement; adoption requires the concurrent vote of two-thirds of all the members. The proposed amendments must be submitted to a national referendum not later than 30 days after adoption by the National Assembly.

For the amendment to pass, more than half of eligible voters must participate, and more than half of the votes cast must be in favor. Furthermore, the constitution states in Article 128(2): "Amendments to the Constitution for the extension of the term of office of the President or for a change allowing for the reelection of the President shall not be effective for the President in office at the time of the proposal for such amendments to the Constitution."

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Un Jong Pak

KUWAIT

At-a-Glance

OFFICIAL NAME
State of Kuwait

CAPITAL
Kuwait

POPULATION
2,257,549 including 1,291,354 nonnationals (July 2004 est.)

SIZE
6,854 sq. mi. (17,820 sq. km)

LANGUAGES
Arabic

RELIGIONS
Muslim (Sunni 70%, Shia 30%), 85% Christian, Hindu, Parsi, and other 15%

NATIONAL OR ETHNIC COMPOSITION
Kuwaiti 45%, other Arab 35%, South Asian 9%, Iranian 4%, other 7%

DATE OF INDEPENDENCE OR CREATION
June 19, 1961 (from United Kingdom)

TYPE OF GOVERNMENT
Constitutional hereditary monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 11, 1962

DATE OF LAST AMENDMENT
May 16, 2005

In June 1961, after independence and under a possible Iraqi threat, the then-ruler (*amir*) of Kuwait announced his plan to establish constitutional rule. Drafted by a partially elected Constituent Assembly, the constitution was promulgated the following year. While Kuwait has experienced partial suspensions of the constitution (in 1967, 1976, 1986, and during the Iraqi occupation), the document has eventually been reenforced.

The constitution defines Kuwait as "a hereditary emirate" but does not define the precise line of succession. While granting the ruler substantial powers, the constitution also guarantees political participation to Kuwaiti full citizens. The system of government is defined as democratic with sovereignty residing in the people. Citizens participate, via the unicameral National Assembly, in making laws and in supervising the government.

The constitution protects civil rights as "specified by law." It also guarantees the judiciary's independence. Islamic Sharia is *a* (not *the*) main source of legislation.

The constitution grants citizens a number of social rights, which form the basis for Kuwait's extensive welfare system. It provides for state involvement in the national economy while also protecting private property. Non-Kuwaitis, however, enjoy only restricted access to the welfare system.

CONSTITUTIONAL HISTORY

Kuwait's ruling family, the Al Sabah, established themselves in the area early in the 18th century, along with allied tribes and leading merchant families. The family was never able to govern as a complete autocracy; it had to take the merchant families into account. By the end of the century the British had the country under their domination.

In the early 20th century the governing balance was disrupted, not least as a result of British intervention.

Discontent among the merchant elite led to the creation of a first National Legislative Council in 1938. The experiment lasted only six months.

Kuwait's present constitution was drafted after its independence by a Constituent Assembly. It consisted of 20 elected members and 11 appointed cabinet ministers. On November 1, 1962, the draft constitution was approved by the then-*amir,* Sheikh Abdallah al-Salim Al Sabah, and went into force on January 29, 1963, when the first National Assembly convened.

Parliament was dissolved temporarily in 1967 and again in 1976; this was accompanied by the suspension of some constitutional protections of political and civil rights. In 1980, the suspended articles were reinstated along with the National Assembly. In 1986, the constitution and the National Assembly were suspended again, prompting popular opposition as a constitutional movement was formed.

The opposition grew stronger after the Iraqi occupation in 1990, during which all constitutional rights were abrogated. During the Iraqi invasion, the exiled ruler, Sheikh Jabir al-Ahmad Al Sabah, met with members of the opposition in Saudi Arabia; he agreed to restore parliament and allow greater freedom once the Iraqis had been driven out. Accordingly, after Kuwait's recovery of sovereignty in 1991, most press restrictions were lifted and elections to a new National Assembly took place.

Atypically for its region, the Kuwaiti parliament has succeeded in forcing cabinet ministers to resign. It has also imposed legislation against the objections of the royal family.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is contained in a written document. International law has to be transformed into national law to become applicable within the country.

BASIC ORGANIZATIONAL STRUCTURE

Kuwait is divided into five governorates (*muhafazat*).

LEADING CONSTITUTIONAL PRINCIPLES

Kuwait is a hereditary principality (emirate); succession is within the ruling family but can move laterally (along brothers). The Islamic Sharia is a (not the) principal source of law. The constitution states that the system of government is democratic, with sovereignty vested in the people. Separation of powers is established, but the executive is dominant. The legislative power is vested in the amir (emir) and the National Assembly. The executive power is vested in the amir, the cabinet, and the ministers (Articles 51 and 52).

CONSTITUTIONAL BODIES

The constitutional bodies are the *amir,* the cabinet, and the National Assembly. An audit commission is stipulated for budgetary control. The constitution makes no mention of a Constitutional Court, yet one has been established.

The Amir

The *amir* is the head of state. He appoints and dismisses the prime minister "after the traditional consultations" as well as the ministers. The *amir* designates the heir apparent, who has to be accepted by the majority of the National Assembly. The *amir* has the right to initiate laws and to send back laws passed by the National Assembly with an explanatory note. His rejection can be overridden by two-thirds of the assembly. The *amir* is supreme commander of the armed forces.

The Executive Administration

The executive branch of government consists of the prime minister and the Council of Ministers or cabinet. While no reference to that effect is made in the constitution, the ruling family is well represented in the Council of Ministers. Cabinet ministers are subject to votes of no confidence.

If the majority of elected members of the National Assembly (that is, excluding the ex officio members) decide to remove a minister, that minister is considered to have resigned. The prime minister is privileged; if the National Assembly decides that cooperation with him is impossible, the *amir* can either dismiss the prime minister and the cabinet or dissolve the National Assembly.

The National Assembly

Fifty members of the National Assembly are elected directly by secret ballot; 25 members are appointed by the *amir.* The assembly term is four years. The National Assembly makes legislation and supervises the government. The assembly has actually exercised its right to questioning, interpellation, and voting no confidence in ministers.

The Lawmaking Process

Any member of the National Assembly can initiate a bill. If it is accepted by a majority, it is presented to the *amir,* who can reject it. His rejection can be overridden by a two-thirds majority.

The Judiciary

Kuwait's legal system is a mix of British common law, Egyptian civil law, and Islamic legal principles. Sunni and Shii Muslims have separate Sharia courts for cases of personal status and inheritance. The constitution provides for an independent judiciary.

The judiciary is structured in three levels: the courts of first instance, the courts of appeal, and a Court of Cassation (final appeal), which was added in 1990. In 1973 a Constitutional Court was established as well. Its five members are chosen by the Judicial Council by secret ballot; one reserve member is appointed by decree. Judges of the Constitutional Court must be Kuwaiti nationals.

THE ELECTION PROCESS

Males who have reached the age of 21 and are Kuwaiti citizens by birth or have been naturalized for at least 30 years can vote. In 2005 the National Assembly approved a constitutional amendment that granted women full political rights, including the right to vote and run for political office. The amendment requires women voters and candidates to abide by Islamic law. Only a minority of residents are citizens. Hence only a small minority of the population are eligible to vote.

POLITICAL PARTIES

Political parties are formally illegal, but organizations that have similar functions are tolerated. Candidates run as independents, but the government allows parliamentary blocs. A wide spectrum of political groupings exists, respectively, representing merchants, liberals, leftists, nationalists, or Sunni or Shii Islamic groups.

CITIZENSHIP

The Kuwaiti citizenship law is constantly contested, debated, and amended. It distinguishes between Kuwaitis of first, second, or third class. Kuwaiti first-class citizenship is normally acquired by birth to a Kuwaiti father. Other nationals can apply for Kuwaiti citizenship after longtime residence. Apart from a huge population of foreign nationals, there are also many stateless long-term tribal residents (*bedoon*), whose status is still largely unresolved.

FUNDAMENTAL RIGHTS

Civil liberties are guaranteed in the constitution. There are safeguards against illegal searches and arrests, and protections for the privacy of homes. The constitution guarantees the right to a fair trial and protects freedom of opinion and the press and academic freedom. Freedom of religion is guaranteed "provided it does not conflict with public policy or morals." The freedom to form associations is guaranteed; private assemblies are permitted without prior permission, and public assembly with such permission. Social rights for Kuwaiti nationals are prominently stated in the constitution: The state aims to eliminate illiteracy and provide education and health care. Work, and the freedom to choose an occupation, are guaranteed rights for Kuwaiti nationals.

Impact and Functions of Fundamental Rights

While Kuwaiti history has experienced stages in which fundamental rights have been suspended, they have nonetheless become ingrained in Kuwaiti society. Their permanent abrogation now seems unlikely.

Limitations to Fundamental Rights

Civil and political rights, though guaranteed in the constitution, are limited by law. For example, several laws empower the government to jail or fine journalists for a variety of offenses. In fact, however, convictions are extremely rare. While media criticize the government, self-censorship is applied with regard to criticism of the *amir*.

Private sector workers have the right to strike; however, the huge group of foreigners working as domestic servants are not protected. Women are legally disadvantaged in matters of personal status and inheritance. Stateless people (*bedoon*), though often longtime residents, are denied full civil rights.

ECONOMY

The constitution guarantees the right to private property. The national economy's stated goal is social justice. Natural resources and their revenues are state property.

RELIGIOUS COMMUNITIES

Islam is the state religion. Sunnis and Shiites worship freely, though the latter complain of insufficient government funding for mosques. Christians are allowed to practice without interference, but Hindus, Sikhs, Baháis, and Buddhists can worship only in private. All inhabitants of Kuwait have the duty to observe and respect public morals.

MILITARY DEFENSE AND STATE OF EMERGENCY

The *amir* is the supreme commander of the armed forces and can declare defensive war; offensive war is forbidden.

He can also proclaim martial law, but only with the approval of the majority of the National Assembly.

AMENDMENTS TO THE CONSTITUTION

An amendment may be proposed by either the *amir* or one-third of the National Assembly. A two-thirds vote in the assembly is needed for passage. Even then the *amir* has the final decision—he may refuse to promulgate it. The monarchical system and the principles of liberty and equality are not subject to amendment, although the "title of the emirate" may be changed, and guarantees of liberty and equality may be increased.

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KYRGYZSTAN

At-a-Glance

OFFICIAL NAME
Kyrgyz Republic

CAPITAL
Bishkek

POPULATION
5,081,429 (July 2004 est.)

SIZE
76,641 sq. mi. (198,500 sq. km)

LANGUAGES
Kyrgyz and Russian (official languages)

RELIGIONS
Muslim 75%, Russian Orthodox 20%, other 5%

NATIONAL OR ETHNIC COMPOSITION
Kyrgyz 64.9%, Uzbek 13.8%, Russian 12.5%, Dungan 1.1%, Ukrainian 1%, Ungur 1%, other 5.7% (1999 census)

DATE OF INDEPENDENCE OR CREATION
August 31, 1991

TYPE OF GOVERNMENT
Authoritarian presidential regime

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
May 5, 1993

DATE OF LAST AMENDMENT
February 2, 2003

Kyrgyzstan is a presidential autocracy with a strong president exercising control over executive, legislative, and judicial powers. The president appoints and dismisses the administration, the judges, and the governors. Free, equal, direct, fair, and transparent elections are guaranteed by the constitution.

Kyrgyzstan is made up of seven provinces and of the cities of Bishkek and Osh. The constitution provides fundamental human rights; individuals as well as selected government institutions may appeal to the Constitutional Court to protect these rights. Religious freedom and state noninterference in religious matters are guaranteed. Nontraditional religious groups may act relatively freely, although the Islamist Party Hizb ut-Tahrir has been designated by the Constitutional Court as "extremist." It is charged with inciting interethnic hatred and seeking to overthrow constitutional order.

CONSTITUTIONAL HISTORY

Around the year 1000 C.E., members of 40 Central Asian Turkic tribes began to identify themselves collectively as Kyrgyz or forty tribes; they established the Great Kyrgyz Khanate in the Yenisei River basin, in today's southern Siberia and western Mongolia. After the khanate was destroyed by the Mongolian invasion of the 13th century, the Kyrgyz tribes moved west to the territory currently known as Kyrgyzstan, where they continued to develop a distinct language and identity and a culture mainly characterized by a nomadic lifestyle.

At the beginning of the 19th century, the rulers of the khanate of Kokand gradually captured vast territories of today's Kyrgyz Republic. In 1876, the epoch of the Kokand Khanate came to an end, and territories were incorporated into the Russian Empire, under the czar's

Turkistan governor-generals. After the Russian Revolution of 1917, the Bolsheviks consolidated their control of the region in 1918. With the establishment of the Soviet Union in 1926, the Kyrgyz Autonomous Soviet Socialist Republic was founded, renamed the Kyrgyz Soviet Socialist Republic in 1939. After the collapse of communism in Russia and the failure of the hardliners' coup in Moscow, Kyrgyzstan reluctantly declared its independence on August 31, 1991. On May 5, 1993, a new constitution was introduced, replacing the 1978 constitution of the Kyrgyz SSR and the 1977 constitution of the Soviet Union. The post-Soviet constitution was amended several times by means of national referenda, most recently on February 2, 2003.

FORM AND IMPACT OF THE CONSTITUTION

Kyrgyzstan has a written constitution, codified in a single document that takes precedence over all other national law. International law must be in accordance with the constitution to take precedence over Kyrgyz law.

BASIC ORGANIZATIONAL STRUCTURE

Kyrgyzstan is a centralistic state. It is made up of seven provinces (*oblasttar*) and the cities of Bishkek and Osh. The provinces differ considerably in geographical area, population size, and economic strength.

The provinces are governed by *akims* (governors), appointed and dismissed by the president upon recommendation of the prime minister and after approval of the corresponding local *kenesh* (council). The *akims* of towns and villages are directly elected.

According to the constitution, the *akims* coordinate the activity of the local offices of the central ministries, administrative agencies, and other executive bodies. They are accountable to the president and the prime minister.

LEADING CONSTITUTIONAL PRINCIPLES

The Kyrgyz system of government is dominated by the president, who controls executive, legislative, and judicial power. The judiciary is not fully independent. The constitutional system is defined by a number of leading principles: state sovereignty, centralism, democracy, and secularity.

Political participation is restricted, as major key positions—such as governors—are appointed by the president. However, the Parliament and the councils of the regions, districts, and towns are directly elected. Rule of law is an important principle; all state bodies, public associations, and citizens are obligated to act according to the constitution and the law. State and religion are separated.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the administration; the Parliament, called Jogorku Kenesh; and the judiciary, including the Constitutional Court.

The President

The president is the head of state and the highest official of Kyrgyzstan, defined as the "symbol of the unity of the people and state power, the guarantor of the Constitution of Kyrgyzstan, and of rights and freedoms of the person and citizen." The president defines the fundamental directions of internal and external state policy, adopts measures to protect the sovereignty and the territorial integrity of the republic, ensures the unity and continuity of state power, and coordinates the functions and interactions of state bodies in line with their responsibility to the people. The president is directly elected for a five-year term and can be reelected only once.

The president appoints the prime minister with the approval of the Jogorku Kenesh. The president also appoints—in consultation with the prime minister and with the consent of the respective Parliament—the members of the administration and the *akims* (governors) of the provinces. The president also appoints and dismisses other key governmental figures such as prosecutors and judges.

The Administration

The administration consists of the prime minister, the ministers, and the state committees. Jointly with the administrative agencies and local state administration, the national administration implements the executive power. The prime minister and the ministers he or she recommends are appointed by the president with the consent of the Jogorku Kenesh. The Jogorku Kenesh may recall the administration in a motion of no confidence.

The administration ensures enforcement of the constitution and all legislative acts; ensures pursuance of state policy in major policy fields, including foreign policy; develops and carries out nationwide development programs; takes measures to secure state sovereignty, the defense of the country, and national security; and ensures interaction with the civil society.

The Jogorku Kenesh (Parliament)

The Jogorku Kenesh is the main representative body. It consists of 75 deputies, elected for a term of five years. The Jogorku Kenesh introduces amendments and supplements to the constitution, adopts laws, and approves the

national budget. It approves the administration on the recommendation of the president and can dismiss it by a vote of no confidence. Also, it elects and removes the ombudsperson and the members of the Constitutional Court and the Supreme Court, all on the recommendation of the president.

The Lawmaking Process

The right of legislative initiative belongs to the president, the Jogorku Kenesh, the administration, and any 30,000 voters by means of a popular initiative. A law goes into effect after it has been adopted by the Parliament, signed by the president, and published in the media. The president has the right to return the law with objections to the Jogorku Kenesh but lacks the right to a final veto.

The Judiciary

The judicial system in Kyrgyzstan comprises the Constitutional Court, the Supreme Court, the Supreme Arbitration Court, and local courts. All high-ranking judges as well as the procurator are elected by the Jogorku Kenesh upon the suggestion of the president; all judges of local courts are directly appointed and dismissed by the president with the consent of the Jogorku Kenesh.

The Constitutional Court consists of eight judges elected for 10-year terms. It has exclusive jurisdiction over constitutional disputes, which can be submitted by government agencies and individuals. It validates presidential elections and has the power to dismiss the president. It judges the constitutionality of the actions of political parties and social and religious organizations.

The Supreme Court of Kyrgyzstan consists of 24 judges. It is the highest body of judicial power in the sphere of civil, criminal, and administrative legal proceedings.

The constitution also provides for courts of elders who consider property and family disputes and any other matters submitted to them with the aim of reaching reconciliation among the disputing parties. The decisions made by the courts of elders may not contradict the law and may be appealed.

THE ELECTION PROCESS

All Kyrgyz citizens over the age of 18 have the right to vote in elections. Citizens who have reached the age of 25 by election day and have been permanent residents in Kyrgyzstan not less than five years have the right to stand for parliamentary elections. To be registered as a candidate in presidential elections, one has to have reached the age of 35 and not exceeded 65; be able to speak fluently the state language, Kyrgyz; and have lived no less than 15 years on Kyrgyz territory.

Citizens who have been judicially certified as insane, as well as those sentenced to prison, may not take part in the elections. Citizens whose verdict is outstanding or who have previous convictions may vote; however, they are not eligible to stand for elections.

During a state of emergency or martial law, referenda and elections are not permitted.

POLITICAL PARTIES

The constitutional right to form political parties is limited by provisions banning organizations that violate fundamental constitutional principles, aim at changing the constitution, endanger national security, or are established on religious grounds. The participation of political parties in state affairs is restricted to the nomination of candidates for election to the Jogorku Kenesh and bodies of local self-governance, and the formation of factions in representative bodies.

Very few political parties are known to the population. More than 40 political parties reflecting local interests have been registered; they are centered around charismatic figures and lack broad membership. The role they play in public life is limited by the overall presence of the strong civil society.

CITIZENSHIP

All people who were living on the territory of Kyrgyzstan on December 15, 1990, are entitled to acquire Kyrgyz citizenship. A person can acquire Kyrgyz citizenship if at least one of his or her parents holds Kyrgyz citizenship, or if the person has lived on Kyrgyz territory for more than five years.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights in its second chapter. The first part, which relates to "human rights and freedoms," emphasizes the traditional set of individual, political, economic, and social rights. The second part explains the "citizen's rights and duties." The dignity of an individual is absolute and inviolable.

Impact and Functions of Fundamental Rights

According to the constitution, every person is entitled from birth to basic human rights and freedoms that are absolute, inalienable, and protected by law and guaranteed by the judiciary. Human rights and freedoms determine the meaning, content, and application of laws in Kyrgyzstan. Kyrgyz customs and traditions that do not contradict human rights and freedoms (such as respect for the elderly and caring for relatives and friends) are supported by the state. Control over the observance of human and civil rights and freedoms in Kyrgyzstan is exercised by the ombudsperson, who is elected by Parliament.

Limitations to Fundamental Rights

According to the constitution, restrictions on the exercise of rights and freedoms may be imposed only on the basis of a law reviewable by a court decision, and only for the purpose of protecting the rights and freedoms of other persons, public safety and order, territorial integrity, or the constitutional structure.

ECONOMY

The constitution does not specify the economic system of Kyrgyzstan. However, it provides certain rights that have economic implications. Among them is the legal protection of all forms of ownership (private, state, communal, and others). According to the constitution, no person can be deprived of his or her property arbitrarily; confiscation against the will of the owner is allowed only by decision of a court. The constitution also defines social rights, such as the right to work, to the free use of one's abilities and free choice of profession and occupation; to free education; and to free use of the network of state and municipal public health institutions.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a basic human right. According to the constitution, religious organizations and associations must be separate from the state and equal before the law. Religious organizations are not allowed to pursue political goals and tasks. The Constitutional Court may decide upon the constitutionality of the activity of religious organizations. In November 2003, the Constitutional Court designated the moderate Islamist Party Hizb ut-Tahrir as "extremist" for their role in inciting interethnic hatred and seeking to overthrow the constitutional order.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is the chief commander of the armed forces and appoints and dismisses its commanders. The president has the power to declare a universal or partial mobilization and announces—in close cooperation with Jogorku Kenesh—a state of war.

The armed forces may be used in case of external aggression or upon the request of another state within a collective defense system. The use of the armed forces to resolve internal state political issues is prohibited. The armed forces may be used to assist in the aftermath of natural disasters.

In Kyrgyzstan, general conscription requires all men over the age of 20 to do basic military service of 18 months (from 2006, 12 months). In addition, there are professional soldiers who serve for fixed periods. Women are not required to serve but may serve as professional soldiers. There is an alternative nonmilitary service option for conscientious objectors, which lasts 24 months.

According to the constitution, Kyrgyzstan strives for universal and just peace, mutually beneficial cooperation, and resolution of global and regional problems by peaceful means. It has obliged itself by international treaties not to produce atomic, biological, or chemical weapons.

AMENDMENTS TO THE CONSTITUTION

Amendments and supplements to the constitution may be introduced by referendum or by Jogorku Kenesh by a two-thirds majority of all deputies. No amendments or supplements to the constitution are allowed during states of emergency.

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Marie-Carin von Gumppenberg

LAOS

At-a-Glance

OFFICIAL NAME
Lao People's Democratic Republic

CAPITAL
Vientiane

POPULATION
6,368,481 (July 2006 est.)

SIZE
91,429 sq. mi. (236,800 sq. km)

LANGUAGES
Lao

RELIGIONS
Theravada Buddhist 60%, other 40%

NATIONAL OR ETHNIC COMPOSITION
Lao Lum 66%, Lao Thoeng 24%, Lao Sung 10%

DATE OF INDEPENDENCE OR CREATION
July 19, 1949 (from France); full sovereignty 1954

TYPE OF GOVERNMENT
Socialist People's Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
August 14, 1991

DATE OF LAST AMENDMENT
May 6, 2003

Laos is a single-party socialist state, which in the 1990s experienced the transition to a free market economy model but retains a political structure typical of communist states in the 20th century. The "leading nucleus" of the political process is the Lao People's Revolutionary (Communist) Party (Article 3 of the Lao constitution). Since the beginning of the 1990s, a gradual strengthening of the rule of law can be observed; the constitution, first adopted in 1991, was significantly amended in 2003. An increasing amount of legislation has been adopted since the early 1990s, but the implementation of genuine rule of law is still considered to be deficient, and pluralist political democracy is absent.

CONSTITUTIONAL HISTORY

The birth year of Laos as a state is commonly considered to be 1353, when King Fa Ngoum founded the Kingdom of Lane Xang with the northern city of Luang Prabang as capital. During the 18th century, the state broke into three separate kingdoms, which eventually all were under Siamese (Thai) control. Laos was recreated as a French protectorate, but a significant part of the Lao ethnic and formerly Lao-ruled territory remained under Thai control. After a short period of independence during the turmoil of the final phase of World War II in 1945, the modern Laos, as it was territorially shaped by France, finally gained full sovereignty in 1954.

Laos traditionally was a monarchy, and French colonial rule did not change this system in principle. With the first constitution, passed May 11, 1947, under the French, Laos became a parliamentary monarchy. The constitution was suspended for a short period in 1960–61 but basically remained in force until the communist takeover in 1975. In that year the monarchy was abolished. The communist leadership did not at first issue a constitution; it ruled the country for more than 15 years on the basis of government decrees. The legal basis of government was reduced to a minimum, with no constitutional framework and little legislation.

In the era of profound transformation of communist countries that began in the late 1980s, Laos retained its political structure but transformed economically. Some progress was made toward the rule of law; a constitution was adopted in 1991, and subsequent attempts were made

to regulate the most important fields of law by parliamentary legislation. A potentially significant leap forward was taken with the constitutional amendments in 2003.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is a single document, adopted in 1991 and amended in 2003. After its adoption, for the first time since the communist takeover a parliamentary lawmaking process became routine. The amendment of the constitution in 2003 demonstrates an attempt to strengthen this impact, as the new Article 96 provides: "The Constitution of the Lao P.D.R. is a fundamental law of the nation. All laws must comply with the constitution."

However, questions of interpretation of the constitution are still within the competence of the Standing Committee of the National Assembly rather than any kind of independent judicial power. As a further sign of the constitution's limited impact, the precise content of the 2003 amendments was not published within Laos for more than six months.

BASIC ORGANIZATIONAL STRUCTURE

Laos is a unitary state. For administration purposes, the country is organized into 16 provinces plus a "special zone," which is administered by the military, and the independent prefecture of the capital, Vientiane. Further administrative entities are districts and villages. The strengthening of local powers has been on the legislative agenda recently, but democratic centralism remains a primary constitutional principle (Article 5).

LEADING CONSTITUTIONAL PRINCIPLES

Although the Lao political structure is clearly of socialist origin, the constitution does not use the word *socialism*. However, Article 3 provides for the role of the Lao People's Revolutionary Party, which it calls the "leading nucleus," and Article 5 states that "democratic centralism" must guide the creation and functioning of all state organizations.

CONSTITUTIONAL BODIES

The predominant constitutional body is the National Assembly, with its powerful standing committee. Other constitutional bodies are the president and the executive administration. The constitution also mentions the leading role of the Lao People's Revolutionary Party, and the importance of certain other political organizations such as the Lao People's Revolutionary Youth Union and the Lao Women's Union, but no details about their powers and competences are defined.

The National Assembly

The National Assembly is supposed to represent the people of Laos. It has the typical duties of a National Assembly, such as adopting laws and choosing members of the administration. In reality, the formal authority of the National Assembly is largely constrained by the informal powers of the Lao People's Revolutionary Party. The members of the National Assembly are elected in general elections for a term of five years.

The Lawmaking Process

Legislation is typically prepared by the administration, adopted by the National Assembly, and promulgated by the head of state.

The President

The president is the head of state and is elected by a two-thirds majority of the National Assembly. Reelection is allowed. The president is not the head of the administration, but rather represents the country abroad; promulgates laws; officially appoints the prime minister, the ministers, and other officials; is head of the armed forces; and exercises the right to pardon. In general, these functions can be described as the typical competencies of presidents in parliamentary democracies or kings in parliamentary monarchies. However, some of the provisions are vague, so that a more political presidency could emerge. In practice, the office of the president was at first merely ceremonial; however, because more recently the most powerful person in Laotian political life, Khmatay Siphandone, holds the presidential office, it now has much more political relevance.

The Executive Administration

The executive administration consists of the prime minister, deputy prime ministers, cabinet ministers, and chairs of organizations with ministry status. The prime minister is appointed by the president after the approval of the National Assembly. The prime minister is the head of the executive administration and responsible for its policies and for the appointment of a range of officials. The National Assembly can force the resignation of the executive administration or any of its members by a vote of no confidence.

The Judiciary

The judicial branch consists of the People's Supreme Court, the Courts of Appeal, the People's Provincial and Municipality Courts, District Courts, and the Military

Court. Some internationally assisted reform projects have tried to strengthen the independence and efficiency of the courts and helped inspire the constitutional amendments of 2003. However, the standing committee of the National Assembly still has the authority "to interpret and explain the provisions of the Constitution and laws."

THE ELECTION PROCESS

The constitution leaves most elements of the election process to be detailed by respective laws. It does set the age of suffrage at 18 and the age of eligibility at 21.

POLITICAL PARTIES

The constitution mentions only one political party, the Lao People's Revolutionary Party (LPRP), which is called the leading nucleus of the political system (Article 3). The constitution does not mention the possibility of other political parties, and there are no laws providing for them. In reality, since 1975 Laos has been a one-party system, in the tradition of Soviet-style democratic centralism (Article 5). Demands for a multiparty system have been rejected as unlawful in court rulings.

CITIZENSHIP

According to the constitution, Lao citizens are persons who hold Lao nationality as prescribed by law. A new nationality law, combining features of both *ius sanguinis* and *ius soli,* was adopted in 2004.

FUNDAMENTAL RIGHTS AND DUTIES

The constitution provides for human rights, including social and economic rights. The classic liberal rights are guaranteed within a framework of laws, which define the scope of the freedoms in detail. However, the practical importance of human rights has been limited so far; for example, the use of political rights is under strict scrutiny for conformity to the system. Effective remedies to enforce the rights guaranteed by the constitution are not yet available. The Criminal Code of 1989 imposes repressive criminal sanctions on "infractions against the Nation's stability and social order." It has been used as an instrument to silence even modest activism on behalf of political reform, despite the fact that Article 31, now Article 44, has officially protected freedom of speech, press, and assembly since the constitution was first promulgated.

Laos is party to some international human rights treaties. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were signed in 2000, but ratification has not yet been undertaken. In general, national laws are not well harmonized with international treaty obligations.

ECONOMY

In the aftermath of the 1975 revolution, Laos adopted a socialist model command economy based on state planning. As have other countries in the region, since the late 1980s it has moved toward a market economy within a classic socialist political framework. In contrast to that in Vietnam, this shift is not clearly documented in constitutional history, because "socialist" Laos adopted a constitution very late, after the new free market policies had already been implemented. However, in comparison to the original text of 1991, the 2003 amendments provide some evidence of the new economic path; for example, they protect foreign investments and strengthen private property and ownership in general. Nevertheless, the language of Chapter 2, The Socio-Economic System, still shows a belief in the efficacy of a state-controlled economy.

RELIGIOUS COMMUNITIES

The majority of Laos's population is Buddhist, and the Buddhist religion plays a significant role in life, culture, and politics. However, the constitution does not accord Buddhism the rank of a state religion, as in neighboring Cambodia. According to Article 9, "The state respects all lawful activities of Buddhists and other religious followers" but strictly prohibits "all acts of creating division of religion and classes of people." Within the provisions on basic rights, the constitution grants the right to believe or not to believe in any religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

According to its constitution, Laos pursues a foreign policy of peace, independence, friendship, and cooperation. It promotes peaceful coexistence and respects the principle of noninterference. The obligations to defend the country, to maintain security, and to perform military service are explicitly mentioned as fundamental duties of Lao citizens, but the details are to be prescribed by law. Currently, there is three-year compulsory military service for males. The 2003 constitutional amendments call on the defense and security forces to improve and strengthen themselves and call on the state to provide any support needed to ensure the physical and mental condition of these forces.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution require approval by two-thirds of the members of the National Assembly. The 2003 amendment of the Constitution of 1991 was a substantial reform, adding 18 new provisions and changing many more.

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Jörg Menzel

LATVIA

At-a-Glance

OFFICIAL NAME
Republic of Latvia

CAPITAL
Riga

POPULATION
2,300,000 (2005 est.)

SIZE
24,938 sq. mi. (64,589 sq. km)

LANGUAGES
Latvian (official), Lithuanian, Russian, other

RELIGIONS
Lutheran 24.17%, Roman Catholic 18.71%, Orthodox 15.22%, Old Believer Orthodox 3.48%, Baptist 0.28%, Seventh-day Adventist 0.17%, Methodist 0.04%, Mormon 0.04%, Jewish 0.03%, Muslim 0.02%, unaffiliated or other 37.84%

NATIONAL OR ETHNIC COMPOSITION
Latvian 57.6%, Russian 29.6%, Belorussian 4.1%, Ukrainian 2.7%, Polish 2.5%, Lithuanian 1.4%, Jewish 0.4%, German 0.1%, other 1.6%

DATE OF INDEPENDENCE OR CREATION
November 18, 1918
(from Soviet Union, August 21, 1991)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament (Saeima)

DATE OF CONSTITUTION
February 15, 1922

DATE OF LAST AMENDMENT
January 3, 2006

Latvia is a unitary republic based on the rule of law and the principles of proportionality, justice, and legal certainty. It is a parliamentary democracy with a pluralist system of political parties. There is a clear separation of powers with checks and balances. Fundamental rights are guaranteed and widely respected. Religious freedom is guaranteed, and state and church are separated.

CONSTITUTIONAL HISTORY

Despite the fact that the fundamental law of the state—the constitution—was adopted more than 80 years ago, it is still at the beginning of its development. One of the major reasons is that in 50 years of Soviet occupation, the state of Latvia and constitutionalism could exist only in the imagination of the people. The Republic of Latvia was established on November 18, 1918, and existed till the Soviet's occupation in 1940. The Republic of Latvia was restored on May 4, 1990.

The Republic of Latvia's first legislative institution was called the People's Council. A protoparliament was established with the agreement of eight political parties as a body of 40 members on November 17, 1918, at a time when elections could not yet be held. Mandates in the council were granted not to individuals, but to parties. Each party had a certain number of seats in the council, and these were filled by the members it authorized.

The People's Council adopted several important laws, on rural local governments and their election, on the Latvian monetary system, on educational institutions, and on citizenship. Council elaborated a political platform that can be regarded as the first provisional constitution of the Republic of Latvia. On August 19, 1919, the People's Council adopted a law calling for a constitutional assembly, which was duly elected and held its first session on May 1, 1920.

The Declaration of the State of Latvia was adopted on May 27, 1920. It proclaimed Latvia to be an independent, sovereign republic with a democratic political system vested in the people of Latvia. This declaration together with the Temporary Provisions of the State of Latvia of June 1, 1920, functioned as the country's second temporary constitution.

The Constitutional Assembly (Satversmes Sapulce) was Latvia's first elected legislative body. On February 15, 1922, it adopted the Latvian Constitution (Satversme). After that, a period commenced that may be called the period of parliament, lasting until 1934.

The political atmosphere grew favorable to authoritarianism. Latvia was surrounded by nondemocratic regimes such as Estonia, Lithuania, and Poland. In the unstable lead up to World War II (1939–45), a significant crisis of democracy and constitutionalism seized Latvia. After the recurrent resignations of Latvian administrations, Kārlis Ulmanis became prime minister. He overturned the state on May 15, 1934. Revolution followed quickly, with neither bloodshed nor resistance. On the pretext of internal riots, martial law was proclaimed for six months.

Freedom of speech was restricted, and censorship was introduced. Labor unions and hundreds of other associations were closed. More than 100 organizations of that time were closed, without any exception. Unlike other authoritarian countries of the time, Latvia did not even retain a leading party. All processions and political meetings were prohibited. Dozens of newspapers and magazines were closed, and hundreds of books were banned. Several hundred social democrats were sent to a concentration camp, although they were set free after a year of work on peat marshes. Many officials, municipal employees, teachers, and others lost their jobs for political reasons. The total number of the arrested and dismissed people was approximately 3,000. During that time, anybody could be handed over to a court martial for any crime.

President Alberts Kviesis had remained in office, but when his constitutional term was over on April 11, 1936, he handed over his powers to Ulmanis, who remained president and prime minister until the Soviet occupation. His initial authoritarianism developed into a dictatorship, as he controlled the executive, legislative, and judicial powers.

On June 16, 1940, the government of the Soviet Union issued an ultimatum that the Latvian government resign. The following day the Soviets invaded, in violation of basic principles of international law, and occupied the country. Kārlis Ulmanis signed legal documents dictated by the invaders once the country was occupied. The incorporation of Latvia into the Soviet Union was carried out under the direct supervision of Moscow.

Elections to the Parliament of occupied Latvia were conducted in July in conditions of political terror under an illegal and unconstitutional election law. The new Parliament adopted the Constitution of the Latvian Soviet Socialist Republic—a copy of Stalin's constitution. At first Soviet power lasted only a year as World War II Nazi Germany invaded and occupied Latvia. The country fell into the Soviet sphere after the war as an involuntary republic of the Soviet Union.

Taking advantage of the gathering collapse of the Soviet Union, Latvia renewed its independence as did its two Baltic neighbors. On July 28, 1989, the Supreme Council of the Latvian Soviet Socialist Republic adopted the Declaration On the Sovereignty of the Latvian State.

Elections of the Supreme Council of Latvia were held on March 18, 1990. For the first time since the Soviet occupation, candidates from various political movements were allowed to run for parliament.

On May 4, 1990, the Supreme Council adopted the Declaration on the Renewal of Independence of the Republic of Latvia. As a start toward dismantling Soviet law in the country, the declaration proclaimed that de jure the state had never ceased to exist; the principle of continuity was applied to the laws of the republic of November 18, 1918. The old 1922 constitution was thus once more in effect.

Independent Latvia has since taken its place in the community of nations. It is a member state of the European Union and a member of the North Atlantic Treaty Organization (NATO).

FORM AND IMPACT OF THE CONSTITUTION

The Constitution of the Republic of Latvia (Latvijas Republikas Satversme) is a written, codified single document. It is quite short and laconic. Because of the relative ease of amendment, it may be classified as a flexible constitution.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Latvia is a unitary republic; the country may be defined as a parliamentary republic. As far as the administrative division is concerned, the territory of the state of Latvia, within the borders established by international agreements, consists of the regions Vidzeme, Latgale, Kurzeme, and Zemgale.

LEADING CONSTITUTIONAL PRINCIPLES

According to the constitution, Latvia is an independent democratic republic. It rests on the rule of law and the principles of proportionality, justice, and legal certainty. There is a division of powers.

As a key principle of the constitution, Latvian is the official language in the Republic of Latvia. The sovereign

power of the state is vested in the people of Latvia. All state authority must therefore be justifiable as the will of elected representatives of the people and thus, ultimately, of the people as the sovereign. Parliament is chosen in general, equal, and direct elections by secret ballot, using proportional representation.

Another fundamental constitutional principle, which is gaining increasing importance, is openness to European integration. It is no longer possible to understand Latvian law without taking into account the laws of the European Union.

CONSTITUTIONAL BODIES

The constitutional bodies are Parliament (Saeima), the president, the cabinet of ministers, the State Audit Office, and the courts.

Parliament (Saeima)

The Latvian Parliament consists of 100 delegates elected for a term of four years. The Parliament itself reviews the qualification of its members. It makes decisions by an absolute majority of members present, except in cases specifically set out in the constitution.

Delegates have broad immunity. They can refuse to give evidence in court and may not be called to account by any judicial, administrative, or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. However, court proceedings may be brought against members of Parliament if, even in the course of performing parliamentary duties, they disseminate defamatory statements that they know to be false or any defamatory statements about anyone's private or family life. Delegates may not be arrested, their personal liberty be restricted, or their premises be searched without the consent of Parliament. Delegates may be arrested if apprehended in the act of committing a crime. Without the consent of the Parliament, a criminal prosecution may not be commenced; nor may administrative fines be levied against its members.

The President

The Latvian president is elected by secret ballot by a majority of the votes of members of Parliament, for a term of four years; he or she may be reelected once only. Any person who enjoys full rights of citizenship and who has attained the age of 40 years may run for president. The president may not hold any other office concurrently. If the person elected as president is a member of the Parliament, he or she must immediately resign from the mandate. The president is not responsible to Parliament or the administration in the fulfillment of presidential duties.

The president is the head of the army of Latvia in times of peace. He or she can declare war on the basis of a decision of Parliament. The president has the right to grant clemency to criminals against whom a judgment of the court has come into legal effect.

The head of state can propose the dissolution of Parliament, subject to the approval of a majority of votes in a national referendum. If the voters agree, Parliament is considered dissolved and new elections occur within two months. If more than half of the votes in the referendum are cast against the dissolution of Parliament, the president shall be deemed to be removed from office, and Parliament shall elect a new president to serve for the remaining term of office of the president so removed.

The Cabinet of Ministers

The cabinet of ministers is the administration and the highest executive body of the country. It consists of the prime minister and the cabinet ministers chosen by the prime minister. The cabinet is assembled by the person who has been invited by the president to do so. The cabinet of ministers starts exercising its duties only after receiving a confidence vote in Parliament. Parliament has the right to submit requests and questions to the prime minister or to an individual minister; one of them, or another responsible government official duly authorized by them, must answer.

The number of cabinet ministries and the scope of their responsibilities, as well as the relations among state institutions, are provided for by law.

The Lawmaking Process

The right to legislate is given to Parliament. Draft laws may be submitted by the president, the cabinet, Parliament committees, any five members of the Parliament, or any group that totals one-tenth of the electorate. Legislative initiatives must generally be drawn up in the form of draft laws, but the state president is entitled to submit proposals that are not in the form of draft laws.

All international agreements that might require new or changed laws need ratification by Parliament. International agreements that delegate state power to international institutions must be ratified by Parliament, with a quorum of two-thirds of all members and the approval of two-thirds of members present.

The president has the right to suspend the proclamation of a law for a period of two months; he or she must do so if requested by at least one-third of the members of Parliament. In either case, the decision must be made within seven days of the adoption of the law by Parliament. The suspended law must be submitted to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the two-month period, the law is proclaimed. Parliament can prevent a national referendum by voting on the law again and approving it by a three-quarters majority of all members of the Parliament.

Finally, the cabinet of ministers has the right, if there is an urgent need during the time between sessions of the Parliament, to issue regulations that have the force of law.

Such regulations may not amend the law regarding elections of the Parliament, laws governing the court system and court proceedings, the budget and rights pertaining to the budget, or laws adopted during the term of the current Parliament, and they may not pertain to amnesty, state taxes, customs duties, and loans. These regulations shall cease to be in force unless submitted to Parliament not later than three days after the next session of Parliament has been convened.

The State Audit Office (Valsts Kontrole)

The State Audit Office is an independent collegiate body that reports to the Parliament on the utilization of public funds. The tasks of the State Audit Office are to supervise the legal, effective, and accurate collection and spending of resources in line with the basic budget and special budget of the state and local governments and to moderate the use of state and local government property. The State Audit Office provides annual reports to the Parliament on actual implementation of the state budget of the previous year and issues opinions on the collection and spending of state resources and handling of state property. Auditors general shall be appointed to their office and confirmed pursuant to the same procedures as judges, but only for a fixed period, during which they may be removed from office only by a judgment of the court.

The Courts

The judiciary is composed of district (city) courts, regional courts, the Supreme Court, and the Constitutional Court. The court system is financed from the state budget. In the Republic of Latvia, only a court can administer justice. Judges in Latvia are independent and subject only to the law. Judicial appointments are confirmed by Parliament and are as a rule irrevocable. Parliament may remove judges from office only in the cases provided for by law, on the basis of a decision of the Judicial Disciplinary Board or a judgment of the court in a criminal case. The age of retirement from office for judges may be determined by law. Latvian courts work in accordance with the following principles: legality, openness, presumption of innocence, equality of parties, and collegiality.

A judge has immunity during his or her term of office. A criminal matter against a judge may be initiated only by the prosecutor general of the Republic of Latvia. A judge may not be detained or subjected to criminal liability without the consent of Parliament. A decision concerning the detention, forcible conveyance, arrest, or subjection to search of a judge shall be taken by a Supreme Court justice specially authorized for that purpose. An administrative sanction may not be applied to a judge, and a judge shall not be arrested pursuant to administrative procedures.

The Constitutional Court

The Constitutional Court is an independent institution of judicial power. It reviews cases concerning the compliance of laws with the constitution, and it has the right to declare laws or other enactments or parts thereof invalid. The Constitutional Court also reviews international treaties entered into by Latvia, to verify their compliance with the constitution; it may rule even before Parliament has confirmed the agreement. The court reviews the compliance of other normative acts with legal norms of a higher legal force (such as ordinary law vis-à-vis the constitution). It has responsibility to ensure that Parliament and the cabinet of ministers, president, chairperson of the Parliament, and prime minister all act in compliance with the law (except in their administrative acts). It also rules in cases of ministers' overruling local council regulations and checks the compliance of the national laws of Latvia with the international agreements entered into by Latvia, as long as they are not contrary to the constitution.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens of Latvia who have reached the age of 18 have the right to vote. Elections to Parliament are secret and by proportional representation.

Any legally registered political organization (party) or association of political organizations (coalition) may submit a list of candidates for Parliament. Any citizen of Latvia who has reached the age of 21 by election day may be nominated as a candidate. Only those candidates on lists that have received at least 5 percent of the total number of votes cast will be elected to Parliament. In the seventh Saeima elections of October 3, 1998, six lists of candidates received more than 5 percent of the total number of votes, in 21 candidate lists, which contained a total of 1,081 candidates.

A national referenda may be initiated if the president proposes a dismissal of the Parliament; if the president suspends the publication of a law for two months; if at least one-tenth of the electors request a referendum; if Parliament amends Articles 1, 2, 3, or 6 of the constitution; or if one-tenth of the electors present a complete draft law to the president and Parliament does not accept it.

The constitution prohibits referenda on the following topics: the state budget, loans, taxes, customs, or railroad tariffs; conscription; proclamation of war and opening of hostilities; entry into a peace treaty; proclamation or termination of a state of emergency; mobilization and demobilization; and treaties with foreign countries.

POLITICAL PARTIES

A party (a political organization) can be formed by any group of at least 200 people. The Communist Party and

parties of national socialist (Nazi) disposition are outlawed. At present, there are about 40 political organizations in Latvia, of which eight parties are represented in Parliament.

CITIZENSHIP

Latvian citizens have equal rights and obligations irrespective of the manner in which they have acquired citizenship. Latvian citizens are persons who were Latvian citizens on June 17, 1940, and their descendants who have registered in accordance with the procedures set out in law and who have not acquired the citizenship of another state since May 4, 1990. Persons can acquire Latvian citizenship by naturalization or otherwise in accordance with the procedures set out by law.

A noncitizen, as defined by the "Law on the status of those former U.S.S.R. citizens who do not have the citizenship of Latvia or that of any other state," has the right to a noncitizen passport issued by the Republic of Latvia.

Dual citizenship is not allowed for those who acquire Latvian citizenship. Even if a Latvian citizen, in accordance with the laws of a foreign state, is simultaneously considered a national of that state still, in legal relations with Latvia he or she shall be considered solely a Latvian citizen.

FUNDAMENTAL RIGHTS

The state undertakes to recognize and protect fundamental human rights in accordance with the constitution, laws, and international agreements; all people in Latvia have the right to know about these rights. All are equal before the law and the courts, as human rights must know no discrimination of any kind. All people have the right to defend their rights and lawful interests in fair court proceedings. Courts shall judge trials irrespective of a person's origin, social and financial status, race or nationality, sex, education, language, attitude toward religion, type and nature of occupation, place of residence, or political or other views. All people have the right to court protection against threats to their life, health, personal freedom, honor, reputation, and property. Everyone is presumed innocent until guilt has been established in accordance with law. Everyone has a right to commensurate compensation when rights are violated without legal basis, and everyone has a right to the assistance of counsel. The right to life of everyone must be protected by the law.

According to the Latvian constitution, all citizens have the right to participate in the activities of the state and of local government and to hold a position in the civil service, as provided for by law. Local governments shall be elected by Latvian citizens. The working language of local governments is Latvian. Persons who are members of ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity. The Latvian constitution guarantees everyone the inviolability of private life, home, correspondence, free movement, and choice of residence. Everyone has the right to depart from Latvia freely. Everyone who has a Latvian passport shall be protected by the state while abroad and has the right to return to Latvia freely. A citizen of Latvia may not be extradited to a foreign country.

In the sphere of labor rights, everyone in Latvia has the right to choose employment and workplace freely according to his or her abilities and qualifications. Forced labor is prohibited; participation in the relief of disasters and work pursuant to a court order shall not be deemed forced labor. Every employed person in Latvia has the constitutional right to receive commensurate remuneration for work done, which must not be less than the minimal wage established by the state. Everyone has the right to weekly days off and a paid annual vacation. Employed persons have the right to collective labor agreements and the right to strike. The state must protect the freedom of trade unions. The Latvian state recognizes the freedom of scientific research and artistic and other creative activity and protects copyright and patent rights.

The state must generally protect human honor and dignity; as a result, torture or other cruel or degrading treatment of human beings is prohibited. Freedom of previously announced peaceful meetings, street processions, and pickets is guaranteed. The state supports marriage, the family, the rights of parents, and the rights of children. The state is obliged to provide special support to disabled children, children left without parental care, or children who have suffered from violence. Human health must be protected with a basic level of medical assistance. Everyone has the right to live in a benevolent environment; the state must provide information about environmental conditions and promote the preservation and improvement of the environment.

Everyone has the right to the liberty and security of the person. No one may be deprived of or have his or her liberty restricted, other than in accordance with law. The constitution guarantees freedom of thought, conscience, and religion, and freedom of expression, which includes the right to receive, keep, and distribute information and express views freely. Censorship is prohibited. The right to form and join associations, political parties, and other public organizations is guaranteed, as is the right to address petitions to national or local government institutions and to receive a materially responsive reply in the Latvian language. There is a right to own property, although such property may not be used contrary to the interests of the public.

Social security in old age, for work disability, for unemployment, and in other cases as provided by law is guaranteed. To guarantee the right to education, the state must ensure that everyone may acquire primary and secondary education without charge. Primary education is compulsory.

Impact and Functions of Fundamental Rights

To implement fundamental rights further in practice the Ombudsperson (Tiesibsargs) is an independent institution that promotes the observance of human rights. It is contributing to the creation of a society in which human rights are genuinely respected. The office is independent in its decisions and activities and can only make recommendations to the competent administrative authorities in order to prevent and to remedy injustices.

Limitations to Fundamental Rights

The rights of persons may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the state, or public safety, welfare, and morals.

ECONOMY

The Latvian constitution does not mention economic matters directly. It does, however, secure the right to own property. Property may not be used contrary to the interests of the public, but property rights may be restricted only in accordance with the law. The expropriation for public purposes is allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.

RELIGIOUS COMMUNITIES

The separation of church and state has never implied segregation of religion from society or complete exclusion of the church from social life. This would not be possible in a democratic country, as religion and religious associations form one of the structural elements of society. The role of the church in the internal national processes in Latvia should not be underestimated. Public polls show that 70 percent of Latvian citizens and 60 percent of noncitizens trust the churches. Embracing this potential, churches have sought to influence state policy and laws. Latvia is a multiconfessional country, where the three largest denominations are the Catholics, the Lutherans, and the members of the Orthodox Church. There are about 170 different denominations and religious groups.

The Law on Religious Organizations, special agreements with the traditional denominations, and special laws for churches govern the state-church relationship in Latvia. It is based on separation, respectful neutrality, religious freedom, and the delegation of some peculiar powers. The government has delegated the right to register marriages to some denominations only; their clerics thereby assume the responsibilities of state officials, but they are not provided with any compensation from the state.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Parliament determines the size of the armed forces during peacetime. If in accordance with the constitution of the Republic of Latvia (Article 62) the state is threatened by an external enemy, or if an internal insurrection anywhere in the country endangers the existing political system, the cabinet has the right to proclaim a state of emergency.

The leading institution of state administration in the defense field is the ministry of defense, which is directly subordinated to the minister of defense. The minister of defense is a civilian who has political responsibility to the Parliament and to the cabinet.

The president of state is the commander in chief of the armed forces. During wartime the president appoints a supreme commander. The president has the right to take whatever steps necessary for the military defense of the state, should another state declare war on Latvia or an enemy invade its borders. Concurrently and without delay, the president must convene Parliament, which decides as to the declaration and commencement of war.

During peacetime, military units are recruited from Latvian citizens via conscription into mandatory active military service. No one may be accepted into military service if he or she has been sentenced for a criminal offense; is a suspect, accused, or defendant in a criminal case; is unfit for service because of health; or is or has been a staff employee or a supernumerary of the security service, intelligence, or counterintelligence service of the Soviet Union; the Latvian Soviet Socialist Republic; or any foreign state.

There is an alternative service of 24 months for conscientious objectors, 18 months for those who have higher education.

AMENDMENTS TO THE CONSTITUTION

Parliament may amend the constitution. The amendments require three readings and must be approved by two-thirds of the members present (with a quorum of two-thirds of all members). Amendments that affect the form of the state, the sovereign power of the people, territorial components, the state language, the election of Parliament, or certain other basic elements must be submitted to a national referendum. Any group of one-tenth of the electorate may submit a fully elaborated draft amendment to the president, who must present it to Parliament. If Parliament does not adopt it without change, it is submitted to national referendum.

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Ringolds Balodis

LEBANON

At-a-Glance

OFFICIAL NAME
Lebanese Republic

CAPITAL
Beirut

POPULATION
3,874,050 (2006)

SIZE
4,015 sq. mi. (10,400 sq. km)

LANGUAGES
Arabic (official), French, English, Armenian

RELIGIONS
Muslim (Shia 32%, Sunni 20%, Ismailite, Alawite 54%, Christian (Maronite 23%, Greek Orthodox, Greek Catholic, Armenian Orthodox [Gregorian], Armenian Catholic, Protestant, Syrian Orthodox, Syrian Catholic, Latin [Roman Catholic], Copt, Assyrian, Chaldean Catholic) 39%, Druze, Yazidi, Jewish, and other 7%

NATIONAL OR ETHNIC COMPOSITION
Arab 95%, Armenian 4%, other 1%

DATE OF INDEPENDENCE OR CREATION
November 22, 1943 (from League of Nations mandate under French administration)

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral national assembly

DATE OF CONSTITUTION
May 23, 1926

DATE OF LAST AMENDMENT
September 3, 2004

Lebanon's governmental system is a mix of parliamentary and presidential elements. The 1926 constitution, still in effect, provides for a republican form of government and stipulates that the people are the source of authority and sovereignty. It was complemented by the unwritten National Pact of 1943, which provided for representation by religious confession: a Maronite Christian president, a Sunni Muslim prime minister, and a Shiite Muslim speaker of parliament. The 1991 Taif Agreement led to fundamental amendments to the 1926 constitution. The abolition of political confessionalism is a basic national goal.

Checks and balances among the three branches of government are detailed. Since its independence in 1943, Lebanon has had nearly 50 cabinets and about a dozen presidents. Lebanon is a centralist state, divided into six governorates.

The president is the head of state and the prime minister is head of the administration. The president of the republic is elected by a two-thirds majority of parliament. The president appoints the prime minister in consultation with the parliament's speaker. Since 1990, a Constitutional Council rules on the constitutionality of laws and on electoral disputes. A Higher Court judges the president and the ministers.

There is a multiparty system based on multiple religious groups. The constitution stresses freedom and equality as fundamental rights. The constitution's economic system can be characterized as a social market economy.

CONSTITUTIONAL HISTORY

Lebanon is situated in what is broadly called the Middle East. Because of the territory's centralized location, it changed hands many times throughout antiquity before it was under the control of the Ottoman Turks in 1516.

When World War I (1914–18) broke out, the Ottoman Empire (centered in today's Turkey) took the side of the German Empire and Austria-Hungary. The Allies (including the United States, France, the United Kingdom, and Russia) held out the hope of postwar independence to the Arabs in order to gain support against the Ottoman Empire. At the same time, Britain, France, and Russia made the secret 1916 Sikes-Picot Agreement to divide the Middle East among them. Furthermore, the British Balfour Declaration (1917) promised the establishment of a national home to the Jewish people in Palestine.

The Ottoman Empire was defeated, and the League of Nations (founded after World War I) awarded France a mandate (a treaty between the league and the mandatory power that promised to establish an independent administration in the future) over "Greater Syria," including the territory of Lebanon. The areas that now comprise Syria and Lebanon were assigned to France, and those that now comprise Israel, including the territories of the Palestinian Authority, and Jordan were assigned to Great Britain.

The establishment of Greater Lebanon was proclaimed on September 1, 1920, by General Gouraud, who was appointed by the French to implement the mandate provisions. The country had its present boundaries. The first Lebanese constitution was promulgated in 1926; it was modeled on the 1875 French constitution. It was amended several times and remained in force until 1987.

The French high commissioner suspended the Lebanese constitution in 1932 to prevent the election of a Muslim as president. After a president was elected in 1936, he partially reestablished the 1926 constitution, which was again suspended by the French high commissioner at the outbreak of World War II. The French presence was acknowledged in the constitution, but they exercised their influence outside the constitutional structure.

In 1943 the Chamber of Deputies amended the constitution, abolishing the articles that referred to the French mandate. France arrested the leaders of this effort but released them in the face of internal and external pressure on November 22, 1943, which has been celebrated as Independence Day since.

Leaders of the nation's ethnic groups then reached a political consensus called the 1943 National Pact, which complemented the 1926 constitution. This unwritten covenant included four principles: (1) Lebanon would be a completely independent state, (2) it would not cut its spiritual and intellectual ties with the West, (3) it would cooperate with the other Arab states, and (4) public offices would be distributed proportionally among the recognized religious groups. A Maronite Christian would be president (under the most recent census, from 1932, Christians were in the majority), a Sunni Muslim would be prime minister, and a Shiite Muslim would be Speaker of parliament. The ratio of seats in parliament would be six Christian seats for every five Muslim seats; this was amended in 1990, and the ratio was changed to parity.

With the proclamation of an independent state of Israel in 1948, a series of Arab-Israeli wars started, some of which involved Lebanon.

The elimination of the Palestinian armed presence in Jordan in 1970 led to the arrival of new waves of Palestinian refugees in Lebanon. Palestinian guerrilla groups used Lebanon as a base of operations in their struggle against Israel. They also fought with the Lebanese army until a cease-fire was reached.

By 1975, the Lebanese government had been weakened so much that it could not prevent the outbreak of a civil war, which lasted until 1990. This war has often been characterized as Christian-Muslim conflict. However, the reality was far more complex and involved a shifting constellation of the Lebanese army, Maronite Christians, Sunni and Shiite Muslims, Druze, Palestinians, and other groups. Furthermore, the war also saw the involvement of the country's two neighbors, Israel and Syria.

Syria first intervened on behalf of the Maronite Christians and later switched to backing Sunni Muslim groups. Syria had previously tried to help negotiate a reform of the National Pact, known as the Constitutional Document. Syria's influence was always exercised outside the constitutional structure. In 1989 Lebanese deputies met in the city of Taif (Saudi Arabia) and adopted a document of national understanding. It established, or rather confirmed, the special relationship with the Syrian Arab Republic: Lebanon is linked to Syria by distinctive ties deriving from kinship, history, and common interests. This agreement also ended the civil war in Lebanon. In 1990, the constitution was amended to reflect the Taif Agreement.

In 1982, Israel attacked the Palestine Liberation Organization (PLO), as well as Syrian and Muslim Lebanese forces, and then occupied a band of territory in southern Lebanon. Israel withdrew some forces in 1985 and completed their withdrawal in 2000. After ongoing protests by the Lebanese people in 2005, Syria also withdrew its troops, which had been stationed there since 1976, from Lebanon.

In 2002, the Lebanese Republic was finally recognized as an independent state by Syria. Lebanon, however, does not have bilateral relations with the state of Israel. Lebanon is a founding member of the League of Arab States (LAS).

FORM AND IMPACT OF THE CONSTITUTION

Lebanon's constitution is codified in a single document consisting of 102 articles. It was complemented by the unwritten National Pact of 1943. Among its provisions, the pact provided for the sharing of power among the religious groups: A Maronite Christian would be president, a Sunni Muslim would be prime minister, and a Shiite Muslim would be speaker of parliament.

This earlier arrangement left the Christians the most powerful group politically, the Shiites the least influential. The 1989 Taif Agreement, known as the Document of National Accord, rectified this imbalance, and it too was introduced into the constitution (1990). The president's powers were limited, while the powers of the prime minister and the speaker were enhanced. The fact that ending the civil war entailed a constitutional revision demonstrates the impact that is assigned to the Lebanese constitution.

The constitution is at the top of the hierarchy of domestic norms. All legislative provisions contrary to the constitution are abrogated by Article 102. All treaties that are ratified by Lebanon have the force of law within the country.

BASIC ORGANIZATIONAL STRUCTURE

Lebanon is a unified centralist state, divided into six regional governments.

LEADING CONSTITUTIONAL PRINCIPLES

The preamble, as amended in 1991, outlines a number of constitutional principles. Lebanon subscribes to the Covenants of the League of Arab States, the United Nations Covenants, and the Universal Declaration of Human Rights. The government embodies these principles "in all fields and areas without exception."

Lebanon is a parliamentary democratic republic based on respect for public liberties. People are the source of authority and sovereignty.

The constitution contains the principles of separation of powers and balance and cooperation among the three branches of government. For instance, executive ministers are responsible before parliament, and the dissolution of parliament is a complex process.

The abolition of political confessionalism, the traditional system of allocating power according to criteria of religious affiliation, is a basic national goal. However, in practice, the Taif Agreement has perpetuated political confessionalism as a key element of Lebanese political life.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the prime minister, and the Council of Ministers or cabinet; and the unicameral parliament (National Assembly or chamber of deputies). A Constitutional Council and a Higher Court, rather than a Constitutional Court, review the constitutionality of laws. A National Committee also plays a constitutional role. The senate, an earlier constitutional body, no longer exists.

The President of the Republic

The president is the head of state; the prime minister is head of the administration. The president of the republic is elected by the National Assembly or chamber of deputies in a secret ballot by a two-thirds majority. After a first ballot, an absolute majority is sufficient. The president serves a six-year term and may not be reelected until six years after the expiration of the president's last mandate. In 2004, the sitting president's term was extended to three more years by constitutional amendment. The president appoints the prime minister in consultation with the speaker of the parliament.

The president presides over the Supreme Defense Council and is the commander in chief of the armed forces. The president also negotiates international treaties in coordination with the prime minister.

The president has the right to request the Council of Ministers to reconsider its decisions. The president issues, in agreement with the prime minister, the decree appointing the cabinet and the decrees accepting the resignation of ministers. The president also may ask the cabinet to dissolve parliament.

The president's legal responsibility is generally limited. He or she is liable only in cases of violations of the constitution, high crimes, or treason. In those cases, a president may be impeached by a two-thirds majority of the Constitutional Council.

Even since the Taif Agreement, the president remains a strong and visible constitutional player. However, presidential decisions must be countersigned by cabinet ministers. The only exceptions are the decree appointing the prime minister and the decree accepting the resignation of the cabinet.

The Council of Ministers

The executive power is entrusted primarily to the cabinet or Council of Ministers, who are responsible to parliament. The council is headed by the prime minister, who is also known as the president of the council. The president of the republic also can preside over the Council of Ministers at his or her discretion but does not have a vote.

The council sets the general policy of the executive administration in all fields and prepares bills and decrees. Council meetings are called into session by the prime minister, who sets their agenda. The president may also call the Council of Ministers to an extraordinary session, but only in agreement with the prime minister.

The council may also dissolve the National Assembly at the request of the president of the republic, under certain conditions.

Instead of simple majority decisions, "basic national issues" require the approval of two-thirds of the members

of the council. Such issues include amendments to the constitution; declarations of a state of emergency, war, or peace; general mobilization; international agreements; budgets; and dissolutions of parliament.

Along with the president, the prime minister is a strong constitutional figure; only the prime minister has the constitutional authority to call cabinet meetings. The prime minister may also prevent the cabinet from considering a constitutional amendment.

The Parliament

Legislative power is vested in the chamber of deputies or National Assembly. The chamber meets each year in two ordinary sessions. The National Assembly elects the president of the republic.

Any deputy may raise a motion of no confidence in the administration during ordinary and extraordinary sessions. The National Assembly has the right to impeach the prime minister and cabinet ministers for high treason or for serious neglect of duties.

If the Council of Ministers, requested by the president, dissolves the National Assembly before the expiration of its mandate, a new chamber must be elected within three months. If elections are not held in due time, the decree is void and the old parliament continues to exercise its powers.

In practice, parliament plays a significant role, especially in financial affairs, since it is competent to levy taxes and pass the budget. Its power is further enhanced by the right to hold a no confidence vote.

The Lawmaking Process

Both the National Assembly and the Council of Ministers have the right to propose laws. Laws proposed by the council are delivered to the president, who then forwards them to the assembly for consideration.

A bill indicated as "urgent" must be issued by the president within 40 days of its communication to the assembly, after it is included on the agenda of a general meeting and read aloud before the assembly and after the expiration of the time limit without action by the assembly. Any bill that has been rejected by the assembly cannot be reintroduced during the same session.

The constitution emphasizes that the president promulgates the laws only after they have been approved by the assembly. The president has the laws published; he or she may not modify them or exempt anyone from compliance with their provisions. The president must promulgate the approved law within one month of its transmission, or in cases of urgent laws, within five days.

The president has the right of veto, by requesting that a law be reconsidered, after consultation with the Council of Ministers. The National Assembly can override this veto by an absolute majority of all the members of the assembly. If the president delays action beyond the time limits, the law is considered legally operative and must be promulgated.

Constitutional Council and Council of State

The 1990 Constitutional Council rules on the constitutionality of laws and on electoral disputes. According to the law on the Constitutional Council, it is composed of 10 justices who serve for a term of six years and cannot be reelected. Five members are elected by the National Assembly and five members are elected by the Council of Ministers. The president of the republic, the president of the National Assembly, the prime minister, or any 10 members of parliament have the right to consult the Constitutional Council. Recognized heads of religious communities have the right to consult the Constitutional Council only on laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education.

The Judiciary

The constitution guarantees that judges are independent in the exercise of their duties. According to the constitution, there is an independent judiciary; however, in practice, the judiciary is often subject to political pressure. The Judicial Organization Law governs the structure and functioning of the judiciary.

The judiciary is composed of ordinary and exceptional courts. The ordinary court system is composed of the courts of first instance, the courts of appeal, and a Court of Cassation (final appeal), all of which have separate civil and criminal branches.

Sharia Courts settle matters of personal status among Muslims. Christian and Jewish ecclesiastical courts deal with matters of personal status for individuals in their respective communities. Finally, there are some courts with specialized jurisdiction, such as the labor court, the land court, the customs committee, military courts, and juvenile courts.

A Higher Court judges the president and the ministers. There is no Constitutional Court.

National Committee

The constitution provides for a National Committee, composed of the president of the republic, the president of the National Assembly, the prime minister, and "leading political, intellectual, and social figures." This National Committee must work toward the abolition of religious confessionalism by making proposals to the chamber of deputies and the cabinet ministers and supervising the execution of a transitional plan. During the transitional phase, equitable confessional representation should still prevail in the cabinet. Eventually, however, it must be abolished in accordance with the requirements of national reconciliation and should be replaced by the principles of expertise and competence.

Senate

The Senate was abolished in 1927. When the National Assembly is finally elected on a national, nonreligious basis, the Senate will be established to guarantee representation for all the religious communities. Its authority will be limited to major national issues. The 2005 draft electoral law, which calls for a nonconfessional national constituency, also revives the Senate.

THE ELECTION PROCESS

Every Lebanese citizen above the age of 21 has the constitutional right to vote. According to the 1990 Electoral Law, Lebanese citizens can stand for election as deputy to parliament when they have reached the age of 25.

Parliamentary Elections

The 1990 constitution provides that until such time as the chamber enacts new electoral laws on a nonconfessional basis the distribution of seats is according to the principles of equal representation between Christians and Muslims and proportional representation among the confessional groups within each religious community and among geographic regions. As an exception, vacant seats and newly created seats are to be filled simultaneously by a two-thirds majority of the cabinet. This provision establishes equality between Christians and Muslims as stipulated in the Taif Agreement.

The seats in the National Assembly were allocated by the 1990 electoral law as follows: 34 seats for Maronite Catholics, 27 for Sunni Muslims, 27 for Shiite Muslims, 14 for Greek Orthodox, eight for Druze, five for Armenian Orthodox, five for Greek-Melkite Catholics, two for Alawites, and one each for Armenian Catholics, Protestants, and other groups. A 2005 draft electoral law that created a single constituency for the whole of Lebanon has been heavily criticized by many Lebanese.

POLITICAL PARTIES

Lebanon has had a multiparty system since the 1920s, mostly based on religious affiliation. However, Lebanese political life has never been organized around political parties. Powerful families still play an independent role in mobilizing votes in both local and parliamentary elections, and the confessional element is even more important. The sophisticated electoral system has further contributed to the weakening of the political parties.

CITIZENSHIP

Nationality is determined by law. Citizenship is primarily acquired by descent; that is, a child acquires Lebanon citizenship when he or she is born of a Lebanese father, regardless of the child's country of birth. Dual citizenship is recognized.

FUNDAMENTAL RIGHTS

The constitution stresses freedom and equality as fundamental rights. Economic, social, and cultural rights are somewhat underrepresented in the amended constitution; however, human rights are explicitly mentioned in the preamble.

All Lebanese are equal before the law. Individual liberty is guaranteed and protected by law. There is absolute freedom of conscience. Freedom of expression and the press as well as the rights of assembly and association are guaranteed.

Impact and Functions of the Fundamental Rights

The preamble of the Lebanese constitution as amended in 1990 states in paragraph (b) that Lebanon subscribes to the United Nations Covenants and to the Universal Declaration of Human Rights. Lebanon has ratified both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Human rights organizations have criticized the covert presence and activity of Syrian military intelligence personnel in Lebanon. Palestinian and Lebanese security forces have also purportedly committed numerous serious human rights abuses.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. Some rights are guaranteed only within the "limits established by law," and others are limited by "public order and morals." On the other hand, no fundamental right can be disregarded completely.

ECONOMY

According to the preamble of the constitution, the economic system is based on a free market and ensures private initiative and the right to private property. Expropriation requires fair compensation.

RELIGIOUS COMMUNITIES

There is absolute freedom of conscience. The state, in rendering homage to the "Most High," must respect all religions and creeds. The state guarantees the free exercise of all religious rites provided that public order is not disturbed. The state also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, are respected.

Nineteen religious groups are recognized; however, no official census has been taken since 1932. It is estimated that Muslims, as a whole, make up a majority, and that Shiite Muslims, Sunnis, and Maronites are the three largest groups. The relationship of all these religious groups has been characterized as "coexistence."

The abolition of political confessionalism has been a basic national goal since 1926. According to Article 95 of the constitution, this should be achieved by means of a transitional plan.

MILITARY DEFENSE AND STATE OF EMERGENCY

The National Defense Law stipulates that military service is compulsory for all men aged 18 to 30 for a 12-month period. Exemptions are available for those whose family members have died in service or on grounds of sickness or economic need. Women are not required to serve. Voluntary participation of women is possible.

The president presides over the Supreme Defense Council and is the commander in chief of the armed forces. The deputy head is the prime minister. The constitution emphasizes that the armed forces are subject to the authority of the Council of Ministers.

Declarations of war and peace, as well as the declaration of a state of emergency, are "basic national issues" that require the approval of two-thirds of the members of the Council of Ministers. The constitution does not further explain what measures the executive is then allowed to take and which rights may then be suspended.

AMENDMENTS TO THE CONSTITUTION

The president has the right to initiate a revision to the constitution. The Council of Ministers then submits a draft law to the National Assembly. A revision of the constitution is a "basic national issue" that requires the approval of two-thirds of the members of the Council of Ministers and approval by two-thirds of all members of the National Assembly.

The assembly may also initiate a revision, at the request of at least 10 of its members and a recommendation of a two-thirds majority of all the members. If the recommendation satisfies certain material requirements, the president of the assembly transmits it to the Council of Ministers. If the latter approves the recommendation by a two-thirds majority, the amendment becomes law. Otherwise, the Council of Ministers returns the proposal to the assembly for reconsideration. If three-fourths of all the members approve the amendment, the president of the republic must either accede to the assembly's recommendation or request the dissolution of parliament.

If the assembly is dissolved, and its newly elected replacement still backs the amendment, the Council of Ministers must yield and approve the amendment within four months.

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Michael Rahe

LESOTHO

At-a-Glance

OFFICIAL NAME
Lesotho

CAPITAL
Maseru

POPULATION
2,022,331 (July 2006 est.)

SIZE
11,720 sq. mi. (30,355 sq. km)

LANGUAGES
Sesotho (native), Sesotho, English (official)

RELIGIONS
Christian (est., including Catholic, Lesotho Evangelical, Methodist, Zion, Pentecostal) 90%, African traditional, Islam, and Bahai (statistics not readily available)

NATIONAL OR ETHNIC COMPOSITION
Basotho (a conglomeration of nationalities: Sephuthi, Ndebele, Xhosa, Batlokoa, Zulu, other) 99.7%, European, Asian and other 0.3%

DATE OF INDEPENDENCE OR CREATION
October 4, 1966

TYPE OF GOVERNMENT
Parliamentary democratic monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 5, 1993

DATE OF LAST AMENDMENT
March 13, 2001

Lesotho is a parliamentary democracy; the first section of its 1993 constitution mandates that "Lesotho shall be a sovereign democratic kingdom." There is a clear constitutional division of the executive, legislative, and judicial powers. However, in practice, only the judiciary is independent of the other branches; members of the executive are, necessarily, members of Parliament, the legislative organ. Lesotho is a unitary state made up of 10 administrative districts. The constitution of the state entrenches "fundamental human rights and freedoms," which are, essentially, civil and political rights. Economic, social, and cultural rights are consigned to the third chapter of the constitution, Principles of State Policy, which are not enforceable by any court. However, Lesotho has ratified the United Nations Covenant on Economic, Social and Cultural Rights, 1966.

The king is a constitutional monarch and head of state, whose functions are basically ceremonial and representative. The paramount political figure is the prime minister, who is assisted by ministers and assistant ministers. However, the king has the constitutional right to be consulted by the prime minister and the other ministers on all matters relating to the government. The prime minister and the ministers, who form the cabinet, depend upon the Parliament, whose members are the peoples' representatives and are chosen through both the first-past-the-post and proportional representation electoral systems.

There is no state religion in Lesotho; the government is secular. The constitution guarantees freedom of conscience, including freedom of thought and of religion. Though privatization has accelerated of late, the economy is still predicated upon a mixture of private and public enterprises. Regardless of past unconstitutional forays into government, the military is subject to the civil government.

CONSTITUTIONAL HISTORY

Lesotho has only one neighbor, the Republic of South Africa, which entirely surrounds it. This geographical reality had a lot to do with the early constitutional history

of Lesotho. After persistent imperialistic pressures from the Boers in South Africa, Lesotho, then Basutoland, sought the protection of the British Crown and became a British protectorate or colony on March 12, 1868. Between 1871 and 1884, Britain annexed Basutoland to its Cape Colony, which formed part of present-day South Africa. However, after the Gun Wars of 1880–81, Britain assumed direct control of Basutoland from the Cape colonial government in 1884 and administered the country on its behalf. The constitutional and political governance of Basutoland thus was directly under the authority of orders in council issued by the British Crown and administered by a colonial governor, who was known as a high commissioner. This constitutional arrangement remained in force until Lesotho became independent on October 4, 1966.

The Independence Constitution of 1966, which secured a pluralistic system of political parties, was seriously compromised when in 1970 the ruling Basotho National Party cancelled parliamentary elections (while vote counting was already in progress), when it appeared set to lose. They remained in power during this unconstitutional quagmire, periodically attracting military attacks by guerrilla fighters of the Basutoland Congress Party, which believed it had been cheated of its apparent electoral victory.

In 1986, the military took over the reins of government from the Basotho National Party and remained in power until 1993, when parliamentary elections based on a new constitution put a democratic administration in power. The Basutoland Congress Party, which formed this administration, felt vindicated by its massive electoral victory. The 1993 constitution, which has been amended four times, remains the constitution of Lesotho.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Lesotho is a written one; it takes precedence over all other laws as it is the supreme law of the land. Any other national law that is inconsistent with the constitution is void to the extent of its inconsistency. Likewise, international law must comply with the provisions of the constitution in order to be applicable within Lesotho. International treaties to which Lesotho is a party apply within the country only when their provisions are internalized through legislation.

Certain provisions of the constitution are entrenched and cannot be amended by the passage of ordinary legislation. These provisions deal with, inter alia, the following: the designation of the country as a sovereign democratic kingdom, the supremacy of the constitution, the protection of fundamental human rights and freedoms, the office of king, succession to the throne of Lesotho, the king's right to be consulted and informed concerning matters of government, the vesting of all land in the Basotho nation, and the vesting of the judicial power of the state in the courts of Lesotho.

BASIC ORGANIZATIONAL STRUCTURE

Lesotho is a unitary state, made up of 10 administrative districts. Through enabling acts, some legislative and executive powers may be delegated to these units. However, these powers remain largely centralized in the national government. There is no constitutional division of powers between the national government and the administrative structures in the districts.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government of Lesotho is one of parliamentary democracy, largely following the British Westminster model; the major difference between the two is that Lesotho's system of government is predicated wholly upon a written constitution. The prime ministers and his or her ministers, who form the executive arm of government, are, necessarily, members of Parliament, the legislative arm of government. The cabinet (the prime minister and his or her ministers) exercises the executive authority of state on behalf of the king, who is a constitutional monarch and head of state. The independence of the judiciary is constitutionally secured; the constitution obligates the government to accord such assistance as the courts may require to enable them to protect their independence, dignity, and effectiveness.

The supremacy of the constitution is a major constitutional principle. It is this feature that gives flesh and viscera to the entrenchment of major constitutional principles as discussed earlier. The right to take part in the government of the country, either directly or indirectly through freely chosen representatives in free and fair elections, is availed to all citizens through constitutional guarantees.

The unitary nature of Lesotho, which entails the centralization of the powers of government, is no indication that arbitrariness is the order of the day in the exercise of these powers. The supremacy of the constitution facilitates challenges to the exercise of any of these powers; the rule of law is, thus, a constitutional predicate for governmental action in any form or shape.

CONSTITUTIONAL BODIES

The main constitutional bodies are the office of king, the cabinet, the Parliament, the judiciary, the Council of State, and the ombudsperson.

The King

The king, who is a constitutional monarch, is the head of state. Though the executive authority of the state is vested in the king, such authority is exercised in fact by the prime minister and his or her ministers.

Acting on the advice of the Council of State, the monarch appoints the prime minister. This power is not unfettered, as the king is obliged to choose the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that will command the support of a majority of members of the National Assembly.

The College of Chiefs appoints the king by designating, in accordance with customary law, the person entitled to succeed to the office of king upon the death of the holder of, or the occurrence of any vacancy in, that office.

The Cabinet

The cabinet is made up of the prime minister and other ministers. These other ministers, one of whom is the deputy prime minister, must be at least seven in number. The king appoints the prime minister on the advice of the Council of State and the other ministers on the advice of the prime minister.

The cabinet is responsible for advising the king in the government of Lesotho. Its members are collectively responsible to the two houses of Parliament. The king, acting on the advice of the prime minister, may, in writing, assign any responsibility for any business of the government to any member of the cabinet.

The Parliament

The Parliament, which is the legislative arm of government, comprises the king, the National Assembly, and the Senate. The constitution of 1993 provided for 80 members of the National Assembly. By virtue of the 2001 Fourth Amendment to the Constitution Act, which added a proportional element to the National Assembly elections, there are now 120 members. These members are popularly elected through a general election that is free, direct, and secret. The period of office of the National Assembly is five years.

The Senate, the second house of Parliament, is composed of members nominated by the king acting on the advice of the Council of State and members designated by principal chiefs as senators in their place.

The Lawmaking Process

Lawmaking is effected through bills passed by both houses of Parliament, the National Assembly and the Senate, and assented to by the king. These bills may originate only in the National Assembly. The entrenched provisions of the constitution can be amended only by following a special procedure that goes beyond the passage of ordinary legislation.

The Judiciary

The judiciary is made up of a Court of Appeal, a High Court, Subordinate Courts, Courts-martial, and such tribunals exercising a judicial function as may be established by Parliament. The highest court of the land is the Court of Appeal. The courts enjoy constitutionally mandated independence and freedom from interference in the performance of their functions. They are subject only to the constitution and any other law; however, such other law should not affect their independence.

In underlying this independence, the administration is constitutionally obliged to offer the courts such assistance as they require so as to protect their independence, dignity, and effectiveness.

The Council of State

The Council of State is a body that assists the king in the discharge of the monarch's functions; it also performs other functions as are conferred on it by the constitution. The king is obliged by the constitution to call a meeting of the council to seek its advice on certain enumerated subject areas. If the king fails to do so, the prime minister must summon such a meeting. If he or she, likewise, fails to call such a meeting, any member of the council, with the support of no fewer than seven other members, may call such a meeting.

The Ombudsperson

The king appoints the ombudsperson on the advice of the prime minister. The ombudsperson is empowered to investigate actions taken by any officer or authority whenever it is alleged that a person has suffered injustice in consequence of the exercise of an administrative function.

THE ELECTION PROCESS

All citizens of Lesotho over the age of 18 years have the right to vote in elections and to stand for election. However, a citizen of Lesotho who owes allegiance to any foreign power or state or is under a sentence of death or is adjudged or otherwise declared to be of unsound mind under any law in force in Lesotho does not have the right to vote in any election. In addition to these limitations, a Lesotho citizen who is an unrehabilitated insolvent or who has an interest in a government contract in respect of which Parliament has not granted an exception does not have the right to stand for election to Parliament.

POLITICAL PARTIES

Lesotho operates a multiparty system that underpins the proportional electoral system for the election of members

to the National Assembly. Political life in Lesotho is very active; currently, there are 16 political parties in the country.

CITIZENSHIP

The primary mode for the acquisition of Lesotho citizenship is birth, either in or outside Lesotho. However, at the time of a person's birth, one of the parents must be a Lesotho citizen.

FUNDAMENTAL RIGHTS

Chapter 2 of the constitution sets out "fundamental human rights and freedoms," which basically consist of the classic civil and political rights. Those rights traditionally classified as economic, social, and cultural are set out in Chapter 3 of the constitution, Principles of State Policy. Section 25 in this chapter provides that these principles are not enforceable by any court. However, in line with general international agreement on the indivisibility of all human rights, Lesotho has ratified the 1966 International Covenant on Economic, Social and Cultural Rights as well as the 1966 International Covenant on Civil and Political Rights.

The constitution provides a means for enforcing the provisions of Chapter 2: Any person who alleges that any provision of the chapter has been, is being, or is likely to be contravened to his or her prejudice may apply to the High Court for judicial redress.

Impact and Functions of Fundamental Rights

The stipulation that human dignity is the quintessence of human rights is axiomatic in current rights discourse. This idea provides the underlying momentum for the recent spate of legislation to ensure that women in Lesotho enjoy true equality in the enjoyment of the human rights provided for by the constitution. These include the 2003 Married Persons Equality Act and the 2003 Sexual Offences Act. Ironically, the constitution itself exempted customary law practices that might discriminate against some individuals from its definition of discrimination in the enjoyment of human rights. This exemption has had a negative impact on women, who are subject to such discrimination in Lesotho's patrilineal society, in which men are, by and large, the sole decision makers.

The values underpinning the human rights provisions of the constitution are being given practical effect by an independent judiciary in Lesotho. A good example is the politically charged 1999 case of *Commander of Lesotho Defense Force and Others v. Rantuba and Others*. The respondents, who were wives of soldiers of the Lesotho Defense Force who had been detained by the military authorities after a mutiny in the Force, applied to the High Court seeking an order that their detained husbands be allowed access to legal adviser and that they be either charged with an offense or released forthwith. The commander of the Lesotho Offense Force opposed the application, contending that investigations were still under way regarding a deep-rooted conspiracy within the army, which threatened the nation at large; when this situation improved, he would consider allowing the detainees access to counsel. The Court of Appeal confirmed the High Court's order that the detainees be allowed access to counsel before the said investigations were completed, thereby upholding the human right of access to counsel for legal assistance.

Limitations to Fundamental Rights

There are limitations to the human rights provided for by the constitution; however, the constitution generally requires that any such limitation or derogation must be in the interest of public safety, defense, public order, public morality, or public health. Furthermore, any action taken in the course of such derogation must be a necessary measure that a democratic society would use in dealing with the situation that warranted the limitation or derogation.

ECONOMY

There is no constitutional provision that mandates any specific economic system by Lesotho. The recent increase in the privatization of public-owned utilities and the liberalization of key economic sectors might seem to suggest that the country is heading toward a totally free market system devoid of any governmental or public control whatsoever, in which market forces operate at will. Nothing could be further from the true state of affairs in the country. Because Lesotho is a least developed country whose economy is ranked 147th of 207 and in which poverty is a major problem, most people in the country believe it can ill afford to allow market forces to drive its economy totally.

Thus, market freedom aimed at attracting much needed foreign investment is encouraged, but it is tempered with policies aimed at social responsibility and social justice. This emphasis is in line with the constitutional stipulation that Lesotho shall adopt policies aimed at achieving steady economic, social, and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. The government of Lesotho has, for example, periodically stipulated statutory minimal daily wages and minimal monthly wages for specified occupations such as drivers, domestic servants, messengers, shop assistants, and waiters.

RELIGIOUS COMMUNITIES

Lesotho is a secular state; it has no state religion. The constitution provides for freedom of conscience, which

includes freedom of thought and of religion and the right to propagate one's religion or belief in worship, teaching, practice, and observance. Christian religions form an overwhelming majority in terms of established religions; their adherents are estimated to number around 90 percent of the population.

There is cooperation between the state and the established religions, especially in matters of formal education, as a large number of educational institutions belong to and are largely controlled by religious organizations. For example, of the 1,300 primary schools in Lesotho in 1999, only six were government-owned, 43 were community-owned, one was privately owned, and 1,250 were owned by churches.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides for a defense force vested with the power to maintain internal security and the defense of Lesotho. After the report of a commission of enquiry that investigated certain disturbances within the defense force, the 1996 First Amendment to the Constitution Act was passed. The act makes provision for the establishment and governance of the defense force, police force, and Prison Service. After that act, the 1996 Lesotho Defense Force Act, which provides for the command, control, and administration of Lesotho's defense force, was promulgated. The functions of the defense force, as set out in the act, include the maintenance of law and order, the prevention or suppression of terrorism and internal disorder, the defense of the country, and the maintenance of essential services.

The military must remain subject to the civil government. There is a general sense in recent years that the military is subordinate to the rule of law, and that law and order prevail in the country.

In 1986, the military overthrew the civilian government of the day. This was an apparently illegal act, but it was welcomed by a large segment of the society. The military coup reversed the effect of a constitutional coup d'état carried out in 1970 by the Basotho National Party administration, which had halted the counting of votes in a general election it appeared to be losing. However, popular as the military coup was at first, the military hung on to power until 1993.

A few years later in 1998, the prime minister was forced to rely on the military forces of South Africa and Botswana, acting on behalf of the Southern African Development Community, to quell disturbances that broke out when opposition parties disputed the results of that year's general election, which the governing party won with a landslide. He could not rely on the Lesotho military forces, a sizable segment of which mutinied and refused to quell the disturbances. The case *In re: Court Martial Between the King and Second Lieutenant Sekoati and 50 Others,* in which the accused were charged with the military offense of mutiny and arraigned before a court-martial, emanated from this mutiny.

AMENDMENTS TO THE CONSTITUTION

Any bill, public or private, that seeks to amend the constitution is subject to the overall supremacy of the constitution and should not be inconsistent therewith. Furthermore, whereas any ordinary bill may be passed by a majority of members of Parliament present and voting, a bill to amend the constitution must be supported at the final voting in the National Assembly by a majority of all the members.

Amending the entrenched provisions of the constitution is even harder. They fall into two categories. The first category deals with, inter alia, the designation of Lesotho as a sovereign, democratic kingdom; fundamental human rights and freedoms; and the office of king. After Parliament approves any amendment to these provisions, it must be endorsed in a national referendum.

The second set of entrenched provisions deal with citizenship, the composition of Parliament, constituencies, and the office of the ombudsperson. Any amendment to these provisions requires the votes of no less than two-thirds of the members of each house of Parliament.

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Kenneth Asamoa Acheampong

LIBERIA

At-a-Glance

OFFICIAL NAME
Republic of Liberia

CAPITAL
Monrovia

POPULATION
3,482,211 (July 2005 est.)

SIZE
43,000 sq. mi. (111,370 sq. km)

LANGUAGES
English

RELIGIONS
Christian 40%, indigenous beliefs 40%, Islam 20%

NATIONAL OR ETHNIC COMPOSITION
Indigenous tribes (including Kpelle, Bassa, Gio, Kru, Grebo, Mano, Krahn, Gola, Loma, Kissi, Vai, Dei, Bella, Mandingo, and Mende) 95%, Americo-Liberians (descendants of former U.S. slaves) 2.5%, Congo people (descendents of former Caribbean slaves) 2.5%

DATE OF INDEPENDENCE OR CREATION
July 26, 1847

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral legislature

DATE OF CONSTITUTION
July 3, 1984

DATE OF LAST AMENDMENT
No amendment

Liberia is a republic in which power is distinctly divided among the executive, the legislature, and the judiciary, consistently with the principle of separation of power and checks and balances. As a unitary sovereign state, the central government retains all governing authority. The country is divided into counties for administrative purposes, at present numbering 15.

The elected president is the head of state and the executive and commander in chief of the armed forces. The bicameral legislature comprises a Senate and House of Representatives that pass legislation on behalf of the nation.

Liberia has a dual legal system based on Anglo-American common law and customary law. The Supreme Court is the custodian of the constitution and is the final appellate authority. Fundamental human rights are preserved throughout the constitution with high regard for the principle of equality before the law.

CONSTITUTIONAL HISTORY

With the growth of abolition sentiment in the United States, the American Colonization Society sent its first group of immigrants to present-day Liberia in 1820, with the aim of repatriating former enslaved African Americans to the African continent. Before departing they signed a constitution that in essence granted the society all powers of government and administration in Liberia.

The effort to repatriate slaves intensified, and various independent colonization societies soon founded their own colonies in Liberia, separate from those of the American Colonization Society. In 1838, all these colonies merged to form the Commonwealth of Liberia.

The constitution of 1839 redefined the administration of government in Liberia. The new constitution vested all executive and legislative powers in an appointed governor and council, the latter chosen by popular vote. On

July 26, 1847, a Declaration of Independence was signed and adopted. Liberia became Africa's first independent republic.

The 1847 constitution legitimized the status of the colony and afforded Liberia international recognition as an independent sovereign state. The constitution primarily is an assertion of rights by the former African American slaves to govern themselves. For the most part the document is closely modeled on the constitution of the United States and embraces such principles as democracy, centralism, popular sovereignty, and the rule of law.

On April 12, 1980, the 1847 constitution that had been in force continuously for 133 years was suspended after a military coup d'état. The National Constitutional Drafting Commission submitted a new draft constitution in 1983 and a constitution advisory assembly was appointed to review the draft. On July 3, 1984, the draft constitution was submitted to a national referendum and approved. It entered into force on January 6, 1986.

In December 1989, a group of insurgents entered Liberia from Côte d'Ivoire with the aim of toppling the government. A devastating civil war ensued. Oddly, a national state of emergency was never declared throughout years of bitter conflict; only parts of Nimba County were declared to be under martial law in 1990.

In August 1996, a supplemental agreement to a 1995 peace pact was signed in Abuja, Nigeria. Elections were held in July 1997. Because of the experience of successive interim governments during the civil war, one of the first official actions of the newly appointed administration was to reconfirm the supremacy of the 1984 constitution.

In August 2003, a Comprehensive Peace Agreement was signed in Accra, Ghana. The agreement officially ended the 14-year civil war in Liberia and brought about the resignation of the former president, Charles Taylor. A National Transitional Government was put in place.

FORM AND IMPACT OF THE CONSTITUTION

Liberia has a written constitution embodied in a single document. The constitution is the supreme and fundamental law. Its provisions have binding force and effect throughout the country. The Supreme Court is empowered to declare any laws inconsistent with the constitution unconstitutional.

BASIC ORGANIZATIONAL STRUCTURE

Liberia is a unitary sovereign state divided into counties for administrative purposes. The main governing authority rests with the central government seated in the capital city, Monrovia.

LEADING CONSTITUTIONAL PRINCIPLES

Liberia's system of government is a presidential republic. There are three separate and coordinate bodies of government that function on the basis of a system of checks and balances.

The Liberian constitution adheres to a variety of essential principles. Liberia is a democracy, a republic, and a unitary state that upholds the principle of limited government and accedes to the supremacy of the judiciary.

On the national level there is a strong insistence on tolerance. The constitution recognizes that all Liberian people, irrespective of history, tradition, creed, or ethnic background, are one common body politic.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the executive, the legislature, and the judiciary.

The Executive

The executive power of Liberia is vested in the president, who is the head of state and of the executive and the commander in chief of the armed forces. The president is elected for a term of six years with a limit of two consecutive terms. In order to be eligible for the presidency a person must be a natural-born Liberian citizen, at least 35 years old, the owner of unencumbered property valued at not less than $25,000, and a resident of Liberia for 10 years prior to election.

The president's powers are far reaching and range from such duties as appointing cabinet ministers to concluding international agreements with the concurrence of the legislature. While in office the president cannot be held accountable for actions done in accordance with the provisions of the constitution. Nonetheless, the president may be impeached on a number of grounds, including treason, bribery, and gross misconduct.

The Legislature

The bicameral legislature consists of a Senate and House of Representatives. Each house adopts its own rules of procedure, which must comply with the requirements of due process of law as stipulated in the constitution.

To be eligible to become a member of the legislature a citizen must be a taxpayer and must have been domiciled in the country and constituency to be represented at least one year prior to the time of election. The minimal age requirement is 30 years for the Senate and 25 years for the House of Representatives.

Senators are elected for a term of nine years. Each administrative county sends two members to the Senate. The vice president of Liberia is the president of the Senate and presides over its deliberations.

Members of the House of Representatives are elected for a term of six years. An elected speaker presides over deliberations.

The Lawmaking Process

Both houses of the legislature are authorized to enact laws. A simple majority constitutes a quorum.

The president must approve of all bills and resolutions before they become law. The president has the power of veto, but it can be overridden by a two-thirds majority of members voting in each house.

The Judiciary

The judicial power of Liberia is vested in the Supreme Court, which applies statutory law, based on Anglo-American common law and customary law.

Decisions of the United States Supreme Court are valid and applicable under Liberian law where the Liberian Supreme Court has not ruled on the issue, and where such a decision is not inconsistent with the constitution of Liberia.

The Supreme Court is the final arbiter of constitutional issues and exercises final appellate jurisdiction. Its judgments are final and not subject to appeal or review by any other branch of government. The court is independent.

THE ELECTION PROCESS

At the age of 18 years, all Liberian citizens have a right to be registered as voters and may vote by secret ballot in public elections.

POLITICAL PARTIES

Liberia operates under a pluralistic system of political parties. The constitution, in recognition of the essence of democracy, encourages the existence of multiple parties in order to reflect the varied political opinions of the people. Parties that seek to hinder the existence of free democratic society are denied registration.

CITIZENSHIP

Persons who are black or of African descent may qualify by birth or by naturalization to be citizens of Liberia.

FUNDAMENTAL RIGHTS

The Liberian constitution defines fundamental rights in Chapter 3. As their basis, it states that all persons are equally free and have certain natural, inherent, and inalienable rights that must be legally enforceable. It offers protection against state interference and abuse of power.

The constitution protects conventional civil rights and liberties. Freedom of thought and conscience, women's rights, and the right to privacy are among those safeguarded. The writ of habeas corpus is guaranteed at all times, even during a state of emergency.

Impact and Functions of Fundamental Rights

The intrinsic notion of human rights goes to the root of the Liberian conscience. Liberia is a nation founded on the principle of freedom and social justice, and the protection of fundamental rights is enshrined in the constitution.

Limitations to Fundamental Rights

Save for inalienable rights, such as the right to life, fundamental rights may be subject to qualifications as provided for in the constitution. In particular they may be suspended or limited by the president during a state of emergency.

ECONOMY

The Liberian constitution does not specify a chosen economic system. In developing the nation's economy, emphasis is placed on conditions of equality, the maximal participation of Liberian citizens in the market economy, and the principle of free competition. It is worth noting that only Liberian citizens have the right to own real property.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom of religion. All religious denominations and groups are treated in the same way. In accordance with the principle of separation of religion and state, there is no established state religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is the commander in chief of the armed forces. At all times military power should be in subordination to civil authority and the constitution. The president, in consultation with members of cabinet, may declare a state of emergency when the nation is in clear and present danger.

AMENDMENTS TO THE CONSTITUTION

A proposal to amend the constitution requires a vote of two-thirds of members of both houses of the legislature. It

may be initiated by a petition submitted to the legislature by at least 10,000 citizens and approved by two-thirds of the members of both houses.

If the proposal is ratified in a referendum by at least two-thirds of registered voters no sooner than one year after the legislature action, the amendment goes into effect.

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Amina Ibrahim

LIBYA

At-a-Glance

OFFICIAL NAME
Great Socialist People's Libyan Arab Jamahiriya

CAPITAL
Tripoli

POPULATION
5,631,585 (July 2004 est.)

SIZE
679,362 sq. mi. (1,759,540 sq. km)

LANGUAGES
Arabic, Italian, English

RELIGIONS
Sunni Muslim 97%, other 3%

NATIONAL OR ETHNIC COMPOSITION
Berber and Arab 97%, other (including Greek, Maltese, Italian, Egyptian, Pakistani, Turk, Indian, Tunisian) 3%

DATE OF INDEPENDENCE OR CREATION
December 24, 1951 (from Italy)

TYPE OF GOVERNMENT
Jamahiriya (a state of the masses) in theory, governed by the populace through local councils

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral General People's Congress

DATE OF CONSTITUTION
December 11, 1969

DATE OF LAST AMENDMENT
March 2, 1977

Libya is currently heading gradually toward a free market economy. The Holy Quran is called the constitution of the nation, and Islam is its religion. The theory of people's authority based on the concept of direct democracy forms the basis of political power. The system of governance is regarded to be unique in the world. In practice, the center, especially the revolutionary leader, exercises the dominant power in the state.

CONSTITUTIONAL HISTORY

Libya was declared an independent state on December 24, 1951, in accordance with a United Nations General Assembly resolution of 1949. The United Nations assisted in drafting the Libyan constitution, which was adopted on October 7, 1951, by the Libyan National Assembly. This assembly represented the three territories that constituted the Federal Kingdom of Libya at the time (Tripolitania, Cyrenaica, and Fezzan). The constitution entered into force on the day of Libyan independence.

Although the constitution did not expressly give the Supreme Court constitutional jurisdiction, a constitutional chamber within the Supreme Court was introduced by law. In fact, the first judgment issued by the Supreme Court was in a constitutional case, in which the Supreme Court issued its famous ruling that a royal decree was unconstitutional.

The 1951 constitution was amended in 1962 and again in 1963. These amendments replaced the federal system of the United Kingdom of Libya by a unitary form of state under the name of Kingdom of Libya.

On September 1, 1969, the monarchy was abolished in a revolution, and Libya was declared a republic. On the same day Colonel Muammar al-Qaddafi issued his first revolutionary decree, proclaiming the principles and

main outlines of the new government. On December 11 that year the Revolutionary Committee issued its Constitutional Declaration.

The first chapter of this declaration listed the objectives of the revolution, such as socialism and social justice. The document then presented a tripartite system of government, under the supreme authority of a Revolutionary Command Council, which exercised sovereign legislative and executive powers. None of its measures, including acts of law, decisions, or decrees, would be subject to appeal. The Command Council appointed the Council of Ministers, which executes the general policy laid down by the Revolutionary Command Council and could dismiss the council. It also has the jurisdiction to conclude and ratify treaties, declare war, and proclaim a state of emergency. The constitutional declaration contained several human rights principles. Since the promulgation of the Constitutional Declaration, no permanent constitution has been adopted.

Although the Constitutional Declaration continued to be in force, a new document, the Declaration on the Establishment of the Authority of the People, was issued on March 2, 1977. This declaration completely changed the form of the state and the system of government. Article 2 of the declaration also proclaimed: "The Holy Quran is the Constitution" of the nation.

On the basis of theories developed in Qaddafi's *Green Book,* the new state was called a *jamahiriya* (state of the masses). The theory of the people's authority was based on the concept of direct democracy, exercised by the people themselves. In this unique political system, power was to start from the base and mount to the summit. This was achieved by dividing the state into governorates, containing people's congresses and people's committees. Both congresses and committees were primarily, but not exclusively, entrusted with control over local affairs. At the summit of the people's committees was the General People's Congress.

The people's power concept as briefly specified in the 1977 declaration has been elaborated by laws and practice. The current law organizing the system is law number one of 2001, as amended.

FORM AND IMPACT OF THE CONSTITUTION

Currently, Libya no longer has a single constitution, but rather several constitutional instruments, including the 1969 Constitutional Declaration and the 1977 Declaration of the Authority of the People, which proclaimed the Quran the nation's constitution. Since the declaration, Libya has issued other proclamations of a constitutional nature, such as the Green Charter for Human Rights issued by decision number 11 of 1988 of the General People's Congress, and law number 20 of 1991, Consolidation of Freedom. Both instruments contain provisions relating to the system of government as well as human rights principles.

BASIC ORGANIZATIONAL STRUCTURE

The unitary state is divided into governorates, each with a people's congress and a people's committee.

LEADING CONSTITUTIONAL PRINCIPLES

The preamble of the 1977 declaration specifies a number of basic principles. Among them are the adherence to socialism, freedom, and the commitment to spiritual values to safeguard morals and human behavior.

CONSTITUTIONAL BODIES

The 1977 declaration states that the people's direct democracy is the basis of the political system. The people exercise their authority through the People's Congresses, the People's Committees, and the Professional Unions. At the national level are the General People's Congress; its chairperson, who is head of state; its General Secretariat; and the revolutionary leader.

The Libyan people is divided into people's congresses. All citizens register themselves as members of the People's Congress in their area. Each congress chooses among its members a People's Committee to lead the congress. The committee is responsible to the congress. While the committees have executive and administrative powers, the congresses exercise legislative as well as sovereign functions.

General People's Congress

The General People's Congress is the national conference of the People's Committees and Professional Unions. It is in this forum where laws are enacted and treaties and conventions are ratified. The congress chooses and can dismiss the head and the members of the General Secretariat, the chief justice of the Supreme Court, the prosecutor general, and other high-level state officials.

The General People's Congress chooses a chairperson to preside over its sessions and to accept the credentials of the representatives of foreign countries. This chairperson is also known as the secretary general of the General People's Congress. The first secretary general of the General People's Congress was, since March 2, 1977, the revolutionary leader Muammar al-Qaddafi, who held this position until 1979, but continues to exercise the most important and vital role in the state.

The General Secretariat of the General People's Congress

The General Secretariat (or General People's Committee) of the General People's Congress performs the function of a council of ministers. The secretary general (prime minister) and the secretaries (cabinet ministers) are chosen and dismissed by the General People's Congress. The secretary general and the secretaries are jointly responsible to the congress; each secretary is responsible for the sector the secretary supervises.

Lawmaking Process

Laws are enacted by the General People's Congress.

The Judiciary

The Supreme Court has competence to adjudicate claims submitted by any person with a personal and direct interest that legislation is in contradiction with the constitution. In addition, the Supreme Court has competence over any substantial legal matter related to the constitution or its interpretation that may arise during the proceedings of any case before any court.

THE ELECTION PROCESS

The Basic People's Congresses, as the local bodies that comprise all Libyan citizens, choose their leadership committees. All Libyans over the age of 18 have the right and the duty to vote in the election. The election process continues until the General People's Congress chooses the General People's Committee at the apex of the hierarchy.

POLITICAL PARTIES

The people's power theory is based on the concept of direct democracy, which is exercised by the people themselves. All political parties are banned by the 1972 law related to the criminalization of political parties.

CITIZENSHIP

Libyan citizenship is primarily acquired by birth. This means that a child acquires Libyan citizenship if his or her father is a Libyan citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

The 1969 Constitutional Declaration, the 1988 Green Charter for Human Rights, and the 1991 Consolidation of Freedom law all contain fundamental rights provisions. The 1969 declaration states that all citizens are equal before the law. It also states that work is a right and a duty, and an honor for every ablebodied citizen. The home is said to be inviolable and cannot be entered or searched except under circumstances and conditions defined by law. Freedom of opinion is guaranteed within the limits of public interest and the principles of the revolution. Education and health are rights, and education is also a duty for all Libyans.

ECONOMY

The 1969 constitutional declaration calls socialism the aim of the state. The state endeavors through building a socialist community to achieve self-sufficiency in production and equity in distribution. The state endeavors to liberate the national economy from dependence and foreign influence, and to turn it into a productive national economy, based on public ownership by the Libyan people and private ownership by individual citizens. Private ownership, if it is nonexploitative, is protected. Inheritance is a right that is governed by the Islamic Sharia. The state has a system of national planning covering economic, social, and cultural aspects. Libya is heading to a free market economy and to encourage foreign investment.

RELIGIOUS COMMUNITIES

Islam is the religion of the state.

MILITARY DEFENSE AND STATE OF EMERGENCY

Defending the country is the responsibility of every citizen.

AMENDMENTS TO THE CONSTITUTION

Since the promulgation of the 1969 Constitutional Declaration, no permanent constitution has been issued, although additional constitutional instruments have been issued from time to time.

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Azza Maghur

LIECHTENSTEIN

At-a-Glance

OFFICIAL NAME
Principality of Liechtenstein

CAPITAL
Vaduz

POPULATION
33,987 (July 2006 est.) of whom 34% are foreigners, mainly Swiss, Austrian, Germans, Italians, Turks, Portuguese, Yugoslavs

SIZE
62 sq. mi. (160 sq. km)

LANGUAGES
German (official), Alemannic dialect (spoken)

RELIGIONS
Roman Catholic 80.4%, Protestant 7.1%, other 12.5%

NATIONAL OR ETHNIC COMPOSITION
Alemannic 86%, Italian, Turkish, and other 14%

DATE OF INDEPENDENCE OR CREATION
January 23, 1719: Imperial Principality of Liechtenstein
July 12, 1806: Independence

TYPE OF GOVERNMENT
Constitutional, hereditary monarchy on a democratic and parliamentary basis

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 5, 1921

DATE OF LAST AMENDMENT
September 15, 2003

Liechtenstein is a constitutional hereditary monarchy with a democratic and parliamentary basis; the power of the state is embodied in the reigning prince and the people. The principle of monarchy and the principle of democracy are of equal importance. Legislative, executive, and judicial powers are separated.

Fundamental rights are guaranteed and freedom of religion is respected. The Catholic Church is the national church. Freedom of religion is respected.

CONSTITUTIONAL HISTORY

Prince Johann Adam Andreas of Liechtenstein was able to purchase the Lordship of Schellenberg in 1699 and the County of Vaduz in 1712. Both dominions were elevated to the Imperial Principality of Liechtenstein in 1719. Meanwhile the rulers continued to reside in Vienna, and governors administered the principality on their behalf.

In 1806, Napoléon abolished the old German Empire and established the Rhine Confederation. Liechtenstein was accepted into the Rhine Confederation as a sovereign state.

In 1852, Liechtenstein and the Austria-Hungarian Empire concluded a customs agreement and several reforms were initiated, finally leading to the constitution of 1862. Power remained with the prince, but parliament could no longer be ignored in the legislative process.

Although Liechtenstein remained neutral in World War I (1914–18), it was affected by the economic sanctions against Austria. After the collapse of the Austrian monarchy, Liechtenstein turned toward Switzerland. The 1923 customs treaty, which to this day forms the basis for the close partnership, was concluded by the two neighboring states. Liechtenstein has used the Swiss franc as its official currency since 1921, although a Currency Treaty was only concluded in 1980.

After negotiations between the reigning prince and parliament a new constitution was adopted in 1921. In

2003, after 10 years of discussions, a long-standing constitutional dispute was settled and the constitution was amended.

FORM AND IMPACT OF THE CONSTITUTION

Liechtenstein has a written constitution consisting of 12 chapters containing 115 articles. It prevails over all other national laws.

BASIC ORGANIZATIONAL STRUCTURE

The Principality of Liechtenstein is a union of two regions, the Upper Country (Oberland) and the Lower Country (Unterland). It contains 11 municipalities. Vaduz is the capital and seat of parliament and government.

LEADING CONSTITUTIONAL PRINCIPLES

The principality is a constitutional hereditary monarchy that has a democratic and parliamentary basis; the power of the state is embodied in the reigning prince and the people. The principle of monarchy and the principle of democracy are of equal importance. Legislative, executive, and judicial powers are separated.

CONSTITUTIONAL BODIES

The main constitutional bodies are the reigning prince, parliament, the administration, and the judiciary.

The Reigning Prince

The reigning prince is the head of state and exercises the monarchical rights in accordance with the provisions of the constitution and other laws. The reigning prince represents the state in its relations with foreign states. International treaties by which territory of the state is ceded, state property alienated, sovereign rights affected, rights of citizens limited, or new burdens imposed on the country require the assent of parliament and approval by the head of state and the administration.

The reigning prince contributes to the legislative process through his right to initiative in the form of proposals of the administration and through his right to veto legislation within six months of passage.

The reigning prince has the right to open parliament at the beginning of the year and to adjourn it at the end of the year. Traditionally, the reigning prince opens parliament with a ceremonial speech from the throne. The reigning prince may suspend parliament for three months at most or dissolve it on grounds of considerable importance. The authority of the reigning prince also includes the right of pardon, of mitigating or commuting legally adjudicated sentences, and of quashing initiated investigations.

On August 15, 2004, Reigning Prince of Liechtenstein H.S.H. Prince Hans-Adam II entrusted Hereditary Prince Alois, pursuant to the constitution, to exercise his sovereign powers as his representative in preparation for the succession. The representation is comprehensive and of unlimited duration.

Parliament (Landtag)

The Diet, called Landtag, is the legal organ representing all Liechtenstein citizens and is therefore called upon to ensure their rights and interests. The Diet consists of 25 members who are elected by the people by universal, equal, secret, and direct suffrage according to the system of proportional representation. Of the 25 members of parliament, 15 are elected by the Upper Country and 10 by the Lower Country. Alternate members of parliament are elected in each voting district, in order to ensure the party balance in parliament, if a member is unable to attend parliamentary sessions.

The constitution requires a minimal threshold of 8% of the valid votes cast in the entire country in order for a party to gain seats in parliament. Members of the administration and the courts may not be members of the Diet at the same time. The term of office is four years; reelection is permissible. Voter turnout in Liechtenstein is traditionally very high. It was 86.5% in the 2005 parliamentary elections. At its first meeting, the Landtag elects a president and a vice president from its ranks to direct its affairs for the current year.

Among the main duties of the Diet is legislation. Without the participation of parliament, no law can be adopted or amended. Parliament also participates in the conclusion of international treaties. Any international treaty that affects state sovereignty, imposes a new burden on the state, or affects the rights of Liechtenstein citizens must be presented to the Landtag, which may not amend a treaty signed by the government, but may only adopt or reject it in its entirety.

Other duties of parliament are the establishment of the annual budget and the authorization of taxes and other public dues. The state budget is prepared by the administration and adopted by parliament. Parliament has the right to amend individual budget items. If the administration requires additional appropriations over the course of the year for new mandates or if individual budget appropriations are exceeded, the administration must obtain a supplementary credit from parliament. Without the approval of parliament, no direct or indirect taxes or other national dues or general levies may be imposed or collected.

The administration submits an accountability report to parliament covering the entire state administration annually. Parliament supervises the state administration and receives requests and complaints about it. It can impeach cabinet ministers before the constitutional court for violations of the constitution or of other laws. Also, parliament can vote no confidence against the administration or any of its ministers.

The Lawmaking Process

Parliament, the reigning prince, and the people (by petition) have the right of constitutional and legislative initiative. In practice, most legislative proposals are drafted by the administration or its experts. Parliament can send legislative proposals back to the administration or form its own committees to revise them. Each legislative proposal is first subject to an initial debate, followed by two readings and a final vote.

During the initial debate, parliament decides whether to consider the proposal. Suggestions can be made that will be evaluated by the government. In the second reading, each individual article is voted on. A valid decision of parliament requires the presence of at least two-thirds of all members of parliament; the bill can then be approved by the majority of the members present. In order for a law to become valid, the sanction of the reigning prince, the countersignature of the head of administration, and publication in the *Liechtenstein Legal Gazette* are all required.

The Administration

The administration is a collegial body consisting of five ministers including the head and the deputy head of the executive administration. All cabinet ministers are appointed by the reigning prince on the recommendation of parliament. The ministers must be citizens of Liechtenstein and eligible for election to parliament. Each of the two regions of Liechtenstein is entitled to at least two ministers. The term of office is four years.

A valid decision of the administration requires the presence of at least four cabinet ministers and the support of the majority of those present. In the event of a tie, the chairman has the deciding vote. Voting is compulsory. The head of the administration chairs its meetings. The reigning prince can assign duties directly to the head of administration, who is also responsible for countersigning laws and any decrees or ordinances issued by the reigning prince or the regent. The head of administration informs the reigning prince about its ongoing business.

The administration is responsible for the execution of all laws and of all legally permissible mandates by the reigning prince or parliament.

The Judiciary

The entire jurisdiction is carried out in the name of the reigning prince and the people by legally bound judges appointed by the reigning prince. Jurisdiction in civil and criminal matters is exercised in the first instance by the Court of Justice, in the second instance by the Court of Appeal, and in the third and last instance by the Supreme Court. Courts of public law are the Administrative Court and the Constitutional Court.

The reigning prince and Landtag jointly select all judges. If parliament elects a candidate approved by the reigning prince, he or she is appointed. If parliament rejects the candidate and no agreement can be reached on a new candidate, the judge is elected by the people.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens above the age of 18 who reside in Liechtenstein have both the right to stand for election and the right to vote. This right was extended to women in 1984 (in the third attempt); thanks to a 1976 constitutional amendment, they could already vote on the commune level.

One thousand voters can force parliament to convene. One thousand five hundred voters can call for a popular vote on its dissolution.

The right of referendum gives voters the opportunity to subject parliamentary decisions to a popular vote. One thousand voters are needed to call a referendum on legislative and financial decisions; 1,500 are needed in the case of constitutional amendments and international treaties. However, parliament has the option of declaring amendments and financial decisions as urgent, thereby excluding the possibility of a referendum.

A total of 1,000 voters have the right of initiative with regard to legislation; 1,500 are required in the case of an initiative concerning the constitution. A total of not less than 1,500 Liechtenstein citizens have the right to submit a reasoned motion of nonconfidence against the reigning prince or to submit an initiative to abolish the monarchy.

POLITICAL PARTIES

Political parties emerged for the fist time in 1918. Until 1933, the Progressive Citizens' Party (Fortschrittliche Bürgerpartei [FBP]) and the Patriotic Union (Vaterländische Union [VU]) were the only parties in parliament. They formed a long series of coalitions. In 1993, the Free List (Freie Liste [FL]) was the third party to jump over the strong 8% hurdle into parliament. Since March 2005, the FBP and the VU have formed a coalition.

CITIZENSHIP

Liechtenstein citizenship may be transferred from either the father or the mother to their mutual child. The acquisition of Liechtenstein citizenship on the basis of birth in Liechtenstein (*ius soli*) is not possible.

FUNDAMENTAL RIGHTS

Chapter 4 of the constitution relates to the fundamental rights and duties of the citizens. These include the right to reside freely in any location within the territory of the state and to acquire all forms of property. They also include personal liberty, the immunity of the home, and the inviolability of letters and documents. Private property is inviolable and free commerce and free trade are guaranteed. There are freedom of religion and conscience, freedom of expression, and freedom of association and assembly. Equal protection is guaranteed. Liechtenstein has—among other international treaties—ratified the European Convention on Human Rights and the United Nations (UN) Pact on Civil and Political Rights.

ECONOMY

Liechtenstein is a modern industrialized and service-oriented state with ties to countries all over the world. It owes its economic success over recent decades to the favorable overall conditions created by a liberal economic legislative framework.

RELIGIOUS COMMUNITIES

Freedom of belief and conscience is guaranteed. According to the constitution, the Roman Catholic Church is the national church and as such enjoys the full protection of the state. Other denominations are entitled to practice their creeds and to hold religious services within the limits of morality and public order.

MILITARY DEFENSE AND STATE OF EMERGENCY

All men fit to bear arms are required to do so until the age of 60, to serve in the defense of the country in the event of emergency.

In urgent cases, the reigning prince has the authority to take necessary measures for the security and welfare of the state. However, emergency decrees are limited in time and content.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be proposed by the administration, by parliament, or by way of a public initiative. Any amendment requires unanimity of the members of parliament present or a majority of three-quarters of the members present at two consecutive meetings. A popular vote is necessary if called for by public initiative. In any event, any amendment needs the subsequent assent of the reigning prince.

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Gregor Obenaus

LITHUANIA

At-a-Glance

OFFICIAL NAME
Lithuania

CAPITAL
Vilnius

POPULATION
3,607,899 (2005 est.)

SIZE
25,212 sq. mi. (65,300 sq. km)

LANGUAGES
Lithuanian (official)

RELIGIONS
Roman Catholic 79%, Greek Catholic 0.01%, Orthodox Church 4.07%, Old Believers 0.78%, Evangelical Reformers 0.2%, Evangelical Lutheran 0.56%, Jewish 0.04%, Sunni Muslim 0.08%, Baptist 0.04%, Jehovah's Witnesses 0.1%, other 15.12%

NATIONAL OR ETHNIC COMPOSITION
Lithuanian 80.6%, Russian 8.7%, Polish 7%, Belarusian 1.6%, other 2.1%

DATE OF INDEPENDENCE OR CREATION
February 16, 1918 (from Soviet Union March 11, 1990)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 25, 1992

DATE OF LAST AMENDMENT
July 13, 2004

Preceded by the provisions on human rights, the first 17 articles of the Lithuanian constitution deal with the fundamental principles of statehood. The constitution affirms that Lithuania is an independent and democratic republic. It asserts the right of defense against attempts to encroach upon or overthrow state independence or the constitutional system by force. The constitution also disallows division of the territory into any state derivatives. This constitutional structure is an expression of the fact that state independence is understood by Lithuanians as the greatest nation-state value.

The powers of the state in Lithuania are exercised by the Parliament (Seimas), the president, the administration, and the judiciary. The president deals with broad-scale questions of national and international politics. In practice, the influence of the president is defined first by the moral authority of the officeholder. The Seimas is not only involved in legislation; it also has significant authority over the implementation of laws. Political observers sometimes characterize Lithuania as a semiparliamentary republic in which the Seimas, the president, and the government seek consensus through a continuous process of consultation.

According to the constitution, state and religion are separated. The military is under the power of civil government. Currently, Lithuanian law is in the process of harmonization with European Union law.

CONSTITUTIONAL HISTORY

The deepest roots of Lithuanian constitutional law reach down to the three Statutes of the Grand Duchy of Lithuania (1529, 1566, 1588). These statutes divided power and defined the rights and relationships among the grand duke, Seimas (Parliament), and the court. They defined human rights in the event of delinquency and punishment, and they stated explicitly that they applied to all citizens, state institutions, and the grand duke himself.

A further important document was the Constitution of the Lithuanian-Polish Commonwealth of May 3, 1791. It was largely based on the system created by the French Revolution, though it preceded the French constitution by a few months. In fact, it was the first written document of such a kind in Europe. However, Russia, Prussia, and Austria partitioned the Lithuanian-Polish state in 1795, after which it disappeared from the political map of Europe. Lithuania was annexed by Russia.

The fact that Lithuania managed to reestablish its statehood in 1918 owes much to the memory of the constitution of May 3, 1791. Nevertheless, parliamentary democracy, which was losing ground throughout Europe at the time, did not survive in Lithuania either. The authoritarian regime of President Antanas Smetona was, however, relatively mild in comparison to the regimes in Germany and Italy, or to the totalitarian rule in the Union of Soviet Socialist Republics (USSR). Lithuania was occupied by the USSR in 1940.

The Lithuanian constitutions adopted during the period of 1918–40, especially that of 1922, which complied with the fundamental requirements of democratic constitutions, had great influence on the drafters of the new constitutional order after the declaration of independence of Lithuania in 1990. Lithuania is a member state of the European Union and the North Atlantic Treaty Organization (NATO).

FORM AND IMPACT OF THE CONSTITUTION

Lithuania has a written codified constitution. It is composed of three documents: the Constitution of Lithuania, the constitutional law On the State of Lithuania, and the constitutional act On the Non-Alignment of the Republic of Lithuania with post-Soviet Eastern Alliances. The constitution is an integral, stable, and directly applicable statute. Constitutional norms are of the highest juridical power. Any law or international agreement that contradicts the constitution is invalid in Lithuania.

BASIC ORGANIZATIONAL STRUCTURE

Lithuania is a unitary state, composed of administrative-territorial units that have some right of self-government. The self-governing institutions and local governments act independently within the limits established by the constitution and the law.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution declares that Lithuania is an independent and democratic republic. It strives for an open, just, and harmonious civil society and state under the rule of law. Other principles such as the separation of state and church and the geopolitical orientation are included in the Lithuania constitution as well.

The power to govern is divided among the legislative, executive, and judicial branches. The judiciary is independent of the other two branches.

CONSTITUTIONAL BODIES

The constitutional bodies are the president, the administration or Council of Ministers (comprising the prime minister and the cabinet), the Seimas (Parliament), and the judiciary.

The President

The president of the Republic of Lithuania is the head of state. The president is elected directly by the people for a term of five years and can be reelected only once for a consecutive term. The candidate must be a citizen of the Republic of Lithuania by birth who has lived in Lithuania for at least the past three years and has reached 40 years of age prior to the day of election.

The president rules on the major issues of foreign policy and appoints and recalls diplomatic representatives to foreign states and international organizations, on the recommendation of the government. The president appoints and dismisses the prime minister and cabinet ministers with the approval of the Seimas. The president appoints and dismisses the head of the armed forces and the head of the security service and signs and promulgates the laws enacted by the Seimas.

The president has the right to nominate and the Seimas has the right to approve the nomination of the chief justice, three other justices of the Constitutional Court, and all justices of the Supreme Court. The president also appoints, with legislative approval, judges of the Court of Appeals.

The Administration

The newly approved administration is empowered to act after the Seimas has approved its program. The administration, which is accountable to the Seimas, must resign if the Seimas rejects its program. When more than half of the cabinet is changed, the administration must be reinvested with authority by the Seimas. In that event, the president empowers the administration to act until it receives renewed powers from the Seimas or a new administration is formed. A minister must resign if more than half the Seimas expresses, in a secret ballot vote, a lack of confidence in him or her.

Seimas (Parliament)

The Seimas consists of 141 members, who are elected for a four-year term. Any citizen who is not bound by an oath or

pledge to a foreign state and who, on the day of the election, is 25 years of age or over and resides permanently in Lithuania may be elected to the Seimas. The Seimas is the key institution of legislation of the state. However, the president may veto its legislation. The president's veto can be overridden only by an absolute majority of the Seimas membership. The president can also dissolve the Seimas if it refuses to approve the administration's budget within 60 days or if it expresses lack of confidence in the government.

The Lawmaking Process

The laws enacted by the Seimas are enforced after signing and official promulgation by the president. The president must either sign and promulgate the law or refer it to the Seimas for reconsideration. After reconsideration, the law is enacted if the amendments submitted by the president are adopted or if more than half of all the Seimas members vote in favor. For constitutional laws, the quorum is three-fifths of the members. Laws may also be adopted by referendum.

The Judiciary

The judicial system in Lithuania is independent of the legislative and executive branches. The following courts operate in Lithuania: the Constitutional Court, the Supreme Court, the Court of Appeals, and county, district, and administrative courts.

The right to appeal to the Constitutional Court is held by the president, one-fifth of the members of the Seimas, the administration, and ordinary courts. Judges of the Constitutional Court are nominated for nine years each, for a single term only. Every three years, one-third of the court is appointed. The decisions of the Constitutional Court are final and are not subject to appeal.

THE ELECTION PROCESS

All Lithuanians who are 18 years old or over on election day have the right to vote. Anyone whom the court declares legally incapable cannot vote.

POLITICAL PARTIES

The founding, functioning, and banning of political parties are regulated by law. Although the pluralist system of political parties in Lithuania has already been developed, individual political parties as well as the entire multiparty system are still in a state of flux. Some sociologists assert that institutionalization of the party system is still a matter to be achieved in the future.

CITIZENSHIP

Lithuanian citizenship is acquired by birth or according to the law. A child acquires citizenship if he or she is born in Lithuania, regardless of the citizenship of the parents. However, if one of the parents is a Lithuanian citizen, a child acquires citizenship independently of the place of birth.

A person may not be a citizen of Lithuania and another state at the same time, except in certain cases established by law.

FUNDAMENTAL RIGHTS

The conception of fundamental rights in Lithuanian law is based on the constitutional provision that human rights and freedoms are innate. Human rights are at the top of the hierarchy of all law values. As part of those constitutional norms that are applicable directly, human rights have great influence on the functioning of all branches of state power.

Impact and Functions of Fundamental Rights

Personal, civic, political, economic, cultural, and social rights are defined in Chapters 2, 3, and 4 of the Lithuanian constitution. The constitutional catalog of human rights, as well as the guarantees of their protection, are in accordance with generally accepted standards of the protection of human rights. Any person whose constitutional rights are violated has the right to appeal to the courts.

Limitations to Fundamental Rights

Limitations to fundamental rights are inscribed in the constitution. The exercise of rights and freedoms must not impair the rights and interest of other people, and it must not cause damage to the morals, public order, or safety of society, or to a person's health. In the case of martial law or a state of emergency, fundamental rights are also limited.

ECONOMY

According to the constitution, Lithuania's economy is based on the right of private ownership and freedom of individual economic activity. However, the state regulates economic activity so that it serves the general welfare of the people.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom to express convictions, to choose religion or faith freely, and to manifest one's religion or faith in worship, practice, or teaching. There is no state religion in Lithuania. According to the ruling of the Constitutional Court, this primarily denotes separation of state and church: Religious organizations do

not interfere in the state's activities and the state does not interfere in the internal affairs of religious communities. The state's and the religious areas' activities and functions are delimited. However, the term *separation* stresses the importance of both state and church in the social life of Lithuania rather than absence of any contact between them.

MILITARY DEFENSE AND STATE OF EMERGENCY

In Lithuania all men over 18 years must serve in the national defense service. Conscientious objectors must perform alternative service.

The president is the chief commander of the armed forces. The imposition of martial law, the declaration of a state of emergency, the announcement of mobilization or demobilization, and the decision to use the armed forces in the defense of the homeland are all prerogatives of the Seimas. In the event of an armed attack, martial law may be imposed by the president. However, the Seimas has the right to approve or to overturn the decision.

AMENDMENTS TO THE CONSTITUTION

The provisions of Chapter 1 and Chapter 14, which concern the state of Lithuania and amendments to the constitution, may be amended only by referendum. A proposal to amend or to append the constitution must be submitted to the Seimas by no less than one-fourth of the members of the Seimas or by at least 300,000 voters. Amendments must be voted upon in the Seimas twice and must be approved both times by two-thirds of all the members.

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Jolanta Kuznecoviene

LUXEMBOURG

At-a-Glance

OFFICIAL NAME
Grand Duchy of Luxembourg

CAPITAL
Luxembourg

POPULATION
448,300 (2005 est.)

SIZE
999 sq. mi. (2,586 sq. km)

LANGUAGES
Luxembourgish, French, and German

RELIGIONS
Catholic 65.9%, Protestant 1.2%, Muslim 0.7%, Jewish 0.5%, Christian Orthodox 0.4%, unaffiliated or other 31.3%

NATIONAL OR ETHNIC COMPOSITION
Luxembourgish 63.1%, Portuguese 13.1%, French 4.5%, Italian 4.3%, Belgian 3.4%, German 2.3%, other 9.3%

DATE OF INDEPENDENCE OR CREATION
April 19, 1839

TYPE OF GOVERNMENT
Parliamentary democratic monarchy

TYPE OF STATE
Central state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 17, 1868

DATE OF LAST AMENDMENT
November 19, 2004

The Grand Duchy of Luxembourg is a parliamentary democracy in the form of a constitutional monarchy based on the principle of separation of powers. It is organized as a central state with no federal or regional governments.

The nominal head of state is the grand duke, whose function is, however, mostly representative and whose powers are strictly limited by the constitution. The actual executive power resides with the cabinet, headed by a prime minister and currently including 14 ministers or state secretaries.

The legislative power belongs to the parliament, called the Chamber of Deputies. The chamber is composed of 60 deputies who are elected for five years.

Fundamental human rights are guaranteed by the constitution. Their application is assured by the judiciary, especially the Constitutional Court, which determines the conformity of the laws with the constitution.

Religious freedom is guaranteed. The chief religious communities receive financial aid from the state on the basis of conventions approved by the Chamber of Deputies. The economic system can be described as a social market economy. The public force, comprising the military, the police, and the civil guard are regulated by the law and subject to the civil government.

CONSTITUTIONAL HISTORY

On June 9, 1815, the Congress of Vienna established Luxembourg as a grand duchy governed by the king of Holland and a state of the German Confederation. Luxembourg gained formal political independence through the Treaty of London of April 19, 1839, which was concluded between the dominant European nations of the time along with Belgium and the Netherlands. The

treaty fixed the borders of Belgium, the Netherlands, and Luxembourg.

The first democratic constitution of the country emerged in 1848, largely inspired by the Belgium constitution. After the Treaty of London of May 1, 1867, which recognized the absolute independence of the Grand Duchy of Luxembourg, the constituent assembly elaborated and amended a new constitution that is still in force. It has been modified several times, for example, in 1919 to provide universal suffrage, and in 1956 to allow the Grand Duchy of Luxembourg to adhere to international institutions, such as those of the European Union, of which Luxembourg is a founding member state.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Luxembourg is a single written document. The Chamber of Deputies needs a majority of two-thirds of the votes to modify it. The constitution takes precedence over all other national law. In case of a conflict between the national law, including the constitution, and an international law that has a direct effect within the legal system of Luxembourg, the latter takes precedence. Therefore, European Union law overrides national law.

BASIC ORGANIZATIONAL STRUCTURE

Luxembourg is a central state. All powers remain with the national institutions. However, the constitution specifies that the communes created by law form autonomous authorities, possessing legal personality and administering their own affairs under the supervision of the national authorities.

LEADING CONSTITUTIONAL PRINCIPLES

Luxembourg is a representative parliamentary democracy. There is a strong division of the executive, legislative, and judicial powers. The constitutional system of Luxembourg is defined by the leading principles of democracy and constitutional monarchy and by the guarantee of individual freedom and equality before the law.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the grand duke, the administration, the parliament (called the Chamber of Deputies), the Council of State, the civil and administrative courts, and the Constitutional Court.

The Grand Duke

The grand duke is the head of state. The Crown of the Grand Duchy is hereditary in the Nassau family. The grand duke appoints and dismisses the members of the cabinet, who need the support of the Chamber of Deputies. The grand duke takes part in the legislative power by sanctioning and promulgating the laws. The grand duke also enacts the regulations and orders necessary for carrying laws into effect. Justice is rendered in the name of the grand duke, but the monarch has no right to interfere in the exercise of the judicial power. All acts of the grand duke require the countersignature of a member of the cabinet.

The Administration

The administration (the cabinet) exercises de facto executive power and has in addition the right to initiate legislation by presenting draft laws to the Chamber of Deputies. It consists of a prime minister and several ministers and state secretaries. The prime minister is the leader of the political party or coalition of parties that has most seats in the Chamber of Deputies. The Council of Ministers is submitted by the prime minister to the grand duke, who then appoints the ministers. The administration thus named presents its political program to the Chamber of Deputies, who, by positive vote, express confidence.

The Chamber of Deputies

The Chamber of Deputies represents the people. It is elected by straightforward universal suffrage on the party list system, in accordance with the rules of proportional representation. It exercises the legislative power together with the head of state, the grand duke, and controls the administration. The principal function of the Chamber of Deputies is to vote on proposed laws.

The Council of State

In the absence of a second chamber or a senate, the Council of State is required to advise the Chamber of Deputies in drafting legislation. It is composed of 21 members appointed by the grand duke on the advice of the Chamber of Deputies, the cabinet, or the Council of State itself.

The Lawmaking Process

Legislation is the prerogative of the Chamber of Deputies. The process of making laws is fixed by the constitution, special laws, and the internal regulations of the chamber. It requires the participation of several constitutional bodies. All bills are submitted to a first and a second vote, with an interval of at least three months between the two, unless the Chamber of Deputies in agreement with the Council of State decides otherwise.

The Judiciary

The judiciary is an independent power. The Grand Duchy of Luxembourg has a civil law system, so that the judges have only to apply the law to individual cases without being obliged to follow judicial precedent. There are two jurisdictions: the judicial and the administrative. All judges are appointed for life by the grand duke. The Constitutional Court, created in 1995, determines the conformity of the laws with the constitution.

THE ELECTION PROCESS

Every citizen of Luxembourg over the age of 18 has both the right to stand for election and the obligation to vote. National elections to select members of the Chamber of Deputies and European elections to elect the Luxembourgish members of the European Parliament are held every five years. Municipal elections to choose the mayors and councils of the 117 communes are held every six years.

POLITICAL PARTIES

Luxembourg has a pluralistic system of political parties. After national elections in June 2004, five parties were represented in the Chamber of Deputies.

CITIZENSHIP

Citizenship of Luxembourg is acquired by birth, by option, or by naturalization. Every child, even born outside the country, becomes Luxembourger if one of his or her parents is a citizen of Luxembourg. Foreigners who are born in Luxembourg or who marry a citizen of Luxembourg can also choose citizenship of Luxembourg. Every other foreigner of age can become Luxembourger if he or she fulfils the conditions fixed by the law, in particular living in Luxembourg for at least 5 years.

FUNDAMENTAL RIGHTS

The constitution defines and guarantees the fundamental rights, such as equality before the law, the natural rights of the individual and of the family, individual freedom, the right to private property, freedom of religion, the inviolable secrecy of correspondence, and the legality of penal prosecution. The constitution also guarantees the right to work and social rights.

Impact and Functions of Fundamental Rights

Since the fundamental rights are enshrined in the constitution, they rank above all other national legislation. All other laws must be compliant to the constitution.

Limitations to Fundamental Rights

The fundamental rights are not without limits, and the constitution foresees the regulation of some rights by the law. For most of the fundamental rights, the constitution foresees explicitly that they can be exercised only in respect of other legal rights. The fundamental rights can be subject to restrictions in case of a criminal offense committed in the exercise of such a right.

ECONOMY

The Luxembourg constitution does not specify any economic system. However, it guarantees freedom of trade and industry and the exercise of the professions and of agricultural labor apart from any restrictions imposed by the legislature. Moreover, the constitution guarantees freedom of private property and association. It also mandates laws to organize social security and guarantees the freedom of trade unions. Combining all these elements, the economic system of Luxembourg can be described as a social market economy.

RELIGIOUS COMMUNITIES

Freedom of religion and of public worship, as well as freedom to express one's religious opinions, is guaranteed. There is no established state church. Nevertheless, the constitution specifies that the state can conclude conventions with religious communities in order to establish the church's relation to the state and to provide financial aid from the state. Such conventions have been made with the Catholic Church, the Protestant Church, the Jewish Community, the Anglican Church, and several Christian Orthodox churches.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution requires that every matter that concerns the public force be regulated by law. The armed forces are subject to the civil government. The grand duke is officially the chief of the army, but command is exercised by military officers under the responsibility of the minister in charge. There is no compulsory military service; the army has been an all-volunteer force since 1967, composed of citizens of Luxembourg and, since 2002, of citizens of the European Union. In a state of emergency, the grand duke can take exceptional measures for a period of three months.

AMENDMENTS TO THE CONSTITUTION

Any constitutional provision can be amended by a vote of at least two-thirds of the members of the Chamber of

Deputies. Every amendment is subject to two votes with an interval of at least three months between them. During this period, either one-quarter of the members of the Chamber of Deputies or 25,000 electors can demand that the amendment be voted on by referendum, which then must take place.

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Paul Henri Meyers

MACEDONIA

At-a-Glance

OFFICIAL NAME
Republic of Macedonia

CAPITAL
Skopje

POPULATION
2,022,547 (2005 est.)

SIZE
9,781 sq. mi. (25,333 sq. km)

LANGUAGES
Macedonian, Albanian

RELIGIONS
Orthodox Christian 64.78%, Muslim 33.32%, Catholic 0.35%, Protestant 0.03%, other 1.52%

NATIONAL OR ETHNIC COMPOSITION
Macedonian 64.18%, Albanian 25.17%, Turkish 3.8%, Roma 2.66%, Serbian 1.77%, Vlach 0.47%, Bosniac 0.84%, other 1.04%

DATE OF INDEPENDENCE OR CREATION
November 17, 1991

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 17, 1991

DATE OF LAST AMENDMENT
December 26, 2003

The constitution of the Republic of Macedonia was adopted in November 1991, as the country gained its independence during the dissolution of the former Socialist Federal Republic of Yugoslavia. It has been a key factor in promoting democratic values and providing a framework for the activities of the emerging political forces in the country.

Macedonia is a parliamentary democracy based on separation of powers, the rule of law, and the protection of fundamental freedoms and rights. The legislative power rests in a unicameral parliament elected in free and direct elections. Parliament in turn chooses and politically controls the administration. The president of the republic is elected directly by the people but has a primarily representative role, except in foreign affairs and defense. The freedoms and rights of individuals are protected by ordinary courts and, in certain instances, by the Constitutional Court. The Constitutional Court plays an important role in protecting constitutionality and legality, and it is highly respected by the public. Every citizen may challenge a law or other normative act before the Constitutional Court.

The Republic of Macedonia is a unitary state with a system of local self-government. Since Macedonian society is multiethnic, many provisions have been made for the protection of the rights and interests of national minorities, especially the Albanian minority, including double-majority vote in Parliament in certain matters. In those cases, ethnic communities act as political entities. Religious freedom is guaranteed. Religious communities are equal before the law and are separate from the state. The market economy and freedom of enterprise are among the basic values of the constitutional order, but the social character of the state is also emphasized in the constitution.

CONSTITUTIONAL HISTORY

The constitutional history of the Republic of Macedonia goes back to December 31, 1946, when the first constitution

of the then People's Republic of Macedonia was adopted. The Macedonian state had been created in 1944 at the Antifascist Assembly of National Liberation of Macedonia (ASNOM), a body of elected representatives of the people.

ASNOM not only was important in the creation of the Macedonian state as a political entity but served as an interim institutional structure of executive and legislative power until a permanent government could be created. ASNOM's Presidium adopted various measures on the territorial and administrative organization of the country, on the police, and on other matters. A human rights act was passed, an official language introduced, and a national holiday proclaimed. Until 1991, Macedonia remained a federated state within the former Socialist Federal Republic of Yugoslavia. New constitutions were implemented in 1953, 1963, and 1974 in line with structural reforms at the federal level and changing concepts of socialism.

The Republic of Macedonia became an independent state in 1991, and the constitution of November 17 of the same year marked the conclusion of that process. It is the first constitution of Macedonia that introduced a democratic political regime. In 2001, Parliament adopted 15 amendments to the constitution aimed at the improvement of the position of national minorities.

FORM AND IMPACT OF THE CONSTITUTION

The Republic of Macedonia has a written constitution, codified in a single document. It is the highest legal act within the hierarchy of norms, and all laws and other regulations must accord with its provisions. Ratified international treaties are part of the internal legal order and must not contradict the constitution. The Constitutional Court decides on constitutionality and legality of normative acts. Few laws have been found unconstitutional as a whole, but every year the Constitutional Court repeals about a dozen detailed articles within laws.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Macedonia is a unitary state with a parliamentary system of government. The direct election of the president of the republic by the people implies some elements of a presidential system, but not enough to classify the government as semipresidential. The central government is very strong in terms of both legislative and executive competencies. However, there is an ongoing process of decentralization in education, social policy, and other fields, so that the system of local self-government is gradually becoming more meaningful.

LEADING CONSTITUTIONAL PRINCIPLES

The Republic of Macedonia is a parliamentary republic. The constitution defines the country as a democratic and social state. It also lists several other key principles such as the separation of powers into legislative, executive, and judicial; the rule of law; political pluralism and free, direct, and democratic elections; equitable representation of persons belonging to all ethnic communities in public bodies; and separation of the state and religious communities. The principle of constitutionality and legality of state action is of paramount importance for the legal order and for the protection of freedoms and rights of individuals.

CONSTITUTIONAL BODIES

The most important constitutional bodies are the Parliament, the president of the republic, the administration, the Constitutional Court, and the ordinary courts.

The Parliament

The Parliament is a unicameral representative body of the people and the sole bearer of the legislative power. It is called the Sobranje. It chooses the government and exercises political control over it. Parliament is composed of 120 members elected in general, direct, and free elections by secret ballot for a term of four years. It decides on war and peace, calls for referenda, elects judges of the ordinary courts and of the Constitutional Court, adopts the state budget, and elects an ombudsperson, among other duties. The Parliament may be dissolved only by a majority vote of its members.

The President

The president of the republic is head of state and is elected directly by the people. Any person over the age of 40 is eligible to run for president. The president nominates a mandator (who can then be elected prime minister) to assemble new administrations but does not directly appoint the ministers. He or she does appoint various high-level public officials, including ambassadors and generals. The president serves as commander in chief of the army, concludes international treaties, presides over the Security Council, promulgates laws, and can exercise a suspensive veto on pending legislation.

The Administration

The administration (cabinet) is the bearer of the executive power. It consists of the prime minister and the cabinet ministers. Ministers are proposed by the mandator, and the cabinet is elected by the Sobranje as a body. A cabinet minister may be dismissed by Parliament on the recom-

mendation of the prime minister. The cabinet must have the confidence of the Parliament.

The cabinet sets policy and uses its legislative initiative to obtain necessary laws. In addition, its wide range of executive competencies and instruments makes the administration the most powerful among the political branches.

The Lawmaking Process

Laws are adopted by Parliament. Legislative initiative rests with the cabinet, any member of Parliament, and any group of 10,000 voters. Laws are adopted in two or three readings at a plenary session, in which committees report on their findings. In general, laws are adopted by simple majority, but there are instances when an absolute or qualified majority is required. A majority vote of the major ethnic communities in addition to an overall majority is required for certain laws. Amendments to the text of a bill are allowed up to 48 hours before the final reading.

The Constitutional Court

The Constitutional Court is not part of the judiciary, but rather represents a separate constitutional body of the state, responsible for the protection of the constitutionality and legality. Although the vast majority of cases pertain to review of normative acts, the court also protects certain freedoms and individual rights by way of constitutional complaints in individual cases.

The court's decisions have had great legal and political impact. It has decided important issues concerning the separation of powers, freedom of religion and belief, and denationalization of property. For example, it decided that a law that sets deadlines for submission of a conscientious objection by a conscript was unconstitutional, since a person might change his or her belief at any time, including during military service. The need of the military authorities for exact numbers of troops in planning its activities was deemed irrelevant.

The Judiciary

The judiciary is composed of courts of first instance, three appellate courts, and the Supreme Court. A special department within the Supreme Court decides administrative disputes.

The leading principle of the judiciary is its independence of the political branches of government. Judges are nominated by the Judicial Council of the republic and chosen by the Sobranje for a permanent term until retirement. The fact that Parliament has the last word in the election of judges has led to some public doubts about the full independence of judges.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens of Macedonia over the age of 18 have the right to vote and to run in parliamentary and local elections. Citizens over the age of 40 have the right to run in presidential elections.

The constitution provides for some forms of direct democracy, at both the national and local levels. The Parliament may call for a referendum concerning matters within its sphere of competence. It must call a referendum if requested by 150,000 voters and if any law would change the borders of the state or associate the republic in a union or community with other states.

POLITICAL PARTIES

The Republic of Macedonia has a pluralistic system of political parties. The constitution does not regulate their status and role, except in the context of freedom of association and in the selection of candidates for president of the republic. Nevertheless, the parties play a crucial role in the democratic life of the country, which is regulated by electoral law and the law on political parties.

The Constitutional Court may decide on the unconstitutionality of a statute or a program of a political party, but the decision to ban its activity rests with ordinary courts.

CITIZENSHIP

Citizenship is acquired by origin, by birth, and by naturalization. Citizenship affects participation in state institutions.

FUNDAMENTAL RIGHTS

According to the constitution, the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the constitution, represent a fundamental value of the constitutional order of the republic. The second chapter of the constitution, about one-third of the entire text, sets out classical political and civil rights and liberties, as well as numerous social, economic, and cultural rights. Given their constitutional status, these rights are binding for all state organs. One section in the constitution focuses on the means through which these freedoms and rights are guaranteed; it invokes judicial protection, including the protection of the Constitutional Court, publicity of laws, ban on retroactivity of laws, and the role of the bar.

Impact and Functions of Fundamental Rights

The constitution is based on a liberal-democratic concept of human rights that gives those rights primacy over state authority. Human rights are crucial for a life of dignity and represent a limit on the exercise of public powers.

Limitations to Fundamental Rights

Freedoms and rights of the individual and citizen can be restricted only for purposes prescribed in the constitution, which usually involve combatting crime, protecting public health, or defending the republic. The principle of proportionality must be invoked in balancing conflicting rights and interests.

ECONOMY

The constitution considers market freedom and entrepreneurship as among the basic values of the constitutional order and as foundations for economic relations. The equal legal standing of all parties in the marketplace is guaranteed. The owner's property and the worker's labor form the basis for management, and workers have a right to share in decision making. Free transfer of capital and profits by foreign investors is also guaranteed. However, there is a constitutional obligation for the republic to provide for more balanced regional development and for the more rapid development of economically underdeveloped regions. In addition, the constitution defines the republic of Macedonia as a social state.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed. Religious communities and groups are separate from the state and equal before the law. There is no state religion. The separation of church and state bars religious activities in public institutions, including public schools. There is mutual respect between the state and the religious communities and among themselves. Religious communities and groups are free to administer their own affairs and to establish schools and other social and charitable institutions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military is governed by civil authorities in peacetime and wartime. The president of the republic is the commander in chief of the armed forces; the minister of defense must have been a civilian for at least three years before being elected to that office. The decision about the use of the armed forces is made by the president of the republic, but Parliament decides on deploying military personnel for peacekeeping operations abroad. The armed forces can be used for the defense of the country, as well as in humanitarian actions in cases of natural disasters or epidemics.

A state of emergency or a state of war is declared by the Sobranje or, if it cannot meet, by the president of the republic. A state of emergency exists when major natural disasters or epidemics take place. In both states of emergency and states of war, the administration may issue decrees with the force of law. In a state of war, if Parliament cannot meet, the president of the republic may appoint and discharge the administration, as well as appoint or dismiss officials whose election is normally within the sphere of competence of Parliament.

Military service is compulsory for men over the age of 18 for a term of six months. There are also professional soldiers under contract. Conscientious objection is not specifically provided for in the constitution, but it derives from the freedom of conscience and is regulated by law. Conscientious objectors perform alternative service in social institutions for a term of nine months.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed by amendments adopted by a two-thirds vote of the total number of representatives. Any amendment to the preamble of the constitution or to provisions relating to the rights of members of ethnic communities requires the same two-thirds majority vote and must be approved by a majority of the votes of those members who belong to nonmajority ethnic communities. Constitutional amendments are adopted after they have been submitted to public debate.

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MADAGASCAR

At-a-Glance

OFFICIAL NAME
Republic of Madagascar

CAPITAL
Antananarivo

POPULATION
17,501,871 (2005 est.)

SIZE
226,657 sq. mi. (587,040 sq. km)

LANGUAGES
Malagasy (official), French

RELIGIONS
Indigenous beliefs 52%, Christian 41%, Muslim 7%

NATIONAL OR ETHNIC COMPOSITION
18 ethnic groups (mainly Malayo-Indonesian and mixed African, Malayo-Indonesian, and Arab), French, Indian, Creole, and Comoran

DATE OF INDEPENDENCE OR CREATION
June 26, 1960

TYPE OF GOVERNMENT
Semipresidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 19, 1992

DATE OF LAST AMENDMENT
April 8, 1998

Madagascar is a unitary state decentralized at the level of six autonomous provinces and 22 regions. The current constitution provides for a semipresidential system of government with a clear division of executive, legislative, and judicial powers and a system of checks and balances.

A wide range of civil and political, social, economic, and cultural rights are granted, and the state is the main guarantor of the respect and realization of these rights. The constitution is the supreme law of the land. Its provisions prevail over international laws, national laws, and provincial laws. Everyone has to abide by the provisions of the constitution.

CONSTITUTIONAL HISTORY

Early forms of state organization existed in Madagascar in the 17th century C.E. The country was organized into two main kingdoms, the Kingdom of the Boina and the Kingdom of the Imerina. There were no formal constitutions, but the will of the kings became constitutional practice, and the assembly of the people adopted laws related to general concerns.

The first written constitution of Madagascar was adopted on April 29, 1959, in preparation for independence from France. It took inspiration from the constitution of the French Fourth Republic, but the drafters were also influenced by the ideas of Ravoahangy and Raseta, two pro-independence activists who championed the traditional concept of *fihavanana:* brotherhood, peaceful settlement of conflicts, and solidarity.

After three years of social and political instability, a military *directoire* composed of 18 members from all corps of the army took the reins of the country in 1975, after the president, Colonel Ratsimandrava, was assassinated. By a secret vote, the military *directoire* nominated Ratsiraka, also an army man, president of Madagascar. Four months later, on December 31, a new constitution was adopted by public referendum and Ratsiraka was elected president of the second republic of Madagascar.

This second constitution of Madagascar instituted a socialist regime and gave more power to the president and the ruling party in order to strengthen the hold of the centralist state on public affairs. The state functioned on the basis of decentralized localities, which in fact had minimal powers. In 1989, the constitution was amended to allow political parties to emerge and function freely.

In 1991, an economic and social crisis, combined with the fall of the Soviet Union, provoked massive demonstrations all over the country in favor of abrogating the socialist constitution of 1975 and forcing President Ratsiraka to resign. These demonstrations turned into generalized strikes that immobilized the country for nearly a year, after which a state of emergency was instituted and a government of transition put in place.

On August 19, 1992, a new constitution was adopted and a new president elected. This third constitution was amended by referendum on September 17, 1995, to allow the president to choose and nominate the prime minister. On March 5, 1998, the constitution was amended once more, to include a system of provincial autonomy.

FORM AND IMPACT OF THE CONSTITUTION

Madagascar has a written constitution, codified in a single document. It is the fundamental law of the land and enjoys supremacy over all other international and national laws. International law has precedence over all national laws, but it must comply with the constitution in order to be applied. Further, the law of the state prevails over that of the provinces.

BASIC ORGANIZATIONAL STRUCTURE

Madagascar is a unitary state organized in six different provinces with independent financial and administrative management, and further decentralized into 21 regions. The provinces have their own executive, legislative, and judicial organs, whose powers are limited to the concerns of their own province. The state is represented in each province by a general delegate of the central administration, whose duty is to make sure that the division of authority between state and province is respected, and that provincial authorities comply with the laws of the state.

LEADING CONSTITUTIONAL PRINCIPLES

The Malagasy constitutional system rests on a number of leading principles: Madagascar is an indivisible and united democratic republic based on popular sovereignty and the rule of law. It is a sovereign and secular state that grants civil and political, economic, social, and cultural rights to all but also assigns duties to all citizens.

The current Malagasy constitution establishes a semi-presidential regime with a clear division of the executive, legislative, and judicial powers, with a system of checks and balances among the three. The administration, which is in charge of the implementation of state policy and plans, is accountable to Parliament. The latter can dissolve the administration by a motion of censure. The judiciary is independent.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic, the administration headed by the prime minister, the Parliament composed of the National Assembly and the Senate, and the judiciary including the High Constitutional Court.

The President

The president of the republic is elected by universal suffrage for a five-year term; he or she can be reelected only once. The president can be removed from office by a vote of impeachment, passed by a two-thirds vote of each chamber of Parliament, and only for a physical or mental incapacity to perform the presidential duties. The president is liable for his or her actions in the exercise of office only in cases of high treason or serious and repeated violations of the provisions of the constitution.

The president is the main figure of the country's political life. The office has great powers, including the nomination of the prime minister, the nomination of one-third of the members of the Senate, and the nomination of three of the nine members of the High Constitutional Court. The president also has the power to dissolve the National Assembly.

The Administration

The administration is in charge of implementing government policy. The prime minister is appointed by the president, who appoints and dismisses the cabinet ministers on the proposal of the prime minister.

The Parliament

The Parliament is made of two chambers: the National Assembly and the Senate. The members of the National Assembly are elected by universal suffrage for a five-year term. They are the representatives of the people and enjoy immunities in the exercise of their function.

One-third of the members of the Senate are nominated by the president of the republic; two-thirds are elected by representatives of each autonomous province for a six-year term—although once in office they exercise

their functions independently of the province where they were elected.

The Lawmaking Process

One of the main duties of Parliament is the passing of legislation. The executive can issue ordinances, but certain domains listed in the constitution are strictly reserved to Parliament. A bill can be initiated in either chamber or by the administration.

The Judiciary

The judiciary is independent of the administration, and all judges enjoy immunities in the exercise of their duties. For constitutional disputes, the High Constitutional Court is the supreme jurisdiction. It is composed of nine judges who serve for a seven-year term. In all other matters, the Supreme Court is the highest jurisdiction.

THE ELECTION PROCESS

All Malagasy citizens over the age of 18 have both the right to stand for election and the right to vote in the elections. National Assembly candidates must be at least 21 years old, and presidential candidates must be at least 40. One can lose the right to vote only by a court decision, for reasons of conviction for criminal, economic, or financial offenses; for offenses such as negligence, bankruptcy, or guardianship; or for insanity. Voting is regarded as a civic duty but is not compulsory.

The president is elected by a direct and universal vote. The candidate who receives the absolute majority of votes is elected. If none of the candidates reaches this majority, there is a second round between the two leading candidates; the winner of this round is elected president.

Members of the National Assembly are elected by a mixed system: simple majority voting in 82 single-member constituencies and party list proportional representation voting in 34 two-member constituencies, using the rule of highest average. The “next-in-line” candidate on the party list fills that party’s vacancies that arise between general elections.

POLITICAL PARTIES

The constitution of Madagascar establishes a multiparty system but forbids the creation of racist and secessionist political parties that might endanger the unity and indivisibility of the state. There are more than 130 political parties, about a dozen of them major parties, including the ruling party, I Love Madagascar (TIM); Pillar and Podium for the Development of Madagascar (AREMA); Militants for the Development of Madagascar (MFM); Be Judged by Your Work (AVI); Work, Truth and Harmonized Development (AFFA); National Union for Development and Democracy (UNDD); Social Democrat Party (PSD); Reflection and Action Group for Development in Madagascar (GRAD-Iloafo); Rally for Social Democracy (RPSD); Economic Liberalism and Democratic Action for Reconstruction Party (LEADER-Fanilo); and Independence and Renewal Party of Madagascar (AKFM-Fanavoazana).

CITIZENSHIP

Malagasy citizenship is regulated by a law, as the constitution does not have any related provision. It is primarily acquired by birth. A child acquires Malagasy citizenship if one of his or her parents is a Malagasy citizen; the place where the child is born is of no relevance. Malagasy citizenship can also be acquired by naturalization. One can lose Malagasy citizenship if he or she acquires another nationality.

FUNDAMENTAL RIGHTS

The constitution of Madagascar defines the fundamental rights and duties of citizens immediately after its general principles. In two different subchapters, it guarantees civil and political rights as well as economic, social, and cultural rights, on both the individual and the group level. The rights to opinion, expression, and information are considered to be the most important rights and receive first mention in the Malagasy constitution.

The constitution does not provide an explicit philosophical foundation for individual rights. It defines human dignity and integrity as an aim rather than the source of human rights.

Impact and Functions of Fundamental Rights

The state is the main guarantor of the respect and implementation of the enumerated individual rights. However, for certain rights such as the right to nondiscrimination and work-related rights, private persons are bound as well.

Limitations to Fundamental Rights

The exercise of each right is regulated by the law and is limited by the respect for others’ rights and the respect for public order.

ECONOMY

The Malagasy constitution does not specify an economic system according to which the country must function. However, certain provisions of the constitution tacitly impose a model of a free market economy and free enterprise system. These include the right to individual property, the freedom of occupation or profession, and the right

to form and join associations. Further, the constitution guarantees the exercise of free enterprise and the security of capital and investments.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed as a human right, and religion is listed as prohibited grounds for discrimination. The constitution does not explicitly mention any religious communities, since religious conflict has never been a problem in Madagascar. There is no established state church; the constitution expressly specifies that the state is secular and therefore establishes a clear division between church and the state.

The Christian church is the strongest civil institution of the country. It has intervened in public affairs, but only in times of national crisis.

MILITARY DEFENSE AND STATE OF EMERGENCY

Military service is compulsory for all men over the age of 18, and it is widely considered to be a duty of honor. Conscientious objection is possible, and no alternative to serving in the armed forces is imposed on conscientious objectors.

The army is not considered independent; it is a prerogative granted to the prime minister to assist in ensuring public security and order. No provision of the constitution specifically deals with the army. However, apart from defending the country against a military attack, the armed forces may intervene in the event of a national insurrection, a natural disaster or a major accident, when the *gendarmerie* is unable to cope successfully with the situation.

The president of the republic and the administration may declare a state emergency after consulting the chairpersons of the National Assembly, the Senate, and the High Constitutional Court. The constitution grants the president special powers at such a time, including that of issuing laws. An organic law regulates the duration and extent of these powers.

AMENDMENTS TO THE CONSTITUTION

The constitution can be amended at the initiative of the president and the administration, or of either of the two chambers of Parliament. The amendment is adopted either by a vote of three-fourths of the members of Parliament or by popular referendum. However, the integrity of the national territory as well as the republican form of the state cannot be changed.

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Mianko Ramaroson

MALAWI

At-a-Glance

OFFICIAL NAME
Republic of Malawi

CAPITAL
Lilongwe

POPULATION
13,013,926 (July 2006 est.)

SIZE
45,747 sq. mi. (118,484 sq. km)

LANGUAGES
English (official), Chichewa (official), Chilomwe, Chingonde, Chinyanja, Chisena, Chitonga, Chitumbuka and Chiyao

RELIGIONS
Protestant 55%, Roman Catholic 20%, Muslim 20%, indigenous beliefs 3%, other 2%

NATIONAL OR ETHNIC COMPOSITION
Maravi (including the Chewa, Nyanja, Tonga, and Tumbuka) 58.3%, Lomwe 18.4%, Yao 13.2%, Ngoni 6.7%, other 3.4%

DATE OF INDEPENDENCE OR CREATION
July 6, 1964

TYPE OF GOVERNMENT
Multiparty democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 18, 1994

DATE OF LAST AMENDMENT
November 30, 2001

The Malawian constitution was adopted in 1994 to mark the end of a 30-year one-party dictatorship. It is one of the most progressive constitutions adopted after the end of the cold war. In addition to recognizing the key principles of separation of powers, judicial independence, and the rule of law, it entrenches a bill of rights that transcends the traditional divide between civil and political rights and economic, social, and cultural rights. The bill of rights binds both state and nonstate actors. Any rights recognized under it can be enforced through a court of law, the Human Rights Commission, and the ombudsperson.

The consolidation of democracy and the development of constitutionalism have been a slow and testing process for the poverty-stricken country. However, unlike its predecessors, the current constitution in its first decade enhanced respect for individual rights, sowed a culture of tolerance, promoted competitive politics, and widened the horizons for challenging the exercise of state power.

The president is the head of state and head of the administration. Malawi has a unicameral parliament. Any act of the administration and any law passed by parliament may be declared invalid to the extent that it is inconsistent with the constitution.

The Malawian economic system is largely a market economy. Freedom of religion is respected. The military is enjoined to operate under the direction of civil authorities at all times.

CONSTITUTIONAL HISTORY

Before colonization, Malawi was inhabited by Bantu speakers who organized themselves under kingdoms. The era of kingdoms ended in 1891 when Britain declared the country a British protectorate. From then on English law applied. Customary law was applicable only to the extent that it was not repugnant to the law and justice received from Britain.

Colonialism displayed little regard for the human rights of the colonized people, and the violent rebellion led by the Reverend John Chilembwe in 1915 signified a growing resistance to colonialism. However, it was not until the African National Congress (later renamed Malawi Congress Party [MCP]) was formed in 1944 that a more organized struggle against colonial rule emerged. In 1953, the British government formed the Federation of Rhodesia and Nyasaland, consisting of Northern Rhodesia (Zambia), Southern Rhodesia (Zimbabwe), and Nyasaland (Malawi). This development strengthened the fight for independence, led by Hastings Kamuzu Banda. Success was achieved in 1963 when the federation was finally dissolved and constitutional talks in preparation for self-rule were arranged in Lancaster House in London.

On July 6, 1964, Nyasaland became the first country in the federation to gain independence from Britain under the new name, Malawi. The constitution adopted that year enshrined a range of civil and political rights, and the principles of judicial independence and separation of powers. However, on July 6, 1966, Malawi became a republic under a new constitution. While it recognized the Universal Declaration of Human Rights (UDHR), the 1966 constitution, unlike its predecessor, did not have a bill of rights. It also declared the country to be a single-party state and concentrated great power in the president, in violation of the doctrine of separation of powers. In 1971, the constitution was amended to make Banda the president for life.

The Banda regime lasted for 30 years and was marked by oppression and lack of respect for the rule of law and constitutionalism. A successful resistance to the regime crystallized in 1992 and culminated in a national referendum held in 1993 to decide whether the country wanted to proceed as a multiparty state. The regime took a resounding defeat. It also lost the presidential and parliamentary elections held in 1994. A new constitution was adopted provisionally on May 18, 1994, after a four-month period of negotiation and national debate. It became fully operational on May 18, 1995. Modeled after the 1993 interim constitution of South Africa, the new constitution represents the most progressive constitution the country has ever had.

FORM AND IMPACT OF THE CONSTITUTION

Malawi's constitution is written and embodied in a single document comprising 215 sections. Any law or act of the administration that is inconsistent with the constitution is invalid to the extent of the inconsistency. Courts are obliged to consider current norms of public international law where applicable in interpreting constitutional provisions.

While international treaties require an act of parliament to be enforced by domestic courts, customary international law automatically forms a part of the law of Malawi. The Law Commission has undertaken wide-ranging law reforms since 1994 in many areas, including labor and employment law, criminal law and procedure, children's rights, and environmental protection, to align the laws with the constitution. The Malawian government generally abides by the constitution. However, poverty, insufficiency of human and other resources in the administration of justice, frequent constitutional amendments, and occasional political violence and intolerance have helped slow the development of constitutionalism and the consolidation of democracy.

BASIC ORGANIZATIONAL STRUCTURE

Malawi is divided into three regions: Northern, Central, and Southern. While these divisions have significant political implications, the constitution does not create any state structures based on them. As a centralist state, Malawi is neither parliamentary nor presidential; perhaps it can best be described as a constitutional state since both presidential and parliamentary actions and omissions are subject to constitutional scrutiny. The constitution also makes provision for the establishment of local government authorities, whose officers are elected every five years.

LEADING CONSTITUTIONAL PRINCIPLES

Malawi practices constitutional democracy. The executive, legislature, and judiciary have separate functions and are all bound by the constitution. Article 6 of the constitution entrenches the principle of democracy. It states that the authority to govern "derives from the people of Malawi as expressed through universal and equal suffrage" in periodic elections. The principles of judicial independence and respect for the rule of law are given express recognition. Religious freedom is also guaranteed and respected in practice.

CONSTITUTIONAL BODIES

The key constitutional bodies are the executive, the legislature, the judiciary, the Human Rights Commission, and the ombudsperson.

The Executive

The president is the head of state and of the administration. The president (together with the vice president) is elected directly by a majority of the electorate in elections held every five years. A person can serve a maximum of two consecutive terms in the presidency. An attempt to amend this provision by the former president Bakili Mu-

luzi in 2002–3 to extend the maximal number of terms was widely criticized and failed. The president has powers to appoint and dismiss ministers and deputy ministers.

The Legislature

All legislative powers are vested in parliament, which consists of the president and the National Assembly. A widely criticized constitutional amendment made by parliament in 2001 removed the possibility of establishing a senate. Members of the National Assembly are elected directly by the electorate in single-member districts under the first-past-the post electoral system every five years. An act of parliament has primacy over other forms of law except the constitution.

The Lawmaking Process

The drafting section, based at the ministry of justice, is generally responsible for the drafting of principal and subsidiary legislation on behalf of the government. After a draft has been produced it is sent to the cabinet for approval. It is thereafter sent to parliament for enactment. If the president withholds assent to a bill, the bill is returned to parliament. When a bill is again presented to the president for assent the president shall assent to the bill within 21 days of its presentation. The law goes into force when it is published in the official gazette.

The Judiciary

The judiciary has played a central role in enforcing democratic norms and constitutional principles. In particular, it has assisted immeasurably in ensuring that elections are fair by judging controversial electoral disputes in a manner that has earned it considerable public confidence. While the constitution does not provide for a separate constitutional court, a legislative amendment made in 2004 required that any constitutional issue must be heard by at least three judges of the High Court chosen randomly on a case-by-case basis.

However, blatant interference with the independence of the judiciary occurred in 2001–2, when the government tried to impeach four judges who had rendered judgments unfavorable to it. International and local pressure worked together to render the proposed impeachment unsuccessful.

THE ELECTION PROCESS

Any person above the age of 18 years has the right to vote in presidential, parliamentary, and local government elections. To contest a parliamentary seat, one must be at least 21 years old. In the case of presidential elections, the minimal age requirement is 35 years. The Electoral Commission has the mandate to conduct elections. The High Court can review appeals against the electoral decisions of the Commission.

POLITICAL PARTIES

Malawi is a multiparty state. A political party must be registered under the Political Parties (Registration) Act to be recognized as such.

CITIZENSHIP

Citizenship can be acquired by birth, descent, marriage, registration, and naturalization.

FUNDAMENTAL RIGHTS

The Malawian constitution subscribes to the view that all human rights are universal, interdependent, and interrelated. It recognizes a range of civil and political rights and such economic, social, and cultural rights as the rights to education; to family protection, culture, and language; to economic activity; and to fair labor practices. It also guarantees the right to development. Furthermore, Section 13 of the constitution stipulates a range of principles of state policy concerning gender equality, nutrition, health, the environment, and education.

The human rights recognized under the constitution bind all organs of government and all natural and legal persons in Malawi. Any person who claims that any of these rights has been infringed or threatened is entitled to apply to the High Court, the ombudsperson, or the Human Rights Commission for a remedy.

Impact and Functions of Fundamental Rights

Malawi has improved considerably in its human rights record since the end of the one-party regime. However, the deepening poverty in the country has hindered the full enjoyment by the majority of the population of their socioeconomic rights. Human rights violations still occur in prisons, and state- and party-sponsored violence happens during elections. Furthermore, the country rarely fulfills its reporting obligations under international and regional human rights treaties.

Limitations to Fundamental Rights

Certain rights, such as the right to life, are not open to any limitation or derogation. However, most rights can be limited by law provided that the limitation does not negate the essential content of the right and that it is reasonable, recognized by international human rights standards, and necessary in an open and democratic society. Derogations may be permitted only during a state of emergency.

ECONOMY

Section 13 of the constitution enjoins the state to take measures aimed at a sensible balance between the creation and the distribution of wealth through the nurturing of a market economy, on the one hand, and long-term investment in health, education, economic, and social development, on the other. This provision suggests that the state has an obligation to strike a balance between developing a market economy and fulfilling its welfare obligations to its citizens. In practice, Malawi's economic system is disproportionately market-oriented as dictated by its donors and the conditions of its debt.

RELIGIOUS COMMUNITIES

Malawi is a secular state. Unlike many other African countries, it has not experienced any major conflict arising from religious differences. Freedom of religion and conscience is a fundamentally protected right. However, the church has historically played an important role in fighting oppressive regimes in Malawi.

MILITARY DEFENSE AND STATE OF EMERGENCY

Malawi does not have a history of military rule. The constitution provides that the Defense Forces of Malawi shall operate under the direction of civil authorities at all times. The responsibilities of the Defense Forces include defending the sovereignty and territorial integrity of the country, upholding and protecting the constitutional order, and assisting authorities in the maintenance of essential services in emergencies. They may also perform other functions outside the country pursuant to the country's international obligations.

Recruitment into the Defense Forces is voluntary. The president may declare a state of emergency only with the approval of the Defense and Security Committee of the National Assembly in times of war, threat of war, or natural disasters. The rights that may be suspended during a state of emergency are specifically mentioned in the constitution. Even then, the derogation of any right must be consistent with the country's international obligations.

AMENDMENTS TO THE CONSTITUTION

Certain constitutional provisions, including the bill of rights, principles of national policy, principles on the interpretation and application of the constitution, and provisions on judicial independence and separation of powers, require a referendum prior to their amendment. Parliament also has amendment powers. With respect to those provisions that require an amendment by a referendum, parliament may amend them if two-thirds of the members of the National Assembly support the amendment. However, the amendment must not affect the substance or purpose of the constitution.

Other constitutional provisions may be amended by a two-thirds majority of the members of the National Assembly. That too many amendments affecting these provisions have occurred since 1994 indicates that this method of amendment is not difficult enough to ensure the development of constitutionalism.

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Danwood Chirwa

MALAYSIA

At-a-Glance

OFFICIAL NAME
Malaysia

CAPITAL
Kuala Lumpur

POPULATION
25,580,000 (2005 est.)

SIZE
127,317 sq. mi. (329,750 sq. km)

LANGUAGES
Malay, English, and other ethnic languages

RELIGIONS
Muslim 60.4%, Buddhist 19.2%, Christian 9.1%, Hindu 6.3%, Confucian/Taoist/other traditional Chinese religion 2.6%, other 2.4%

NATIONAL OR ETHNIC COMPOSITION
Bumiputera (Malays and other indigenous groups) 65.1%, Chinese 26.0%, Indian 7.7%, other 1.2%

DATE OF INDEPENDENCE OR CREATION
August 31, 1957 (Malaya), September 16, 1963 (Malaysia)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 31, 1957

DATE OF LAST AMENDMENT
February 10, 2005

Malaysia is a parliamentary democracy with a constitutional monarchy, based on the rule of law and constitutional supremacy. Joined in a federation, Malaysia is made up of 13 federal states and a strong central government. Each of the states has a state constitution, and the whole federation is governed by a federal constitution. The federal constitution is the supreme law of the nation and provides for the institutions of government, the relationships among them, their rights and duties, and the rights and duties of citizens. In particular, the constitution provides for guarantees of human rights, subject to some qualifications. The rights and duties prescribed by the constitution are enforced by a judiciary independent of the other two arms of government, namely, the legislature and the executive body.

The Yang di-Pertuan Agong is the head of state, but his function is mostly in accordance with advice from the executive body. The central political figure is the prime minister, who is the head of the executive body and leads the administration of the country. The prime minister depends on Parliament, a representative body of the people, of which the prime minister is also a member, for legitimacy in running the country. Free, equal, periodic, and direct elections of the members of the lower house of Parliament are guaranteed.

The upper house or Senate is an appointed and specially elected house. A pluralistic system of political parties is in existence, but the ruling government party dominates and the opposition parties have limited impact on the political scene.

Malaysia is multiracial and multireligious, and religious freedom is guaranteed. Although Islam is declared as the official religion, Malaysia is essentially a secular state. The economic system can be described as a market economy. The constitution provides for the preservation of traditions that are regarded as important in ensuring the stability of the multiracial society and the nation as a whole.

CONSTITUTIONAL HISTORY

The Malay Peninsula was under British rule by the late 19th century, although British forces had the island of Penang ceded to them as early as 1786. Various agreements between local Malay rulers and the British government resulted in a strong British influence over the laws and in particular the constitutional structures that developed.

After World War II (1939–45), the first formal constitution governing the whole of the peninsula was proposed by the British government. Named the Malayan Union in 1946, this political entity, however, was rejected by the Malay people. Hence, the Federation of Malaya was formed in 1948 and became the basis of the present day constitutional structure. In 1955, the first elections in Malayan history were held to choose members of the Federal Legislative Council. This paved the way for independence through an agreement with the British government, and a constitutional commission was formed to propose a constitution for the nation. The commission, consisting of foreign jurists, drafted a constitution based on the terms of reference given to it and existing models. This constitution was accepted by the people, and Malaya was born in August 1957. Malayan independence had implications for the destiny of the other British territories in the region, which consisted of Sabah, Sarawak, and Singapore. The three territories merged with the Malayan states in 1963, forming the Federation of Malaysia. Singapore left the federation soon after in 1965.

FORM AND IMPACT OF THE CONSTITUTION

Malaysia has a written federal constitution codified in a single document that takes precedence over all other laws. International law must be in accordance with the constitution to be applicable within Malaysia.

BASIC ORGANIZATIONAL STRUCTURE

Malaysia is a federation made up of 13 states. All of them have identical autonomous rights specified in the constitution; their powers are not as great as those of the central government. The federal constitution takes precedence over the state constitutions, which have to be adapted to fit into the working of the federal constitution, as no inconsistencies in the organizational structure and working of government are allowed.

The doctrine of the supremacy of the constitution is in operation, as opposed to parliamentary sovereignty.

LEADING CONSTITUTIONAL PRINCIPLES

Malaysia's system of government is a parliamentary democracy with a constitutional monarchy. There is a fusion of powers between the executive and the legislature just as in any government that follows the Westminster model. The judiciary, however, is separate, and there is a system of checks and balances.

The rule of law is implicit in all the provisions of the constitution and the law. However, Parliament has authority from the constitution to pass laws to counter subversive or terrorist activities that may derogate from the principles of rule of law.

Although Islam is declared to be the official religion, the constitution and the law are essentially secular.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the Yang di-Pertuan Agong, the prime minister, and the cabinet ministers; the Parliament, consisting of the Dewan Rakyat (House of Representatives) and Dewan Negara (Senate); the Conference of Rulers; and the judiciary, including Superior Courts.

The Yang di-Pertuan Agong (King)

The Yang di-Pertuan Agong is the head of state. He is a constitutional monarch elected for a five-year term by the Conference of Rulers.

The head of state has the discretionary power to appoint the prime minister, who is the head of the executive body, but very few other discretionary powers. Most of his powers are to be exercised in accordance with the advice—in essence, instructions—of the prime minister or anybody else specified by the constitution.

The Prime Minister

The executive body conducts the day-to-day running of government affairs. It is headed by the prime minister and assisted by the federal ministers. The constitution provides a great deal of power to the prime minister, who is thus a dominant figure in the administration and Malaysian political life.

Dewan Rakyat (House of Representatives)

The Dewan Rakyat is the lower chamber of Parliament. The members are elected for a five-year term in a direct, free, equal, and secret balloting process. The support of the majority of the Dewan Rakyat is required in order for a member to be appointed prime minister by the Yang di-Pertuan Agong.

Besides legislative functions, the Dewan Rakyat monitors the administration, which is responsible to it. The session of the Dewan Rakyat is five years.

Dewan Negara (Senate)

The Dewan Negara is the upper chamber of Parliament. Some of its members are elected by the state legislative assemblies to represent the interest of the federal states; the others are appointed by the Yang di-Pertuan Agong on the advice of the administration. The term of the Senate is three years.

The Dewan Negara acts as a political monitor to the Dewan Rakyat.

The Lawmaking Process

The main role of Parliament is the passing of legislation. Most of the laws passed are initiated by the administration. The draft law is debated and passed by each house of Parliament and receives the formal royal assent of the Yang di-Pertuan Agong before it becomes law. Some laws require the consent of other bodies such as the Conference of Rulers.

The Conference of Rulers

The Conference of Rulers consists of the hereditary rulers of the nine Malay states of the federation. Besides choosing the Yang di-Pertuan Agong from among themselves, this body is responsible for special functions relating to traditional elements of the constitution.

The Judiciary

The judiciary is established by the constitution as a body independent of other branches of the government. It interprets and enforces the law and the constitution and resolves disputes between them.

The highest Malaysian court is the Federal Court, which also serves as the constitutional court. The Federal Court has ruled several times on the supreme authority of the constitution and on its interpretation according to its general aims and principles.

Malaysia practices a two-tier appeal system; below the Federal Court are the Court of Appeal and the High Courts. These courts deal with all matters except those that are the exclusive province of Sharia (Islamic law), such as family matters. Sharia matters are within the jurisdiction of the federal states and are administered by the state sharia courts, which are not part of the federal judiciary.

THE ELECTION PROCESS

All Malaysians over the age of 21 are eligible to stand for and vote in an election. Elections are held periodically (usually about every five years), and seats for both state legislative assemblies and the federal Parliament are contested.

POLITICAL PARTIES

Malaysia allows for a pluralistic system of political parties. Federal laws govern their activities. One of the main parties of the ruling coalition was at one time declared unlawful by a high court under an ordinary federal law.

CITIZENSHIP

Malaysian citizenship is primarily acquired by birth. A child acquires citizenship if one of his or her parents is a citizen.

FUNDAMENTAL RIGHTS

The federal constitution provides for the protection of human rights and fundamental freedoms. The provisions protect basic fundamental rights including the right to life, equality, free speech, religion, and property.

Impact and Functions of Fundamental Rights

Fundamental rights are subject to qualifications found in the provisions of the federal constitution and in the interpretation of the courts. It is normally the function of the courts to protect fundamental rights, and the interpretations of the courts form the main body of law.

Limitations to Fundamental Rights

Constitutional amendments and exceptions, restrictive judicial decisions, and legislative interventions have played an important role in limiting and restricting fundamental rights.

ECONOMY

The Malaysian constitution does not specify any particular economic system but provides for conditions such as property rights and the right to form associations that encourage a market economy. However, there are provisions for affirmative action to balance certain inequalities.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed by the constitution, although it declares Islam to be the official religion of the country. The highest court has declared that the status of

Islam does not alter the secular nature of the laws of the country.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military defense consists of professional soldiers who serve for fixed periods. There is also a volunteer force. The military is under the direction of the executive body.

During civil chaos or natural disasters, a state of emergency can be declared by the Yang di-Pertuan Agong on the advice of the prime minister and cabinet. During a state of emergency, provisions of the constitution may be suspended, and the executive body may take over and issue laws that are inconsistent with the constitution. During this time, the police and military may be directed by the executive body to take certain measures to restore order.

AMENDMENTS TO THE CONSTITUTION

In general, the constitution can be amended by a two-thirds majority in both the Dewan Rakyat and Dewan Negara. However, certain amendments may require the consent of the Conference of Rulers or the consent of certain state governments whenever their interests are affected.

The courts have so far not recognized any basic provisions of the constitution that cannot be amended. Since the ruling administration has usually commanded a two-thirds majority in Parliament, there do not appear to be any limitations as to the extent to which the constitution can be amended.

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Johan S. Sabaruddin

MALDIVES

At-a-Glance

OFFICIAL NAME
Republic of Maldives

CAPITAL
Male

POPULATION
349,100 (July 2005 est.)

SIZE
115 sq. mi. (298 sq. km)

LANGUAGES
Dhivehi

RELIGION
Islam (Sunni, state religion)

NATIONAL OR ETHNIC COMPOSITION
Sinhalese, Dravidian, Arab, Australasian, and African ethnicities

DATE OF INDEPENDENCE OR CREATION
July 26, 1965

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral People's Council (Majlis)

DATE OF CONSTITUTION
January 1, 1998

DATE OF LAST AMENDMENT
No amendment

The Republic of Maldives is a unitary state with a strong president. The country is governed centrally from its capital, Male. The president has vast powers in making policy and appointing and dismissing public officials. The president is head of state, head of the executive, and commander in chief.

The constitution provides that the Republic of Maldives is a state founded on Islamic principles and that the state religion is Islam. Together with Islamic law (the Sharia), the constitution is the fundamental law of the country. No law or act shall violate the constitution or Islamic law.

The constitution establishes an executive and legislative branch of government. The administration of justice is in the authority of the president, thus making the judiciary subordinate to the executive. The president appoints and dismisses judges at his discretion. The constitution contains a number of fundamental rights, which are subject to limitations based on principles of Islamic law.

CONSTITUTIONAL HISTORY

Maldivian constitutional history begins with the conversion from the Buddhist religion to Sunni Islam in the mid-12th century C.E. By 1153, an independent Islamic sultanate was established. This sultanate, with short interruptions, ruled until 1968, when it was abolished and replaced by the current Republic of Maldives.

From 1558 to 1573, the Maldives were under Portuguese rule but returned to independence after citizen uprisings. By 1645, the sultanate of the Maldives was under the protection of the Dutch in Ceylon, who were replaced by the British in 1796. In 1887, the Maldives were accorded the status of a protected state included in the administrative unit of Ceylon, without becoming a formal protectorate. The inner structures of the sultanate were not affected.

The first written constitution was adopted in 1932, making the formerly hereditary sultanate elective and providing for a parliament and a prime minister. Several

constitutions followed. After the independence of Ceylon in 1948, the Maldives gained self-government status from the British. In 1953, a republic was proclaimed, but the sultanate was reimposed shortly afterward.

On July 26, 1965, Great Britain and the Maldives, by agreement, ended the British status of protector, and the sultanate of Maldives gained official independence. On November 11, 1968, a constitution establishing the Republic of Maldives and eventually abolishing the sultanate was adopted by referendum. The 1968 constitution was replaced by the current constitution on January 1, 1998, in a referendum.

On June 9, 2004, the president announced his plans to democratize the Maldives. A constituent assembly (People's Special Majlis) was convened the same year. It is currently finalizing its deliberations.

On February 14, 2005, the president presented a list with 31 proposals for amendments of the constitution. They mark a significant step toward more democracy and a clearer separation of powers and change many aspects of the constitutional order of the Maldives. Whether all proposed amendments will be passed could not be assessed at the date of writing this article. If they are passed, the president's role will shrink decisively: The president will be allowed to serve for only two terms of five years and need no longer be male. Presidential elections will be direct. A prime minister will be head of government with broad powers, reducing the president's role. Parliament will be bicameral and have stronger influence on the selection of government officials. The judiciary will be completely separated from the president's office with a newly established Supreme Court and the office of a chief justice as administrator of all judicial affairs. Several extensions of fundamental rights are foreseen, among them gender equality.

FORM AND IMPACT OF THE CONSTITUTION

The Republic of Maldives has a written constitution in a single document that, together with Islamic law, is the supreme law of the country. According to Article 148 (1), no law shall be made in contravention of the constitution. All laws passed before the constitution took force must be in accordance with it.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Maldives consists of 26 natural atolls with approximately 2,000 islands. The country is centrally governed from its capital. The atolls are grouped into 19 administrative units; the capital forms a separate unit. The administrative units are of only marginal importance. The atolls are governed by atoll chiefs, appointed by and under the direction of the president and the cabinet.

LEADING CONSTITUTIONAL PRINCIPLES

According to Article 1, the Republic of Maldives is a republic based on the principles of Islam. Islam is the state religion of the Maldives (Article 7), but the president, rather than religious authorities (Article 38), has the supreme authority to propagate the principles of Islam. Therefore, Islamic law plays a major part in civil and criminal matters.

The constitutional framework makes the judiciary a branch of government dependent on the president. The president has the right to appoint and dismiss all judges. A judge of the High Court can be dismissed if "in the opinion of the president, . . . [he] fails to satisfactorily discharge his duties and responsibilities." Any other judge can be dismissed at the discretion of the president.

Maldives is a presidential democratic republic, with elections of president and parliament every five years.

CONSTITUTIONAL BODIES

The constitution provides for a president, cabinet of ministers, parliament (People's Majlis) atoll chiefs, and a judiciary, including a High Court.

The President

The presidency is the strongest constitutional institution in the Maldives. The president's election follows a special procedure; from among all persons seeking the office, one person is chosen through a secret ballot by parliament. This person is put to a general public vote. The president must be a male Sunni Muslim and must not be married to a foreign national.

The president is head of state, head of the executive, and commander in chief. He appoints and dismisses the vice president, the cabinet ministers, major public officials, the heads of the lower administrative units, and all judges. He presides over the cabinet of ministers and promulgates decrees, directives, and regulations. The president exercises duties subject to Sharia law and the constitution. The president can take over the responsibilities of all ministries and the office of the attorney-general.

The president is the representative of the state in dealing with foreign governments and discharges all acts and functions under international law.

The Lawmaking Process

Parliament can pass bills with a simple majority vote, except those bills that constitutionally require a two-thirds

majority. A bill is forwarded to the president for assent within seven days. The president can take 30 days to assent or resubmit the bill to parliament with alterations or recommendations. If the president does not react within the 30 days, the bill is deemed to have his assent. Parliament can override presidential changes in a bill by a two-thirds majority. To become law, the bill has to be published in the *Government Gazette*.

The Cabinet of Ministers

The cabinet of ministers is appointed by the president without the need for approval by parliament, although parliament can force a cabinet minister to resign by passing a no confidence vote. The cabinet consists of the president, the vice president, cabinet ministers, and the attorney-general.

The cabinet ministers support the president in formulating and executing policy and in governing the republic. All cabinet ministers are accountable to the president. The constitution provides that if a cabinet minister's negligence causes loss or damage to the state, the minister is personally responsible.

The People's Majlis

Parliament consists of 50 members, who serve for a five-year-term. Two members are elected from each of the 20 atolls and two from the capital, Male, in direct elections. The president appoints eight additional members.

The speaker of parliament is appointed and can be dismissed by the president. The speaker is not a member of parliament.

Parliament sits in three sessions each year, as stipulated by the constitution. The president can convene extraordinary sessions.

Parliament passes legislation in all areas. The annual budget, as well as all tax-related matters, must be approved by parliament. The president can object to bills passed by parliament, but his objection can be overridden by a two-thirds majority. Decisions by parliament cannot be questioned by courts, except claims of unconstitutionality.

Atoll Chiefs

The 20 atolls are administered by atoll chiefs, appointed by the president. The president and cabinet ministers can issue directions to the atoll chiefs.

The Judiciary

The judiciary in the Maldives does not constitute an independent branch of government. The president, as the highest authority administering justice in the Maldives, has the right to appoint all judges, as well as to dismiss them at his discretion. The courts are administered by a cabinet minister whom the president assigns. The president also determines the number of courts in the Maldives. Judges must be Muslims. The Sharia is the source for the administration of civil and criminal law and is interpreted by the courts.

Each inhabited island of the Maldives has a judge or magistrate. Serious cases are regularly referred to the capital, Male. Male has eight lower courts dealing with theft, debt, and property cases. There are approximately 200 general courts in the Maldives.

The High Court

The High Court hears appeals cases from lower courts and all such cases that the president assigns to it by regulation, especially politically sensitive cases. The High Court consists of the chief justice and a variable number of judges, at the discretion of the president.

THE ELECTION PROCESS

The constitution provides that all Maldivian citizens (who must be Muslims) of at least 21 years of age are allowed to vote in elections and public referendums. Candidates for the presidency must be at least 35 years old and must never have been convicted of an offense under Islamic or criminal law. Candidates for parliament must be at least 25 years old and may not have been convicted of offenses under Islamic or criminal law in the past five years. All candidates must be Muslims.

POLITICAL PARTIES

Until mid-2005 there were no organized political parties allowed in the Maldives. Candidates were running on the basis of personal qualifications and merit in each of the atolls. In the first significant action on the president's proposals for constitutional reform in the Maldives, parliament on June 2, 2005, unanimously supported a bill to allow the formation of political parties.

CITIZENSHIP

A citizen of the Republic of Maldives is one who had citizenship at the enactment of the 1998 constitution, or is a child born to a citizen of the Maldives, or is a foreigner who becomes a citizen in accordance with the law. As, according to Article 7, Islam is the state religion of the Maldives, the government interprets the provision to impose a requirement that citizens be Muslims.

FUNDAMENTAL RIGHTS

Chapter 2 of the constitution devotes its 19 articles to the fundamental rights and duties of the citizens. The

constitution guarantees equality before the law, the inviolability of the private sphere, freedom of education and expression, property rights, a right to work and to a pension, as well as the freedom of assembly and association. The presumption of innocence in criminal matters is contained in the constitution. A Human Rights Commission was created in 2005 to support the protection of fundamental rights.

Impact and Functions of Fundamental Rights

Citizens owe loyalty to the state and to the constitution. Restrictions to fundamental rights stem from the strong position of the president and his ability to influence all offices in the Republic of Maldives.

Limitations to Fundamental Rights

Individual rights are restricted in areas that potentially conflict with Islamic law, namely, in the fields of education and freedom of expression. Freedom of belief is rendered impossible, as Islam is the state religion.

ECONOMY

The Maldives are among the poorest countries in the world. Economic activities focus on tourism and fishing.

The constitution does not provide for a specific economic system. Nominally, all land, sea, and natural resources are vested with the state, according to the constitution. However, the fundamental rights chapter contains provisions on the right to acquire and hold property, as well as the protection of property.

RELIGIOUS COMMUNITIES

As the constitution proclaims Islam to be the state religion, no other religious communities are recognized. Foreigners can practice their religion, if they do so privately. The president's role as supreme authority to propagate the tenets of Islam and the use of Islamic law in civil and criminal cases is evidence of the mingling of state and religion in the Maldives.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution stipulates that the president is commander in chief. Since the Maldives have historically experienced few external threats, a military was never established. However, a National Security Service consisting of army, naval, and air forces was created in the early 1980s; it is composed of about 2,000 voluntary members.

The constitution provides for a state of emergency. The president can proclaim such a state for three months if the security of the Maldives is threatened by war, foreign aggression, or civil unrest. The president takes over all legislative power, and fundamental rights may be suspended for the time of emergency. If the period is to be extended, parliament must assent.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be amended by a constitutional assembly (The People's Special Majlis). It consists of all members of the cabinet, members of parliament, an equal number of specially elected members from the atolls and the capital, as well as eight members appointed by the president.

The assembly decides on amendments of the constitution by simple majority. The president has the right to object but can be overridden by a two-thirds majority in the assembly.

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Oliver Windgätter

MALI

At-a-Glance

OFFICIAL NAME
Republic of Mali

CAPITAL
Bamako

POPULATION
12,291,529 (July 2005 est.)

SIZE
478,780 sq. mi, (1,240,036 sq. km)

LANGUAGES
French (official language), Bambare, spoken by 80% of the population

RELIGIONS
Muslim 90%, animist 6%, Christian 4%

NATIONAL OR ETHNIC COMPOSITION
Manding (Bambara or Bamana, Malinke) 52%, Fulani 11%, Saracolé 7%, Mianka 4%, Songhai 7%, Tuareg and Maur 5%, other 14%

DATE OF INDEPENDENCE OR CREATION
September 22, 1960

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 12, 1992

DATE OF LAST AMENDMENT
No amendment

Despite being one of the poorest countries in the world, Mali has reached a respectable level of constitutional development. Some 10 years after the introduction of multiparty rule, the democratic process allowed a free and peaceful election of a second president. Democratic structures such as political parties and independent media are growing, and their rights are respected to a considerable extent—but not completely. Human rights are still threatened by the lack of full independence of the judiciary and excessive use of force by security forces.

CONSTITUTIONAL HISTORY

Sitting astride ancient trading routes, great kingdoms developed the first statelike structures in Africa within the territory today known as Mali, after the eighth century C.E. As an integral part of an international Arab-Muslim culture, society was richly developed in the 14th through 16th centuries. The arrival of the Europeans in the 15th century along the coastal shores of Africa dramatically changed the trading patterns in Africa and, together with the slave trade, severely disrupted the political organization of the area. The territory eventually became part of the French colonial empire as French Sudan in 1895. The French colonial power developed infrastructure, railroads, and agriculture in the arable portions of the Niger and Senegal River valleys.

French Sudan acquired independence in a federation with Senegal on June 20, 1960. The federation rapidly fell apart, and on September 22 of the same year, Mali was proclaimed a sovereign republic.

Under its first president, Modibo Keita, a Soviet-style political and economic system was introduced. After eight years in office, Keita was ousted in a military coup and replaced by a one-party system of military rule that lasted until 1991. With the arrival of the multiparty democracy movement to Africa, the then military ruler, Moussa

Traore, was deposed by his own forces after he ordered troops to shoot at demonstrators. A new constitution was framed in a national conference in 1991, and new institutions were elected in 1992. The current, second president of what is now called the Third Republic was a leader in the anti-Traore coup, who subsequently presided over the democratic transition process.

FORM AND IMPACT OF THE CONSTITUTION

Mali is one of the more successful African countries with regard to the introduction of multiparty democracy. While the elections of the National Assembly and the president of the republic in 1997 were characterized by grave administrative problems, and later by opposition boycotts, the election in 2002 went smoothly. It produced a peaceful handover of the office of the president, after the incumbent was barred from running for another term by constitutional provisions. The outgoing president, Alpha Oumar Konare, became chairman of the African Union.

During the 1997 electoral crisis, basic liberties were threatened by the excessive use of force by police. The judiciary did not provide adequate remedies for those ill treated. However, overall the constitution has contributed much to the dramatic change of Malian society toward pluralism and democracy.

BASIC ORGANIZATIONAL STRUCTURE

Mali is an indivisible republic and a unitary state. It is a presidential democracy based on the French model. The constitution provides for a certain amount of decentralization by giving responsibility to substate entities, in particular to municipalities. These decentralized entities are represented on the national level in a High Council for Decentralized Entities.

LEADING CONSTITUTIONAL PRINCIPLES

Modeled on the French example, Mali is a laicist (secular) social republic, one and indivisible. It is founded on the principles of democracy, the rule of law, and justice.

Mali's government is a presidential republic with separation of powers. The position of the president of the republic is strong. Unlike in the French model, the parliament, the National Assembly, is unicameral.

Fundamental rights are complemented by the affirmation of civic duties. The constitution allows for the transfer of sovereign powers to organizations of African unity.

CONSTITUTIONAL BODIES

The institutional provisions follow, to a great extent, the French model. The main constitutional bodies are the president of the republic, the cabinet, the National Assembly, the Constitutional Council, the High Court of Justice, the High Council for Decentralized Entities, and the Economic and Social Committee.

The President of the Republic

In Mali, the president is the most powerful figure under the constitution. He or she not only enjoys vast powers in the governmental process but is also the guardian of the constitution and of the integrity and the sovereignty of the nation. The president assures the continuity of the state.

The president is directly elected for five years and may be reelected only once. In order to be eligible, candidates must have Malian nationality. If no candidate wins more than 50 percent of the votes counted in a first round, the two best-placed candidates compete in a second, final round.

The president may not hold any other office. Specific provisions were included in the constitution to prevent improper enrichment.

The president is replaced by the prime minister in cases of temporary incapacity. In the event of vacancy or permanent incapacity the president is replaced by the president of the National Assembly.

The president appoints the prime minister and cabinet ministers and can demand the resignation of the prime minister at any time. The president also fills high posts in the civil administration and military.

The constitution allows the president to dissolve the National Assembly after consultation with the prime minister and the president of the National Assembly. The president may only dissolve the subsequent National Assembly one year after its election.

The Lawmaking Process

The National Assembly disposes of the power of lawmaking. The division between parliamentary lawmaking power and regulatory power of the executive branch of government is determined by a catalog in the constitution.

Laws may be initiated either by the cabinet or by members of parliament. They require a simple majority of votes in the National Assembly. Organizational laws, that is, those related to the functioning and the organization of the institutions of the republic, require a favorable vote of the majority of the members of the National Assembly. The constitution determines the areas to be regulated by organizational laws.

The Cabinet

The cabinet is composed by the prime minister and the cabinet ministers. It is appointed by the president and is

responsible to the assembly. It directs the administration and security forces in the exercise of their functions. Some functions of the president of the republic can be delegated to the prime minister.

Membership in the cabinet is incompatible with holding of any other office in public and private institutions.

The cabinet has extensive regulatory power to issue ordinances.

The National Assembly

Deputies are elected by universal suffrage for four-year terms with the possibility of reelection. The constitution affirms the principle of representation of the whole nation, not of constituencies.

The size of the assembly is determined by organic law. It currently has 147 members. Parliamentary activity is limited to two biannual sessions with a maximum of 75 days. The constitution provides for parliamentary immunity of members.

The National Assembly has the power to make law. The division between parliamentary lawmaking power and the cabinet's regulatory power is determined by a catalog in the constitution. Laws may be initiated by either the cabinet or members of parliament.

Parliament has the usual means of controlling the executive. The National Assembly can challenge the authority of the cabinet by a motion of censure at the demand of one-tenth of its members.

The Constitutional Council

As in France, the control of constitutionality of laws and international treaties is assured by a Constitutional Council. The council is composed of nine members. The president of the republic, the president of the National Assembly, and the president of the Supreme Council of the Judiciary appoint three members each. The term of office is seven years with one possible renewal. Only lawyers who have at least 15 years of professional practice experience are eligible.

The council is responsible for determining the constitutionality of laws, especially new laws not yet in force, which may be presented to the council by the president of the republic, the prime minister, the president of the National Assembly, the president of the High Council for Decentralized Entities, the president of the Supreme Court, or one-tenth of the members of either the National Assembly or the High Council for Decentralized Entities. It also has the authority to resolve disputes among the different institutions of the republic and disputes over elections. The Constitutional Council also rules on the permanent incapacity of the president of the republic.

The High Court of Justice

The High Court of Justice is responsible for judging charges of high treason against the president of the republic and members of the cabinet. It is made up of deputies from the National Assembly. The charges are raised by the National Assembly by a vote of two-thirds of its members.

High Council for Decentralized Entities

The High Council for Decentralized Entities is responsible for all issues of local and regional development. It is part of an effort to promote local self-government and has to be seen within an as-yet-incomplete larger effort to restructure the organization of local municipalities. Members of the High Council have some rights of parliamentary immunity.

The cabinet must submit a draft law within 15 days after a request by the High Council on matters concerning improvement in the environment and the quality of life within the decentralized entities.

The Economic and Social Committee

The Economic and Social Committee is to be consulted about all economic, social, and budgetary issues. It is composed of representatives of labor organizations and of professional and employer associations.

The Judiciary

There is a single jurisdiction for civil, criminal, and administrative affairs. It is formally independent, and the independence of individual judges is constitutionally protected. The Supreme Court is at the apex of the judiciary. The judiciary has the task of ensuring respect for fundamental rights.

The president of the republic is the guarantor of the independence of the judiciary. The president chairs the Council of the Judiciary, which is responsible for all career-related questions within the judiciary and for its independence.

Judicial independence is still not sufficiently developed. The important role of the president in the selection of judges has led to the appearance of partiality in important judgments against opposition leaders; these cases have displayed a flagrant disregard of constitutional provisions and domestic law.

THE ELECTION PROCESS

Every Malian citizen at least 18 years of age may participate in elections, which are universal, direct, equal, and secret.

An Independent National Elections Commission, composed of members chosen by the cabinet, the majority and opposition parties in the National Assembly, and associations of civil society, watches over the procedures. Serious administrative difficulties plagued the organization of

the first democratic elections for president and National Assembly under the new constitution in 1997. In reaction, the Constitutional Council annulled the National Assembly elections, and major parties boycotted the presidential elections.

The 2002 elections were also characterized by allegations of corruption, and voter turnout remained low. Once more, a quarter of the votes in the presidential election were ruled invalid by the Constitutional Council because of fraud and other irregularities.

Referenda can be held on any draft law or international agreement affecting the organization of state institutions.

POLITICAL PARTIES

Mali has become a multiparty system. Political parties are regulated by a law that prohibits parties that have only an ethnic, linguistic, or religious basis. Parties founded on programs aiming to destroy national territorial integrity or the republican form of government are also banned. Political parties benefit from financial aid from government revenue.

The right of a party to oppose the administration is explicitly recognized by law.

CITIZENSHIP

Citizenship is acquired by descent from a Malian parent regardless of the country of birth. Naturalization is possible after five years of residence and renunciation of former citizenship. Citizenship can be revoked within the first 10 years after naturalization on the grounds of criminal or other actions not in the interest of the country.

FUNDAMENTAL RIGHTS

Unlike its French model, the constitution includes a catalogue of rights and civic duties. Fundamental rights include those of the first and second generation (civil liberties and social rights) as well as rights of the third generation (rights to culture and a safe environment).

Impact and Functions of Fundamental Rights

The general human rights record is good. Still, excessive violence by the security forces puts basic liberties at risk. The constitution explicitly provides for the punishment of individuals and state agents who commit torture. Nonetheless, torture has been used, especially during the 1997 electoral crisis, when administration officials refused to recognize convincing reports on this issue.

Time limits on police detention are frequently disregarded. Female genital mutilation remains legal and is commonly practiced. Libel suits are a threat to one of Africa's most open presses, but independent newspapers and radio stations do exist, and even state-run radio and TV outlets present a diversity of views.

The judiciary has not provided sufficient protection and appears biased toward the executive. A Democratic Questioning Area is organized annually in which the executive submits itself to a one-day hearing on human rights violations. It is designed as a forum of mediation.

The death penalty, while not formally abolished, is never carried out.

Limitations to Fundamental Rights

Some of the fundamental rights guaranteed in the constitution can be limited or defined by law, such as freedom of the press or freedom of cultural activity.

ECONOMY

The constitution does not favor any economic system over another. Private property is protected and the liberty to join a labor organization is recognized.

RELIGIOUS COMMUNITIES

Although predominantly Muslim, Mali is a secular republic. Freedom of religion is assured. No one may be treated discriminatorily on the basis of his or her religious beliefs. A law that provides for the registration of religious communities is not applied.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the commander in chief of the armed forces. The military submits to civil rule, and the armed forces are not political.

Declarations of war need parliamentary approval. In a state of emergency the president may take necessary measures, although the president may not dissolve the National Assembly once it is convened.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be initiated by either the president or members of parliament. An amendment proposal needs a two-thirds majority in the National Assembly and approval in a popular referendum. Excluded

from amendment are the republican form of government, the laicist (secular) character of the state, and political pluralism.

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Malte Beyer

MALTA

At-a-Glance

OFFICIAL NAME
The Republic of Malta

CAPITAL
Valletta

POPULATION
400,214 (July 2006 est.)

SIZE
122 sq. mi. (316 sq. km)

LANGUAGES
Maltese (national language), Maltese and English (official)

RELIGION
Catholic

NATIONAL OR ETHNIC COMPOSITION
Maltese

DATE OF INDEPENDENCE OR CREATION
September 21, 1964

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 21, 1964

DATE OF LAST AMENDMENT
Act V of 2003 amendment for accession to European Union; treaty signed April 16, 2003

Malta is an island republic with a long history of development within a small territory not far from the European and African landmasses. Though frequently occupied and used by major foreign powers, it has retained a separate identity while absorbing the influences of its occupiers. Its independence of spirit, as well as a long tradition of self-administration regardless of occupation, has produced a nation that is intensely participatory and democratic and has the usual features of a member state of the European Union and the Council of Europe.

CONSTITUTIONAL HISTORY

Malta has a long history and traces of an important prehistory in a number of Neolithic hypogea and temples. Malta and its neighboring island Gozo were Phoenician colonies, but became part of the Roman Empire after the Punic Wars (264–41 B.C.E. and 218–02 B.C.E.). The Christian faith was introduced to the island by Saint Paul, as attested to by the narrative in the Acts of the Apostles. When the Roman Empire was divided, Malta was assigned to the Byzantine East. The Arabs conquered the Islands in 800 C.E. and the Normans under Count Roger of Hauteville reconquered them in 1090. Thereafter, Malta and Gozo shared the ups and downs of political life in Sicily, ruled by the Norman kings and their Swabian, Angevin, Aragonese, and Castilian successors in title. During most of the Middle Ages, the islands were governed internally by two Università chambers, one for each island, that were administered by elected *jurats*.

In 1530, Emperor Charles V granted Malta to the knights of Saint John, who were to respect the rights and privileges conceded by his forebears to the Maltese inhabitants. The order not only assumed the defense of the island, as was the intent of the grant, but also encroached on the government of the islands. The order did defend the island successfully during the Great Siege of 1565 and preserved the islands, with the concurring heroic resistance of the Maltese, from Ottoman attack. In 1798, the order was dissolved by Napoléon, then a general of the French Republic, who later became the French emperor.

By that time the order had effectively been, for almost 268 years, the government of an independent country. They provided Malta with codes of municipal law, with an administration, some social services, forts and fortifications, and urban centers complete with palaces and churches. A *collegium melitense* founded by the Jesuits in 1584 was made a state public university in 1775. Although the order's government was absolutist, there was considerable collegiality in its internal management. Most public officials were Maltese; the status of the knights as a religious order, subject to the authority of the pope, tempered the harsh tone of sovereignty.

When Napoléon Bonaparte, commanding a large fleet of 118 ships bound for Egypt, took over the islands, he tried in six momentous days in June 1798 to change the nation's structure completely. He disbanded the university and substituted a central technical school, and he centralized the administration, dividing the islands into two municipalities. He also abolished slavery and granted Jews and Muslims equal rights. However, the government he left behind also began to sell the churches' gold, silver, and precious objects; enforced a decree limiting each religious order to one monastery; and trampled on other well-established rights and customs.

The Maltese organized a rebellion and managed to regain possession of the islands, except for the capital, Valletta, and three port cities guarded by high fortifications. The Maltese insurgents asked for, and obtained, the assistance of the admiral Lord Nelson's British fleet and their Portuguese allies. Eventually, after a two-year siege maintained by the Maltese assisted by the British, the French capitulated.

The British entered to assist, but then took possession, supposedly at the request of the Maltese Congress of Representatives. The congress issued a Declaration of Rights in 1802, stating that Malta had not been acquired by conquest but by compact. It was sent to London to form the basis of the relationship between Britain and Malta; nevertheless, for most of the period of British rule Malta was treated as a crown colony, administered by a governor responsible to London.

Initially, the governor was not even assisted by a council. After several years of protest meetings, petitions, and incessant criticism of the colonial administration, the British imperial government conceded some degree of self-government in 1887, enacting the Mizzi-Strickland Constitution, which provided for an elected majority in the Council of Government and for elected representatives in the Executive Council. However, partial self-government proved short-lived. When the elected majority rejected the education budget, in opposition to the imperial government's policy of supplanting the Italian language with English in the schools, the constitution was amended in 1889 and the education budget was approved by the appointed councilors.

Decades of political agitation in favor of genuine self-government ensued. Between 1890 and 1919, elected councilors would routinely resign en masse, or alternatively, eccentric individuals would be elected in mockery of the constitution. During World War I (1914–18) one of the more prominent nationalist politicians was court-martialed for allegedly inciting Britain's Italian allies against Britain over the language issue.

In 1918, Filippo Sceberras, a public-spirited and respected physician, called upon all the voluntary societies of Malta to appoint two delegates to a national assembly to draft a new constitution, with the goal of a Maltese government responsible to an elected parliament. The social-economic situation in the country had deteriorated, with demobilization, unemployment, and high inflation, and in June 1919, riots broke out in Valletta. In response, the governor was replaced, and the bishop was asked to help restore calm. The new governor promised changes, and in the ensuing months the draft constitution was substantially approved by the British government.

The constitution functioned smoothly during the first two elected legislatures (1921–24, 1924–27), during which an administration was formed and supported by a majority formed of the moderate Nationalist and the Labour Party, the first all Nationalist and some dissident Labour members in the second. After 1927, however, the constitution was strained by conflicts between the pro-British Constitutional Party and the Catholic Church. It was suspended in 1930, restored in 1932, but suspended again in 1933 as a result of political problems, as the Nationalist government was suspected by Britain of harboring pro-Italian tendencies. In 1939 a new constitution was promulgated with a provision for a Council of Government with 10 elected members, but with substantially reduced powers and functions. In 1947, after World War II (1939–45), the self-governing constitution was restored, but with the former senate suppressed. In 1958 self-government was suspended, then reinstated in 1962.

In May 1964, a referendum approved an independence constitution drafted under the Nationalist prime minister Borg Olivier. With some minor amendments, it was approved by the British Parliament at Westminster and entered into force on September 21 that year. Malta retained the British monarch as head of state and was admitted as an independent member to the Commonwealth. Malta's constitution was amended, and the islands became a republic on December 13, 1974. Malta became a member of the European Union on May 1, 2004.

FORM AND IMPACT OF THE CONSTITUTION

Malta has a written constitution that prevails over all other laws. Laws that do not conform to the constitution can be declared unconstitutional by the constitutional and other courts; parliament is then called upon to abrogate or amend them, if need be, with other provisions.

BASIC ORGANIZATIONAL STRUCTURE

Malta is a unitary state. The 67 local councils, one for each city and sizable village, enjoy a considerable delegation of powers.

LEADING CONSTITUTIONAL PRINCIPLES

Article 1 of the constitution of Malta describes the country as (1) "a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual." Subarticle (3) further states that "Malta is a neutral state actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance."

The republic is a parliamentary democracy, and the principles and provisions of the constitution follow the pattern of the unwritten constitution of Great Britain and its conventions. The rule of law, the separation of powers, and the supremacy of parliament, within the bounds of a written constitution, provide the implicit and explicit premises of the constitutional regimen.

CONSTITUTIONAL BODIES

The organs of the state are the president; the House of Representatives, which has the exclusive power of legislation; the cabinet or administration, which is responsible to parliament for the good government of the country; the judiciary; and the Local Councils.

The President

The president of the republic is elected for five years by the parliament, cannot be reelected, and has, in general terms, the same powers as those of the monarch in Great Britain.

The president as head of state has primarily a representative function but can, on occasion, exercise a unifying role of moderation and appeal to fundamentals. A senior, experienced and highly respected political leader is usually elected as president, and although the prime minister is supposed to "advise" the president according to the letter of the constitution, in actuality, the president gives unpublicized advice to the prime minister.

The Parliament

According to the constitution, parliament consists of a single chamber of 65 members elected by proportional representation and by a single vote, together with the president. It has only one chamber: the House of Representatives.

The leader of the opposition holds an official position and is appointed by the president as the member who enjoys the confidence of the majority of opposition members. Cabinet ministers and parliamentary secretaries (junior ministers) have to be members of the house; cabinet ministers reply to members' questions at the beginning of each sitting.

Malta is a member of the British Commonwealth and inherits most of the traditions, procedures, and style of British political life. The country also acquired the ethos of the British civil service during the long colonial period (1800–1964), and the Maltese bureaucracy continues to follow these patterns.

An ombudsperson is elected by, and is responsible to, parliament but can directly address the administration as well. Though not binding, the report of the ombudsperson to parliament is made public and has considerable political impact. The auditor general is also chosen by and is responsible to parliament. The audit, which is concerned with finances as well as the efficiency of government, is given great weight by public opinion and at times hotly debated in parliament.

The Administration

The executive power is vested formally in the president but is exercised by the prime minister and the cabinet, who are collectively responsible to parliament. The prime minister is appointed by the president, who chooses the person who would have the trust of the majority of parliament, in practice the leader of the largest party in the house. The other ministers are designated by the prime minister after taking office and then appointed by the president. The president acts, in all matters, on the advice of the prime minister except in those cases specified by the constitution. These include the decision to dissolve parliament and hold new elections, the replacement of the prime minister when the prime minister no longer enjoys the trust of the majority of the house, and the choice of the leader of the opposition. It is the prime minister and the cabinet ministers who are subjected to criticism for all the acts of the executive.

There is no formal investiture of the prime minister and the cabinet through a vote of confidence in the House of Representatives. The appointment by the president confers on the prime minister and then the cabinet ministers all legal executive powers as soon as they take the oath or solemn affirmation of office. At the start of every legislative session, the president delivers to parliament from the throne a speech, which is handed to the president by the prime minister in open house and lists the measures and general policy line of the administration's program. A debate follows with a vote on the motion of reply to the speech. On the strength of the majority expressed on this motion, the house is deemed to have shown its confidence or lack of it.

The Lawmaking Process

Parliament is exclusively vested with the legislative power. Any member can introduce a draft bill, but in practice

most legislation is proposed by the cabinet through its ministers. When a draft bill is proposed, it is put on the agenda for a first reading, after which it is distributed to the members. The debate on the second reading is limited to the principles that inspire the bill. A division (vote) is frequently called on the second reading, if the opposition does not agree with the bill in principle. If passed on second reading, the bill is referred either to the house sitting in committee or to one of the permanent committees. Any member can propose amendments in this stage, and bills are frequently amended.

The bill is then proposed for a final, third reading. In the case of bills that according to the constitution require a qualified majority, this majority is needed on the final, third reading. The bill as passed in the third reading is then sent by the clerk of parliament to the president for his or her assent.

The Judiciary

The judiciary is independent of the legislative and executive organs of government. While the executive appoints the judges and magistrates, the assignment of judges to the various courts follows the recommendations of the chief justice in consultation with the other members of the bench and countersigned by the minister of justice.

The Constitutional Court is formed through the automatic machinery ordained in the constitution and does not rely on the Ministry of Justice. Judges can be dismissed only by parliament, on impeachment by two-thirds of the members, at the recommendation of the Commission for the Administration of Justice. This commission is presided over by the president and includes cabinet members, judges, and other leading public figures.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Elections to the House of Representatives are determined by proportional representation through the single transferable vote. Each of the 13 electoral divisions elects five deputies.

Malta has a very active civil society. During the long period of colonial rule, a panoply of social and cultural groups as well as labor, trade, patriotic, and political unions voiced the aspirations and grievances of the Maltese people. Even with the provision of more formal constitutional institutions, these societies have continued to contribute to the richness and diffusion of Maltese political and sociocultural discussion.

POLITICAL PARTIES

The period of self-rule that began in 1921 offered the opportunity for the development of the political system and of parliamentary conventions and customs. Notwithstanding the initial multiplicity of political parties, Malta has evolved into a substantially stable two-party system, with alteration in power between the parties. Since independence in 1964, the Nationalist (originally proindependence, now Christian Democrat) Party has been in power from 1964 to 1971, from 1987 to 1996, and from 1998 to date, and the Labour Party from 1971 to 1987 and from 1996 to 1998.

CITIZENSHIP

The acquisition, possession, and loss of Maltese citizenship are regulated by the constitution and a special citizenship law. Dual or multiple citizenship is permitted in accordance with law.

FUNDAMENTAL RIGHTS

The constitution guarantees the classical fundamental rights and freedoms of the individual such as the right to life, protection from arbitrary arrest or detention, freedom of expression, and freedom of movement. There is also protection from forced labor and inhuman treatment. Respect of private and family life is guaranteed. As general principles of government policy, the constitution also enumerates certain social rights such as the right to work and the equal right of men and women to enjoy all economic, social, cultural, civil, and political rights.

Impact and Functions of Fundamental Rights

Fundamental rights are well protected in Malta. If, in an individual case, state authorities infringe upon an individual's rights there are effective court remedies. Malta subscribed to the 1950 European Convention on Human Rights together with its Protocol with the right of individual petition to the Human Rights Court at Strasbourg.

Limitations to Fundamental Rights

The rights and freedoms guaranteed by the constitution are subject only to limitations designed to ensure that they do not prejudice the rights and freedoms of others or the public interest.

ECONOMY

The constitution does not explicitly decide on a specific economic system. However, Article 37 states that private property cannot be taken by force except on the basis of a law and for the payment of adequate compensation. The constitution also explicitly encourages private economic enterprise. Taking into account the social principles guaranteed

by the constitution, such as the right to work, the economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

Malta enjoys constitutional guarantees of freedom of religion, belief, and opinion. Even though Malta is a predominantly Catholic country, there has been a tradition of religious tolerance, strengthened by long centuries of the existence of mostly smaller non-Catholic religious communities. There are Anglican churches, Methodist and Greek Orthodox chapels, Baptist churches, a mosque, and a synagogue. In the law courts, confirmation on oath according to one's belief can be substituted with a simple solemn affirmation. The crucifix as a traditional Catholic symbol is found in the parliamentary chamber, without any ostentation, as well as in hospitals and schools. Parents can, and a few do, ask that their children should not be made to attend religious classes in the state or private schools, and there is no direct or indirect pressure on the children to conform to any kind of religious practice. Article 2 of the constitution states, "The religion of Malta is the Roman Catholic Apostolic Religion."

MILITARY AND STATE OF EMERGENCY

The military in Malta is always subject to the civil government. The president can proclaim a period of public emergency if Malta is engaged in war or faces exceptional circumstances. The House of Representatives then decides on the continuance of that period of emergency.

AMENDMENTS TO THE CONSTITUTION

Bills to amend the constitution need to be supported by the votes of a majority of all the members of the House of Representatives. Certain amendments, such as those concerning the basic principles contained in Article 1, require a majority of two-thirds of all the members of the house. Furthermore, a referendum is required in certain cases, such as a change in the ordinary term of parliament.

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Ugo Mifsud Bonnici

MARSHALL ISLANDS

At-a-Glance

OFFICIAL NAME
Republic of the Marshall Islands

CAPITAL
Majuro

POPULATION
59,788 (2004 est.)

SIZE
Land area 70 sq. mi. (181 sq. km) Ocean 301,160 sq. mi. (780,000 sq. km)

LANGUAGES
English and Marshallese (both official), two other Marshallese dialects, Japanese

RELIGIONS
Christian (mainly Protestant), Bahá'í

NATIONAL OR ETHNIC COMPOSITION
Micronesian

DATE OF INDEPENDENCE OR CREATION
October 21, 1986 (from United States–administered United Nations trusteeship)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 1, 1979

DATE OF LAST AMENDMENT
No amendment

The Marshall Islands is a unitary state with a republican and parliamentary democratic form of government. It is based on the rule of law and a clear separation between the judicial branch of the state and the executive and legislative branches.

The written constitution of the country contains provisions protecting fundamental rights and freedoms that are enforceable by the courts. The Marshall Islands has entered into a Compact of Free Association with the United States and has been host to the U.S. Army base on Kwajelein atoll since 1964.

CONSTITUTIONAL HISTORY

The two archipelagic chains of atolls that are now known as the Marshall Islands first attracted the attention of Europeans when Spanish explorers were groping their way across the Pacific Ocean in the early 16th century, and they were claimed by Spain. Later the islands were called the Marshall Islands after a British sea captain who sighted and named a number of them on his voyages from Botany Bay in Australia to China. In the mid-19th century, American missionaries were sent to the islands. About the same time, several large German trading companies set up stations for coconut products in some of the islands. The Spanish claim to ownership of the islands was contested by Germany, and in 1885 the pope, to whom the dispute had been referred, held that Spain was entitled to exert its sovereignty, but Germany was entitled to continue to occupy the islands for trading purposes.

The following year Germany annexed the islands outright and held them until defeated in World War I (1914–18). The islands then were placed by the League of Nations as a mandate under the administration of Japan. After World War II (1939–45), the islands were included in the Trust Territory of the Pacific Islands, which was placed by the United Nations under the administration of the United States.

In 1967, negotiations for future independence of the Trust Territories began with the United States. In 1979, Marshall Islands promulgated its own constitution. In 1982, it signed a Compact of Free Association with the United States, which was approved by the United States Congress in 1985. The following year, 1986, Marshall Islands was recognized as a separate independent state by the United States. It was not, however, until 1990 that the United Nations formally dissolved the Trust Territories, and Marshall Islands was recognized internationally as an independent country.

The legal system of Marshall Islands includes not only the constitution, which is the supreme law, but also provisions of the Trust Territory code applicable to Marshall Islands. It furthermore includes legislation and executive instruments, originating both before the 1979 constitution and since that date. It also includes treaties that have been ratified by the legislature, including in particular the Compact of Free Association. American common law, which was stated by the Trust Territory Code to be part of the law of the Trust Territory, has been carried forward by the constitution of the Marshall Islands as part of the existing law of the country. This is subject to the terms of the constitution and any legislation enacted by the legislature. Customary law relating to land tenure is preserved by the constitution, and the legislature is authorized to recognize the customary law in any part of Marshall Islands.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Marshall Islands, which took effect on May 1, 1979, is one of the few constitutions of a former dependent country in the Pacific that do not adopt the constitutional system of the former controlling country. Instead of establishing an executive president elected by the people, as in the United States, the constitution of Marshall Islands establishes a parliamentary executive along the lines adopted in England.

The constitution is expressly stated to be the supreme law of the country, and any law that is inconsistent with it is void to the extent of the inconsistency. Furthermore, any action taken by any person or body that is inconsistent with the constitution is, to the extent of the inconsistency, unlawful.

BASIC ORGANIZATIONAL STRUCTURE

Marshall Islands is a unitary state. There are some 33 municipalities or local government bodies, but the national legislature and executive established by the constitution have power to exercise control over these.

LEADING CONSTITUTIONAL PRINCIPLES

Marshall Islands is a republic based upon a national parliamentary democracy. The legislature is elected by popular vote.

The executive is drawn from, and ultimately controllable by, the legislature. The administration of government is carried out by a politically neutral public service appointed by, and disciplined by, a politically neutral Public Service Commission. The head of the executive, the president, is also the head of state.

The judicial power is vested in courts that are required to be independent of the executive and the legislature, and the judiciary is appointed by, and disciplined by, a politically neutral Judicial Service Commission. A Traditional Rights Court is authorized to give opinions on matters of titles or land rights or other matters that depend wholly or partly upon custom, but those opinions are not binding.

Fundamental human rights are spelled out in some detail in the constitution and can be enforced by the courts.

CONSTITUTIONAL BODIES

The predominant constitutional bodies are the parliament, called Nitijela, the president, the Council of Chiefs, and the judiciary.

The Legislative

The unicameral legislature, called Nitijela, a Marshallese word that means "council of wise or powerful people," consists of 33 members elected by popular vote from 24 constituencies. Elections for the Nitijela are held every four years.

The President

The president, who is the head of the executive, as well as head of state, is elected by the members of the Nitijela from among their number at the first meeting of the Nitijela after a general election. The president then nominates six to 10 members of the Nitijela to form the cabinet, which is chaired by the president. The cabinet is responsible to the Nitijela, and four or more members of the Nitijela may at any time move a motion of no confidence in the cabinet. If this is carried by a majority of the total membership of the Nitijela, the president is deemed to have resigned along with the other members of the cabinet.

The Council of Chiefs

The Council of Iroij, or council of paramount chiefs, consists of 12 paramount chiefs drawn from 12 districts who hold office for one year. In those districts where there is

more than one paramount chief, the paramount chief who is to be the member of the council is either selected by his or her peers or, if there is no agreement, appointed by the Nitijela.

The Lawmaking Process

The council receives copies of all bills approved by the Nitijela, and if in its view the bill relates to customary law, traditional practice or land tenure, or a related matter, it can request that the bill be reconsidered by the Nitijela. The approval of the council is not, however, required for any bill.

The Judiciary

The judicial power of Marshall Islands is stated by the constitution to be vested in the Supreme Court, the High Court, a Traditional Rights Court, and such District Courts, Community Courts, and other subordinate courts as are established by law. The High Court is established as the principal court with general jurisdiction at first instance with regard to criminal offenses and civil claims. It enjoys powers of judicial review over decisions of government agencies, and appellate jurisdiction to hear appeals from decisions of subordinate courts as is provided by legislation. Decisions by the High Court about the interpretation of the constitution are required to be made by a bench of three judges. Appeals from the High Court are heard by the Supreme Court, which is the final court in Marshall Islands.

The Judiciary Act enacted by the Nitijela has established a District Court that has minor civil and criminal jurisdiction and a Community Court with very minor civil and criminal jurisdiction in each local government area.

The Traditional Rights Court established by the constitution is authorized to express opinions on questions relating to titles or land rights or to other interests that depend partly or wholly on customary law referred to it by a court. The opinions of this court are to be given substantial weight by the court that consulted it, but they are not binding on that court. The court's members consist of panels of three or more judges who are representative of all classes of land rights as determined by the High Court.

THE ELECTION PROCESS

Persons over the age of 18 years, unless certified insane or serving a prison sentence, are entitled to vote in the constituency in which they reside or have land rights. There are 24 constituencies, most with one member each, but the five more populous constituencies provide more than one member. In these constituencies each voter is able to cast a vote for as many candidates as there are seats to be filled. The candidates who receive the greatest number of votes are elected even if they do not have an absolute majority. Persons over the age of 21 years who are entitled to vote are entitled to stand for election.

POLITICAL PARTIES

There are no legal restrictions on the existence of political parties. As in many Pacific countries, political parties did not form initially, but in more recent years political groupings have tended to emerge, particularly the United Democratic Party.

CITIZENSHIP

Persons who were citizens of the Trust Territory when the constitution went into effect in 1979 automatically became citizens of Marshall Islands if they or their parents had land rights in the country. Persons born after the constitution took effect are automatically citizens if at the time of their birth one of their parents is a citizen or they are born in the Marshall Islands and not entitled to citizenship of any other country.

Persons are also entitled to be registered as citizens upon application to the High Court. Citizenship is granted if the court is satisfied that they have land rights or they have been resident within the country for not less than three years and have a child who is a citizen. Persons can also become citizens if they are of Marshallese descent and it is in the interests of justice that they be granted citizenship.

Citizenship may be acquired by naturalization by persons who have been resident in the country for five years, are of good character, are able to speak Marshallese, have an understanding and respect for the customs and traditions of the country, have the means to support themselves, and are not citizens of another country.

FUNDAMENTAL RIGHTS

The constitution recognizes the normal civic rights to liberty and due process, and to freedom from cruel and unusual punishment, from compulsory search and seizure, from seizure of property without compensation, and from discrimination. Freedoms of thought, speech, press, religion, assembly, association, and petition are also recognized.

In addition, the constitution recognizes the right of every person to access to the judicial and electoral processes; to health care, education, and legal services; to ethical and responsible government; and to freedom from quartering of soldiers, imprisonment for debt, conscription, and interference with personal privacy. The constitution expressly states that the enumeration of rights and freedoms in the constitution does not deny or disparage other rights and freedoms that are not so enumerated.

ECONOMY

The constitution recognizes the customary land rights of chiefs in Article 10(1), notwithstanding the fundamental rights recognized in Article 2, and it specifically empowers the Traditional Rights Court to give opinions as to land rights, which opinions are to be given "substantial weight" by any court that has sought its opinion.

Agriculture is basically subsistence, and there is only a limited amount of small-scale industry. Tourism provides some contribution to the national economy, but the largest contribution is from the United States government under the terms of the Compact of Free Association. It is estimated that over $1 billion U.S. in aid has been provided since 1986.

RELIGIOUS COMMUNITIES

The constitution recognizes freedom of belief and religion but allows for government funding of religious institutions to reimburse them for the costs of providing educational, medical, or other services, provided that there is no favoring of one religious group or belief over another. The main religious bodies are Christian, mainly Protestant churches, but in recent years there has been an increase in Bahá'í groupings.

MILITARY DEFENSE AND STATE OF EMERGENCY

Marshall Islands has a police force, but no army. Defense of the country is the responsibility of the United States under the terms of the Compact of Free Association with the United States.

AMENDMENTS TO THE CONSTITUTION

Many of the provisions of the constitution can be amended by a two-thirds majority of the members of the Nitijela, followed by endorsement by a majority of qualified voters at a referendum. Crucial provisions of the constitution, however, can be amended only by proposals submitted to a referendum by a constitutional convention. A convention can be called by the Nitijela on its own initiative or upon the request of at least 25 percent of the voters. In those cases, the amendment must be approved by a two-thirds majority of voters at that referendum.

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Don Paterson

MAURITANIA

At-a-Glance

OFFICIAL NAME
Islamic Republic of Mauritania

CAPITAL
Nouakchott

POPULATION
3,086,859 (July 2005)

SIZE
397,955 sq. mi. (1,030,700 sq. km)

LANGUAGES
Arabic (official), Poular, Soninke, French, Hassaniya, Wolof

RELIGION
Islam (Sunni) 99%, other 1%

NATIONAL OR ETHNIC COMPOSITION
Moor (black) 33%, Moor (white) 33%, other (Tukulor, Fulani, Soninke, Wolof) 33%

DATE OF INDEPENDENCE OR CREATION
November 28, 1960

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
July 11, 1991

DATE OF LAST AMENDMENT
June 25, 2006

The Islamic Republic of Mauritania is a unitary state with a strong presidency. The country is governed centrally from the capital; municipalities have elected councils. The executive is by far the strongest power in the constitutional framework.

The constitution states that Islam is the religion of the state and of its citizens. It is the main factor in uniting the country, which has a very diverse population. In the past, tensions existed among Arabs, black Africans, and Berbers, but they have diminished in recent years.

The constitution establishes three branches of government: an executive, a legislative, and an independent judiciary. The legislative branch is rather weak in comparison with the presidential powers, as is the judiciary. The constitution contains a number of fundamental rights, which, however, can be limited by ordinary laws.

CONSTITUTIONAL HISTORY

The area of what is now Mauritania was settled by Berber tribes in the first millennium B.C.E. Migration from northern to southern regions led to the displacement first of native black tribes and then of the Berber tribes by Arabs. The region formed the center of the first of the centralized black kingdoms in western Africa, the Ghana Empire (700–1200 C.E.), and was part of subsequent African empires.

European settlements began around 1440, when the Portuguese established an outpost on Mauritanian shores. The French opened trading posts in 1659; by the early 19th century they had gained control over the region, and they had established colonies by the mid-19th century. They governed Mauritania from Senegal. In 1903, Mauritania became a protectorate of the French, and in 1920, it was declared a separate colony in French West Africa.

After World War II (1939–45), in which the African colonies participated, a continentwide struggle for independence developed that finally led to Mauritania's independence from France in 1960. A constitution enacted in 1961 resembled the constitution of the Fifth French Republic. The country was under one-party rule as early as 1965. Civil unrest and ethnic tensions followed, further aggravated by droughts that lasted from 1969 to 1974.

In 1975, Spain bequeathed its colonial territory of Western Sahara jointly to Morocco and Mauritania, with Mauritania receiving the southern third of the territory. Morocco had only relinquished its claims to Mauritanian territory in 1969, and tensions had arisen immediately. Moroccan guerrilla troops attacked the Mauritanian occupying forces in Western Sahara and a war ensued. A military coup toppled the Mauritanian government in 1978. In 1979, Mauritania relinquished its claims to Western Sahara and ended its engagement in the region.

Military governments ruled the country and abolished the 1961 constitution. After another military coup in 1984, Colonel Maouiya Ould Sidi Ahmed Taya gained power, and a Constitutional Charter was enacted in 1985.

Taya undertook modest steps toward democracy, although retaining a strong presidency. In 1991, he introduced a new constitution. General elections were held, and the transition to slightly more democratic structures took place peacefully, although conditions never completely settled.

On August 3, 2005, a military coup ousted President Taya, and a Military Council for Justice and Democracy under the guidance of Colonel Ely Ould Mohamed Vall was established. On August 6, 2005, the council published a Constitutional Charter suspending parts of the existing constitution. Parliament was dissolved, and the council as well as the military forces took over legislative and executive powers. The courts continued their duties. A constitutional referendum was scheduled for June 24, 2006. It took place on June 25, 2006, and was supported by virtually all political parties now registered in Mauritania. With a 97 percent approval rate, the referendum reestablishes the constitution of 1991, but significantly reduces the president's role. According to Article 4 of the Constitutional Law, the amendments will enter into force at the end of the transitional period, which the Constitutional Charter of August 6, 2005, limits to a maximum of two years. The preamble, all articles on Islam, and individual and collective liberties and rights are sustained.

FORM AND IMPACT OF THE CONSTITUTION

The Islamic Republic of Mauritania has a written constitution in a single document. The constitution is the supreme law of the country.

BASIC ORGANIZATIONAL STRUCTURE

Mauritania is divided into 13 regions, including the capital district, which form the judicial and administrative units of the state. However, the government is still rather centralized. The government aims to further decentralization of the country, and laws on decentralization exist; however, in many areas the division of responsibilities between the central government and local government has not been clarified. Since 1990, municipal elections have strengthened the position of the lower entities.

LEADING CONSTITUTIONAL PRINCIPLES

Article 1 of the constitution establishes Mauritania as a social Islamic republic, and Article 5 proclaims Islam as the religion of the state and the citizens. Because of Mauritania's ethnic diversity, it is a common faith rather than a cohesive national identity that unites the country. Islamic law was introduced in 1980, and in accordance with the provisions in the constitution, it plays a major part in civil and criminal matters. Islamic courts exist beside Western-style law courts.

The balance of power of the three branches is tilted toward the presidency. The constitution guarantees the judiciary's independence, but the president, the strongest political factor in Mauritania's constitutional framework, is its guarantor. The judiciary therefore is subject to pressure from the executive branch.

The Islamic Republic of Mauritania is a democratic republic, with regular elections of president, both chambers of parliament, and municipal councils.

CONSTITUTIONAL BODIES

The constitution provides for a president; a prime minister and council of ministers; a bicameral Parliament, composed of a National Assembly and a Senate; a judiciary; a Constitutional Council; and an advisory body called the High Islamic Council.

The President

The presidency is the strongest constitutional institution in Mauritania. The president is head of state, head of the executive branch, and commander in chief. The president is the guardian of the constitution. All executive power is vested in the president. The president also represents the country in dealings with foreign governments and ratifies international treaties.

According to the constitutional amendment of June 25, 2006, the president is elected every five years by universal suffrage and can stand for one single reelection. Candidates must be born Mauritanians of 40 years up to a maximum of 75 years of age. The limitations pertaining to age and number of reelections, according to the new Article 99, cannot be altered.

The president appoints and dismisses the prime minister and the cabinet ministers, and he or she may delegate presidential powers to them. The president has statutory powers and can dissolve the National Assembly at his or

her discretion. The president appoints civil servants and military personnel. On any question of national importance, the president can ask for a referendum.

Until the end of the transitional period in 2007, presidential duties and rights are exercised by the president of the Military Council for Justice and Democracy as well as the council itself. Presidential elections and, with them, the end of the transitional period have been scheduled for March 11, 2007.

The Prime Minister and the Council of Ministers

The prime minister and the council of ministers are appointed by the president and are responsible to the president and the National Assembly.

The prime minister defines the policy of the executive administration only by authority of the president. The council of ministers implements this policy. The National Assembly can force the prime minister to resign by a vote of censure or no confidence.

The office of prime minister continues to exist in the new system of the Constitutional Charter.

Parliament

Mauritania has a bicameral parliament. The two chambers sit in two sessions per year, each session limited to a maximum of two months. The short sessions strengthen the executive power by limiting the direct possibility of checks and balances. Extraordinary sessions may be held for specific reasons at the request of 50 percent of the members or of the president. Extraordinary sessions may not exceed one month.

The two chambers share legislative power and do not differ in political importance. In exceptional cases, Parliament can authorize the executive government to issue ordinances in areas that are nominally restricted to formal laws.

Both chambers of Parliament have been dissolved in the wake of the military coup of August 3, 2005. Its powers are exercised by the Military Power for Justice and Democracy.

National Assembly

The National Assembly consists of 81 members who serve for a five-year term, elected by direct suffrage. The National Assembly has the right to take a vote of no confidence in the prime minister and force the prime minister to resign.

Senate

The Senate consists of 56 senators. Its members are elected by indirect suffrage; that is, they are nominated by municipal councils. They represent the districts of Mauritania as well as Mauritanians living abroad. The term of office is six years; one-third of the members are renewed every two years.

The Lawmaking Process

Bills can be introduced in either chamber of Parliament by members themselves or by the executive administration. Finance bills must be submitted to the National Assembly first. After bills are accepted in both houses, the president can propose amendments to the National Assembly, which can accept them by simple majority.

The Judiciary

According to the constitution, the judiciary is an independent branch of government; in reality, the central executive government interferes heavily with judicial proceedings. The highest court in the country is the Supreme Court, which has jurisdiction in appeals and administrative matters. The main source of law is the Sharia; only in commercial and some criminal matters does a Western-style legal code apply.

The judiciary so far has not been affected by the military coup.

Constitutional Council

The Constitutional Council is a central institution in Mauritanian constitutional law. It reviews every law as to its constitutionality before its promulgation. If the council declares a law to be unconstitutional, it cannot enter into force. Additionally, the Constitutional Council evaluates the legality of presidential elections and referenda. The council's decisions cannot be appealed.

Three of the council's six members are appointed by the president, two by the president of the National Assembly, and one by the president of the Senate. The president of the republic also appoints the head of the council. The term for members is nine years and is nonrenewable. One-third of the council is replaced every three years. The minimal age is 35, and members must not belong to the leadership of a political party.

The Constitutional Council continues its functions under the new leadership advising the Military Council on Justice and Democracy.

High Islamic Council

The High Islamic Council is an advisory body to the president and is composed of five members appointed by the president. It issues opinions in all matters that the president refers to it.

The High Islamic Council is not affected by the military coup.

THE ELECTION PROCESS

The constitution provides that all Mauritanians at least 18 years of age are allowed to vote in elections and public

referenda. Candidates for the presidency have to be born Mauritanians, 40 years of age or above. Candidates for the National Assembly must be 25 years of age or above. Candidates for the Senate must be at least 35 years old. Since 1992, more candidates have competed in elections, and safeguards against fraud and manipulation were introduced in 2001.

POLITICAL PARTIES

Under military rule, political parties were banned, and only with the new constitution of 1991 were they legalized. The constitution provides for a pluralistic party system, which can be abolished only by a constitutional revision. Since the Military Council for Democracy and Justice took over in 2005, the number of political parties has increased. Under the old rule, the political scene was dominated by the presidential party, which occupied almost every seat in parliament. Political opposition parties claimed irregularities in every election. It will have to be seen what the parliamentary elections of 2006 and 2007 and the presidential election in 2007 will bring.

CITIZENSHIP

The constitution does not contain any provisions regarding citizenship. Mauritanian citizenship is acquired mainly by birth to a Mauritanian parent. Noncitizens can apply for citizenship after five years of residence in Mauritania. Dual citizenship is recognized only in very few cases, mainly if a Mauritanian female marries a noncitizen and has to assume his citizenship. In that case she can retain her Mauritanian citizenship as well.

FUNDAMENTAL RIGHTS

Article 10 of the constitution is the most important to fundamental rights. It names the following as citizen rights: freedom of movement and settlement; freedom of thought, opinion, and expression; freedom of assembly and association; and freedom of the arts and sciences. Citizens can participate in political parties, and the presumption of innocence in criminal matters forms part of the constitution. The right to strike is guaranteed.

The Constitutional Charter upholds the fundamental rights of the constitution.

Impact and Functions of Fundamental Rights

The citizens are obliged to fulfill their duties to the welfare of the state and must protect the country. In practice, fundamental rights are restricted in many areas by the strong position of the executive and the rather weak judicial system.

Limitations to Fundamental Rights

All fundamental rights can be restricted by laws or provisions in the constitution itself. The human rights record of the Mauritanian government remains weak; fundamental rights abuses are reported continuously. The principles of Islam interfere with fundamental rights in many aspects, inhibiting especially the freedom of the press.

ECONOMY

Mauritania has a market-driven economy, and its constitution protects private property. The economy is focused on iron mining and agriculture. Mauritania ranks among the poorest countries in the world with a per capita income of $340 per year.

RELIGIOUS COMMUNITIES

A full 99 percent of the population are Muslims. Islam is the state religion. Other religions are tolerated, and non-Muslim citizens, as well as non-Muslim expatriates, can practice their faith freely and openly. Religious groups are not registered with the government. Religious groups, along with nongovernmental organizations, are not subject to taxation. Under a 2003 law, the use of mosques for political purposes is prohibited.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution stipulates the president as commander in chief. Two-year military service is obligatory for every male at the age of 18. The military consists of army, navy, and air force, as well as police forces and the presidential guard. Several attempts at military coups since 1992 have been suppressed.

The president may declare a state of emergency or martial law by presidential decree for a maximum of 30 days without specified reasons. Parliament can change this duration in regular session.

AMENDMENTS TO THE CONSTITUTION

There are two ways to amend the constitution. By initiative of the president or one third of the members of one chamber of Parliament, the constitution can be amended through a simple majority vote in a referendum. Prior to the referendum, the National Assembly and the Senate must each vote in favor of the bill with a two-thirds majority.

Another way to amend the constitution is the presentation of the bill to Parliament convened jointly as “Congress.” Then, a three-fifths majority in Congress is

necessary for the amendment without the need for a referendum.

The president has discretion on which method of amendment to follow.

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Oliver Windgätter

MAURITIUS

At-a-Glance

OFFICIAL NAME
Republic of Mauritius

CAPITAL
Port Louis

POPULATION
1,240,827 (July 2006 est.)

SIZE
788 sq. mi. (2,040 sq. km)

LANGUAGES
English (language of administration), French (language of business), Creole and Asian languages (Bhojpuri, Hindi, Urdu, Tamil, Hakka, and Mandarin)

RELIGIONS
Hindu 49.6%, Catholic 29.9%, Muslim 16.6%, Buddhist 0.7%, Protestant 0.3%, other 2.9%

NATIONAL OR ETHNIC COMPOSITION
Indo-Mauritian 68%, Creole 27%, Sino-Mauritian 3%, Franco-Mauritian 2%

DATE OF INDEPENDENCE OR CREATION
March 12, 1968

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
March 12, 1968

DATE OF LAST AMENDMENT
August 15, 2003

Mauritius, found just below the equator in the middle of the Indian Ocean off the coast of Madagascar, is a parliamentary democracy with an impressively elaborate written constitution modeled on the British or Westminster system of government. A unitary state administered from Port Louis, the chief city of the main island of Mauritius, it encompasses other smaller islands of varying sizes and population: Rodrigues, Agalega, Tromelin, Cargados Carajos, and Chagos Archipelago, including Diego Garcia. Its constitution formally guarantees the fundamental freedoms and liberties of the citizen similar to those found in the European Charter of Human Rights. It became a republic in 1992.

CONSTITUTIONAL HISTORY

The island was discovered in the middle of the 16th century by Arab traders. However, it was first occupied by the Dutch, who named it after Prince Maurice de Nassau. The Dutch used it as a convenient stop and for exploitation of timber for two short periods: 1638–58 and 1664–1710. The French took over from 1715 to 1810, when it was captured by the British. Mauritius attained independence from British rule on March 12, 1968.

FORM AND IMPACT OF THE CONSTITUTION

Mauritius boasts a third-generation constitution in that it states explicitly all the principles, powers, and responsibilities of government. The charter takes precedence over all other laws. International law is not directly applicable. Any legal obligation taken at international level by the executive needs to be incorporated in national legislation to become the law of the land.

BASIC ORGANIZATIONAL STRUCTURE

Unlike in the British system, the parliament of Mauritius is unicameral. Rodrigues alone among the islands

that make up the country has its own local legislature, the Regional Assembly. It differs considerably in geographical area, population size, and economic strength from the others. The powers and responsibilities of its legislature are specified in the Rodrigues Regional Assembly Act 2002 and are limited to the island's own administration.

LEADING CONSTITUTIONAL PRINCIPLES

The following leading constitutional principles are enshrined in the Mauritian Charter and influence the growth of its parliamentary democracy: (1) a sharp division of powers among the executive, the legislature, and the judiciary; (2) adherence to the rule of law; (3) guarantee of constitutional protections to citizens as regards their fundamental freedoms and liberties; (4) the periodic holding of free and fair elections; and (5) a multiparty system. The civil service is by tradition and convention politically neutral. Because the constitution is secular, government is also religion-neutral.

As regards foreign affairs, Mauritius adopts a policy of openness and takes an active part in world and regional politics. It is a member of the Commonwealth of Nations. Regionally, it plays a leading role in African integration through such organizations as the South African Development Community, the New Economic Program for African Development, and the African Union.

CONSTITUTIONAL BODIES

The predominant constitutional figures are the president, the prime minister, the deputy prime minister, and the cabinet ministers. These figures decide policy. The chief justice, the judges, and the magistrates represent the judicial authority, by interpreting and administering the law. The National Assembly is the legislative body and representative organ of the people, which enacts the nation's laws. There is also an ombudsperson, the parliamentary commissioner to whom complaints may be made by a citizen aggrieved by maladministration.

The President

Executive authority is vested in the president. The president appoints the prime minister and may remove the prime minister from office. The prime minister is the political head presiding over the cabinet and also the leader in the National Assembly.

The president is appointed by the National Assembly for a term of five years. There is no restriction as to the number of terms a president may serve.

Cabinet Government

The cabinet is the political nerve center of government affairs. It comprises the prime minister and the ministers. The powers of the prime minister largely derive from his or her role as the dominant figure in the National Assembly.

The National Assembly

The National Assembly is the central representative organ of the people and the supreme legislative body. Its members are elected for a period of five years in direct, free, equal, and secret balloting in general elections. The island of Mauritius is divided into 20 constituencies, each electing three candidates. The island of Rodrigues constitutes a separate constituency, electing two candidates. Since 2000, the island of Agalega has participated in the general elections as an attachment of one of the urban constituencies.

The Lawmaking Process

The main function of the National Assembly and the Regional Assembly of Rodrigues is to enact legislation, the former for the whole country and the latter for Rodrigues. A draft law or bill becomes law only after the president has given assent. The president may withhold assent once; once the National Assembly has resubmitted the bill it must be signed.

The Judiciary

The judiciary is independent of the executive and the legislature. It is regarded by the public with trust and confidence as a guarantor of their rights. The legal professions comprise barristers, attorneys, and notaries.

The highest court in the Mauritian judicial system is the judicial committee of the Privy Council, based in London. In Mauritius itself, the local apex court remains the Supreme Court. The Supreme Court comprises an appellate division and an original division with unlimited jurisdiction to deal with all matters of a civil, criminal, administrative, labor, or financial nature. It also has a constitutional division that deals exclusively with constitutional disputes. Many of the court's decisions have had the highest legal and political impact.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Mauritians over the age of 18 have both the right to stand for election and the right to vote in the election.

POLITICAL PARTIES

The Mauritian electoral process is based on the multiparty system. Subject to its compliance with the laws, no party

may be banned from participation in an election. However, all parties are required to register before the electoral commission, which manages the elections. The work of the electoral commission, which is itself an independent body under the constitution, is further supervised by the electoral supervisory commission.

CITIZENSHIP

Mauritian citizenship is primarily acquired by birth. A child acquires Mauritian citizenship if one of his or her parents is a Mauritian citizen, wherever the child is born. However, in case of birth abroad, soon after the minor attains adulthood he or she must apply for citizenship.

FUNDAMENTAL RIGHTS

The fundamental rights and freedoms enshrined in the Mauritian constitution are specified as follows: right to life, right to personal liberty, protection from slavery and forced labor, protection from inhuman treatment, protection from the deprivation of property, protection of the law, protection of freedom of conscience, protection of freedom of expression, protection of freedom of assembly and association, protection of freedom to establish schools, protection of freedom of movement, and protection from discrimination on account of race, caste, place of origin, political opinions, color, creed, or sex.

Impact and Functions of Fundamental Rights

These fundamental rights have generally been respected in Mauritius. Over and above the protection of the courts in cases of breach, Mauritians can seek the assistance of the Human Rights Commission, a recent institution set up to handle rights complaints in a less formal manner on a case-to-case basis.

Limitations to Fundamental Rights

Those fundamental rights are not, however, absolute. Each basic right is subject to a certain number of specified limitations that in turn are not themselves absolute. For instance, Article 12 guarantees the freedom of expression and at the same time legitimizes any law restricting that right in the interest of defense, public safety, public order, public morality, or public health. However, the limitation must be “reasonably justifiable in a democratic society.” Thus, the European principle of “limitation limits” based on proportionality is basically followed in Mauritius.

ECONOMY

The Mauritian constitution does not impose any specific choice of economic system. However, insisting as it does on the fundamental freedoms and liberties of a liberal democracy, it has an economy that has grown and developed as a free market economy. Market freedom in Mauritius, however, is not interpreted as license; it is subjected to a degree of control in the interest of social responsibility.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is constitutionally protected as part of freedom of conscience. It goes hand in hand with freedom of assembly and association. There is no established state church or religion.

All public authorities are bound to remain strictly neutral in their relations with religious communities, and no one religion may be given any preferential treatment to another without violating antidiscrimination provisions.

The fact that Mauritius is a secular state does not prevent government from encouraging religious and sociocultural organizations to proliferate. They operate as autonomous organizations subject to the laws of the land and compliance with a number of statutory requirements for registration, annual returns, and audit and the supervision of the Registrar of Association.

MILITARY DEFENSE AND STATE OF EMERGENCY

Mauritius does not possess any armed forces. It does have forces for the maintenance of law and order called the Disciplined Forces, which include a section specially trained to deal with situations of national emergencies and natural disaster such as cyclones, floods, riots, or major accidents. Defense and security are the responsibility of the prime minister, who decides how best the country may be protected internally and from outside threats.

When the need for military intervention arises, the prime minister may have recourse to assistance from friendly nations. In 1967, for instance, British troops from Aden were called to quell rioting in the country on the apprehension that it might develop into a major preindependence civil disturbance. There is a present pact for military assistance between Mauritius and India. The likelihood of its use is quite remote, however.

Accordingly, there is no general conscription. The Disciplined Forces are always under the control of civil government. Mauritius also belongs to the group of nonallied countries as regards its international politics.

AMENDMENTS TO THE CONSTITUTION

The constitution sets different requirements for amending different sections. In many cases, it can be changed

by a two-thirds vote of the members of the National Assembly. Other provisions, such as Chapter 2 (fundamental rights and freedoms), require a three-quarters vote of all the members of the National Assembly for amendment. In a few cases, such as the postponement of elections beyond the five-year mandate, it may be altered only by a unanimous vote in the assembly after a national referendum.

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Satyabooshum B. Domah

MEXICO

At-a-Glance

OFFICIAL NAME
Estados Unidos Mexicanos

CAPITAL
Ciudad de México, D.F.

POPULATION
105,000,000 (2005 est.)

SIZE
761,606 sq. mi. (1,972,550 sq. km)

LANGUAGES
Spanish

RELIGIONS
Catholic 88%, Protestant 5.20%, biblical not evangelical 2.07%, Jewish 0.05%, other 1.16%, without any religion 3.52%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (Amerindian-Spanish) 60%, Amerindian or predominantly Amerindian 30%, white 9%, other 1%

DATE OF INDEPENDENCE OR CREATION
September 27, 1821

TYPE OF GOVERNMENT
Presidential system, representative democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 5, 1917

DATE OF AMENDMENT
April 7, 2006

Mexico is organized as a democratic, representative, and federal republic that comprises 31 federal states and one federal district. Its constitutional system is based on two fundamental principles: the division of legislative, executive, and judicial powers and the recognition and guarantee of fundamental human rights. While a reasonable balance exists among the three federal powers, the central figure of public life, according to the presidential model, continues to be the president of the republic, who is both head of state and head of the executive.

The current constitution was enacted on February 4, 1917, and became effective on May 1 of the same year. It contains 136 articles, of which only 27 have escaped reform during their nine decades of existence. It was the first constitution in the world to recognize and guarantee the social rights of workers and peasants.

A politically pluralist system has emerged as a result of a gradual, delayed process toward a democratic transition, which culminated in the year 2000 with the election of a president from the opposition. Political parties compete on a level ground protected by an electoral organization that guarantees free and respected elections at both federal and local levels.

The state and religious communities are separated. The state respects the right to religious freedom, although some restrictions do apply. The economic system can be described as a social market economy. The army has a strong popular component and is subject to the civil government both in law and, in recent decades, in fact.

CONSTITUTIONAL HISTORY

Mexico began to emerge as a political entity in 1821, after the independence of the Viceroyalty of New Spain from Spain. This new political entity was populated by a people—the Mexican people—of mixed heritage, a blend of Spaniards from the Iberian Peninsula of Europe who entered to conquer and colonize the newly discovered lands and the Amerindian peoples who inhabited the territory of what would become New Spain.

The Great Tenochtitlan, capital of the Aztec Empire (and site of today's Mexico City), fell on August 13, 1521, after a 75-day siege. Although the Aztecs resisted, the Spanish conquerors led by Hernán Cortés finally took the main square. For three centuries, from 1521 to 1821, the country was subject to the Spanish Crown. It was granted the rank of kingdom and known as the Viceroyalty of New Spain.

The discovery, conquest, and colonization of America took place with the financial backing of Spain. Although a special legal system known as the Indian Rights was drafted for the Indies, as America was initially called, Spanish language and law were imposed on New Spain.

The revolution for independence began in 1810, led by Don Miguel Hidalgo. It ended in 1821, after a victorious movement led by Don Agustín de Iturbide.

On May 19, 1822, Iturbide was proclaimed emperor of Mexico. During the time of the empire, the provinces of the old Captaincy of Guatemala, known today as the countries of Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica, were annexed by Mexico. The Captaincy of Yucatán, which had not belonged to New Spain, was also annexed. In the north, the sparsely populated Mexican territories of Texas, New Mexico, and Alta California extended their borders north of the 40th parallel. During this early stage of the Mexican state, its territorial extension could be calculated at approximately 1,737,460 square miles. On March 19, 1823, Iturbide abdicated. After the empire dissolved, the Central American provinces, with the exception of Chiapas, separated.

The next portion of territory to be lost was the prosperous province of Texas. On March 2, 1836, over 50 representatives and colonists proclaimed the "independence" of Texas in Washington, D.C. On July 5, 1845, the United States Senate approved the annexation of Texas. As a consequence of the ensuing war between Mexico and the United States, and by virtue of the 1848 Treaty of Guadalupe Hidalgo, Mexico lost over half of its territory.

In 1864, for the second time in independent Mexico's history, a monarchy was established. Emperor Maximilian of Habsburg was crowned by the Conservative Party. On June 19, 1867, Maximilian's execution ended his short-lived empire. This date also marks the final triumph of a liberal faction over the conservatives. For years, their power struggle had caused turmoil in the Mexican territory.

From 1808 until 1867, Mexico saw many constituent assemblies and proposed constitutions, as well as plans for change. Several constitution projects were drafted but never prospered.

The Mexican Revolution of 1910, resumed in 1913, is the historical event that led to the current constitution, which was enacted on February 5, 1917. In its initial stages, the revolutionary movement brandished the slogan of political democracy, "Effective Suffrage. No Reelection." Economic, social, and cultural demands were added later. Another antecedent of the revolution was the regime of Porfirio Díaz, who remained in power for 31 years through seven elections.

On November 20, 1910, an armed movement led by Francisco I. Madero emerged. On May 25, 1911, President Diaz stepped down. Madero was chosen president of the republic in the first democratic elections in Mexican history. Jose María Pino Suárez was elected as vice president.

On February 18, 1913, Victoriano Huerta usurped the presidential seat—a usurpation that he veiled with constitutional formalities—and had Madero and Pino Suárez murdered. On March 26, 1913, the governor of Coahuila, Venustiano Carranza, launched a long military campaign, managing to defeat the army first, and later Huerta's disaffected revolutionaries themselves, until he was finally able to convene a Constituent Congress in September 1916. The constitution it drew up, enacted on February 5, 1917, and effective in May 1917, has remained in effect to the present day.

FORM AND IMPACT OF THE CONSTITUTION

The Mexican constitution is a rigid, written document that cannot be reformed by ordinary constitutional powers except under those rare exceptions that the document itself justifies. It plays a central role in the national judicial order. The constitution is based on the recognition of two fundamental principles: the principle of supremacy and the principle of inviolability. The principle of supremacy is consecrated expressly in Article 133, which establishes that the constitution is the supreme law of the union. The principle of inviolability, which is found in Article 136, states that the "constitution will not lose force or vigor even if and when a rebellion interrupts its observance."

The principle of supremacy in Article 133 contains the hierarchical order of the laws, as follows: (1) constitutional laws, (2) laws of the congress of the union that emanate from the constitution and international treaties, and (3) federal and local laws.

Traditionally the Supreme Court of Justice of the Nation has granted the same constitutional rank to laws that emanate from the Congress and those pursuant to international treaties. However, in an interpretative declaration in 1999, the Supreme Federal Tribunal abandoned this criterion, sustaining the jurisprudential thesis that places international treaties first, above federal laws, but second to those of the federal constitution.

BASIC ORGANIZATIONAL STRUCTURE

Mexico is a federation made up of 31 federal states and one federal district. The Mexican Federation was not a union of preexisting states that had already acquired sovereignty and independence; such states did not exist in Mexico. After it became independent of Spain and attained its sovereignty, federalism and centralism were the

two major proposals for the organization of a Mexican state. Mexico chose the federalist option at its first constituent congress in 1824. The federal system was maintained in the 1824 constitution, in the Constitutive Act, in the 1847 reforms and constitution, and in the current 1917 constitution. Yet federalism has remained a central issue in Mexico's constitutional history ever since, often dividing the nation.

Though federalism eventually prevailed in theory, it was mostly as a theoretical expression of an ideal that could never crystallize into a political reality in the face of the existing reality of centralism. It was not until recent years that firm steps were taken to establish a cooperative federalism that gives reality to the constitutional norm.

In the Mexican constitutional model, federalism signifies a dual system of authority distributed between the federal government and the local governments. The shared authority can be legislative, executive, or judicial in nature. Authority that is not explicitly granted to federal organs is understood to be reserved for the member states. Next to the explicit and reserved powers are the so-called concurrent faculties, which are powers exercised simultaneously by the federation and by the states.

As the utmost expression of their autonomy, each state in the Mexican Federal Republic drafts its own constitution, thereby creating its own local government bodies and granting them authority. There are 31 constitutions that correspond to 31 state entities. The content of these local constitutions is in part determined by the federal constitution, which imposes a series of obligations and prohibitions with which they must abide.

Generally speaking, the constitution stipulates that the states are obliged to accept a republican, representative, and democratic form of government, and to have as the basis of their political and administrative organizations free municipalities. It also stipulates that the public power of each state must be divided for its exercise into executive, legislative, and judiciary powers.

Each state entity has its own local executive power, led by the governor of the state, a legislative branch in the form of a unicameral congress, and a judiciary, the highest organ of which is a superior tribunal of justice. Local constitutions, for the most part, have lacked originality and followed the federal model instead of accepting local customs and adapting to them. It has only been in recent years that they have shown a tendency to move toward the exercise of their autonomy by introducing amendments to their constitution more consonant with the particular circumstances of each state.

Along with the state entities or members, there exists another unique entity called the federal district, where both the federal powers and the capital of Mexico are located. Mexico City and the federal district occupy the same geographic district. The constitution merges Mexico City and the federal district into a single entity.

Unlike the state entities, the federal district does not have a constitution of its own. Its organizational roots are found in the federal constitution.

LEADING CONSTITUTIONAL PRINCIPLES

Mexico can be described as a democratic, republican, federal, and nonreligious state, with a clear division of powers and a system of protection for human rights.

The Mexican system is democratic; part of the leading principle found in Article 39 of the constitution states: "National sovereignty resides essentially and originally in the people" and "All public power originates in the people and is instituted for their benefit."

However, the people, who are sovereign and by definition maintain this attribute of sovereignty forever, do not exercise power directly, but instead through their representatives. Popular participation in the renewal of the legislative and executive powers is carried out through free and periodic elections.

The classic tripartite principle of the division of powers is defined in Article 49 of the constitution, which establishes that "the Supreme Power of the Federation is divided, for its exercise, into legislative, executive and judicial branches." This principle of the separation of powers extends to the states in their internal regimes. Historically, however, and despite the tripartite principle, power has been concentrated in the executive branch, to the detriment of the remaining two branches. With the 1917 constitution, the power of the president of the republic was so excessive that a historian justifiably called it an "Imperial Presidency."

In recent decades, this reality has gradually changed into a government of separation, a balance of powers, and free and respected elections. On July 2, 2000, Mexico's process of democratic transition culminated in the first election since 1917 of a candidate from the opposition to the presidency of the republic. A system of absolute political democracy was established.

The Mexican constitutional system is organized under the rule of law (Estado de Derecho). The authorities are subject to the law. There is an extensive catalog of recognized and constitutionally protected human rights.

The 1917 Mexican constitution was the first in the world to guarantee the social rights of workers and peasants. It can be affirmed that social constitutionalism, or the social democratic rule of law, was modeled by this constitution. Article 3 considers democracy not solely as a legal structure and a political regime but also as a system of life founded on constant economic, social, and cultural improvement for the people. However, and despite recent serious efforts, an enormous gap continues to exist today between the recently attained political democracy and a social democracy that still looms in the distance.

Mexico is a republic. The executive position is periodically renewed with the participation of the people through elections. It is a secular state, with the separation of the state and religious communities. It recognizes and guarantees the human right to religious freedom.

According to the constitution, the municipality is the foundation of territorial division and of the political organization of the states. A council (*ayuntamiento*) is chosen by direct popular election to govern each municipality. The council is composed of a municipal president, who chairs the council, and the councilors (*regidores* and *síndicos*). The councilors are chosen through direct popular elections, hold the post for a three-year term, and may not be reelected for the term that immediately follows.

CONSTITUTIONAL BODIES

Historically and until recently, the predominance of the executive power over the other two branches blurred the principle of the separation of powers. With the exception of brief periods, the subjection of the judicial and legislative powers to the executive has been the historical norm, to such a degree that for a long time the legislative organ was no more than a type of registration office under the orders of the president of the republic. The president practically monopolized the power to introduce bills before a congress that approved them automatically.

Fortunately, this situation has changed substantially through a series of amendments to the constitution that began in 1977. A system of proportional representation was introduced into the election of deputies, without abandoning the election method of relative majority, establishing a mixed electoral system that set the renewal of the country's political life in motion.

As do most democratic constitutions, Mexico's constitution adopts the theory of the division of powers with the consideration that the separation should not be mechanical, but rather organic. Through the balance and cooperation of the powers they can better satisfy the purposes of the state.

Accordingly, the predominant bodies established in the constitution are the president of the republic, with the aid of the public administration apparatus, the Congress of the union, composed of the Chamber of Deputies and the Chamber of Senators, and the judiciary, made up of diverse federal tribunals and headed by the Supreme Court of Justice of the Nation.

The President of the Republic

The president of the republic exercises the federal executive power and is simultaneously the head of state and the head of the administration. To be president, a person must be a Mexican citizen by birth and a child of a Mexican mother or father. The candidate must also have reached the age of 35 at the time of the election. No one can be candidate for president who is in active service in the army, is a secretary of state (minister), holds any high position in the national government, or is governor of a federal state, unless the candidate resigns from the post six months prior to the day of the election. A candidate also must not be a member of a religious order or a minister of any cult.

The election of the president is direct. The president assumes the duties of office for a period of six years, cannot be reelected, and cannot occupy the position, under any circumstances, for a second term. During the six-year period in office the president can be impeached only for treason and serious crimes. The president may resign from the post only under very grave circumstances, which are specified by the Congress of the union, and before whom the resignation must be presented.

The president of the republic is the representative of the Mexican state and commander in chief of the military forces. Among the president's duties are the promulgation and execution of laws enacted by the Congress of the union. The president also has the power to introduce bills or decrees before the congress and to veto laws adopted by the congress. The purpose of the veto, which can be total or partial, is to return the bill, with any observations deemed pertinent, to the Congress of the union so that they may discuss it again. If and when the congress accepts it with two-thirds of the votes, the bill then becomes law and is returned to the executive for its enactment. If it does not obtain this majority, the bill is defeated.

The president holds the power to direct foreign policy and sign international treaties after submitting them to the approval of the Senate. The president declares war in the name of the Mexican state pursuant to a previous congressional law to that effect. The president can also grant pardons to criminals according to the law.

The president is supported by the federal public administration, whose main components are the secretaries of state. They are the most immediate collaborators and closest in rank within the executive to the president, who has the power to designate and remove them freely. The secretaries of state lack their own authority since they exercise power in their respective fields by delegation and as representatives of the president. The acts of the secretaries are by law presidential acts. However, the constitution demands that all regulations, decrees, agreements, and orders of the president be countersigned by the secretary of state covering the matter and stipulates that they must not be obeyed if lacking this prerequisite.

The Legislature

The legislative power is entrusted to the Congress of the union, which comprises two chambers: the Chamber of Deputies and the Chamber of Senators. Both hold the same constitutional rank and are essentially endowed with the same powers. Senators and deputies alike represent the nation and are chosen directly by the people.

The Chamber of Deputies is renewed in its entirety every three years. It comprises 500 deputies. Of these, 300 are elected according to the principle of relative majority voting, and 200 are elected according to the principle of proportional representation, through a system of regional lists. For each proprietary deputy, an alternate is elected

as a replacement in case of special leave, resignation, or an absence from sessions of 10 consecutive days without justifiable cause.

A deputy must be a Mexican citizen by birth and have reached 21 years of age by the day of the election. Deputies are representatives of the nation. Each represents the totality of the people and not only the district or region in which he or she was chosen.

The Chamber of Senators is renewed in its entirety every six years. It is composed of 128 senators. In each state and in the federal district, 96 senators are elected by majority vote. The remaining 32 senators are elected according to the principle of proportional representation, according to lists presented by the political parties for each election.

A senator must be a Mexican citizen and must be 35 years of age by the date of the election. As in the case of the deputies, for each proprietary senator an alternate is also elected.

Senators and deputies cannot be reelected for the term that immediately follows their term. The constitution also states that proprietary deputies and senators may not hold any other commission or employment of the federation or of the states for which they receive a salary during their term of office.

To preserve the independence of the parliamentary function, members of both chambers are granted parliamentary immunity. Deputies and senators cannot be legally prosecuted during their term of office, until the chamber previously approves a bill, similar to impeachment, that entails the removal of the representative from office. No legal action whatsoever may be taken against them for expressing their opinions in the exercise of their duties.

The general quorum rule is that for the chambers to open their sessions, more than half of all the members must be present. Once quorum has been reached, the chambers can act. Decisions are generally made by a majority of the members present.

For the opening of the ordinary sessions of the first period of Congress of the union, the president of the republic must be in attendance and present a written report on the general state of the country's public administration.

Neither the Chamber of Deputies nor the Chamber of Senators on its own has the formal power to expedite laws. Their joint action is necessary to draft laws. The congress can perform some functions that are administrative and jurisdictional in nature.

The Lawmaking Process

The right to introduce bills or decrees before the Congress of the union is granted to the president of the republic, the deputies and senators of the Congress of the union, the local chambers of deputies of the states, and the Legislative Assembly of the federal district, for issues concerning the federal district itself. Most bills can be presented in either of the two chambers. Bills concerning loans, contributions or revenues, or the recruitment of troops, however, must be introduced first in the Chamber of Deputies.

Once the bill or decree is submitted, a period of discussion begins, and it is eventually either approved or rejected. If both chambers approve it, the law is remitted to the president. The president either vetoes the bill or promulgates it and publishes it immediately. A veto can be total or partial; in either case, congress can override the veto with two-thirds of the votes, and the executive must enact it.

The Judiciary

The judiciary in Mexico is independent of the other two federal powers. The judicial power of the federation is vested in a Supreme Court of Justice, an Electoral Tribunal, Collegiate Tribunals, Circuit Courts, and District Courts.

The Federal Judicature Council also plays an important role in the judiciary. It is a predominantly administrative body that oversees the administration of the federal judiciary and monitors and disciplines it—with the exception of the Supreme Court. The Federal Judicature Council has contributed much to the establishment of a judicial career path and, consequently, to the professionalization of the judicial system.

Other jurisdictional organs also exist but are not considered to form part of the federal judicial power. These include military tribunals, misdemeanor councils, agrarian tribunals, the Tribunal of Fiscal and Administrative Justice, the Board of Conciliation and Arbitration, and the Federal Tribunal of Conciliation and Arbitration.

The Supreme Court of Justice of the Nation is the highest organ of the federal judiciary. It can be considered a constitutional tribunal on which the protection of the constitutional order has been conferred.

The Supreme Court is composed of 11 judges. The president of the republic nominates the judges, who are then submitted for approval to the Chamber of Senators. After hearing the proposed candidates, the Senate elects them.

Over the last decade, and particularly since the democratic transition of 2000, the Supreme Court of Justice has played a crucial role in resolving conflicts between federal and local powers in the country and in defending the fundamental values found in the constitution. In a paradigmatic case, in January 2002 the court issued an interpretive ruling, expanding on a fundamental law: "The constitution protects the product of the conception as a manifestation of human life, independently of the biological process in which it is found." The recognition and protection of the human right to life are not explicitly expressed in the text of the constitution.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The right to vote is acquired at the age of 18 years, both for Mexicans by birth and for those who have acquired

citizenship by naturalization. However, in order to be voted into public office, one must be a Mexican citizen by birth and have reached a higher age, which varies with the office.

Federal elections are organized by an autonomous public organ called the Federal Electoral Institute (IFE), which has a judicial character and its own resources. This institute is independent in its decisions. Its guiding principles are certainty, legality, independence, impartiality, and objectivity.

Another key instrument in the process of democratic transition and in the current consolidation of the democratic system is the Federal Electoral Tribunal, created in 1996. It is the leading jurisdictional authority in electoral matters and a specialized organ of the federation's judiciary with far-reaching autonomy. It can be defined as a court of constitutionality in electoral matters.

Mexico is a representative democracy. The federal constitution does not recognize any so-called direct or semidirect democratic instruments, such as referenda, plebiscites, popular initiatives, or repeals. However, in recent years, some of these instruments have been introduced in several local constitutions, though, in practice, they have not been used.

POLITICAL PARTIES

The constitution considers political parties to be entities of public interest, the purpose of which is to promote the participation of the people in democratic life. They provide citizens with access to public power; enable them to express their views through the programs, principles, and ideas that the parties proclaim; and present candidates for election. Only citizens can be full members of political parties, and only as individuals. Collective bodies, unions, or political groups cannot join political parties.

A pluralistic system of political parties is currently established and consolidated in Mexico. There are three large parties that have the most electoral force within the multiparty regime, alongside three smaller parties that, on occasion, can determine an election through strategic alliances.

The constitution guarantees that national political parties be granted equal shares of subsidies in order to perform their activities. Therefore, they have the right to public financing, with funds from the state to support both their ordinary permanent activities and their electoral campaigns. Political parties have the right to continual access to the mass media, according to procedures established by law.

CITIZENSHIP

The Mexican constitutional system distinguishes between nationality and citizenship. Mexican nationality is acquired by birth or by naturalization.

Mexicans by birth are those born in the territory of the republic, regardless of the nationality of their parents; those born in a foreign country of a Mexican-born or naturalized mother or father; and those born on board a Mexican vessel or airplane. Foreigners may acquire Mexican nationality, provided they are domiciled on national territory and fulfill additional requirements established by law.

The constitution states that no Mexican by birth may be denied his or her nationality. This implies that a Mexican may have dual nationality.

Foreigners, in general, enjoy the same rights as Mexicans. However, they have no right to participate in the political life of the country. They are not allowed any active or passive vote in elections; nor do they have the rights of petition or association in any political matters. They are also not permitted direct ownership of lands or waters within a zone of 100 kilometers along the frontiers and of 50 kilometers along the shores of the country. There are further restrictions in matters of employment and participation in military forces. It should be noted that the federal executive has the exclusive power to compel any foreigner whose presence it may deem inexpedient, without previous legal action, to leave the national territory immediately.

Nationality is a prerequisite for Mexican citizenship. Citizens of the republic are those Mexicans—by birth or by naturalization—who have reached 18 years of age and live an honest life.

Citizenship can be lost by the acceptance or use of titles of nobility, by rendering of voluntary official services to a foreign government without permission of the Congress of the union, and in several other cases stated in the constitution. Citizenship may be suspended if the person is subject to criminal prosecution, serves a term of imprisonment, or has committed an electoral crime as determined by electoral law.

FUNDAMENTAL RIGHTS

The traditional human rights of equality, liberty, and judicial protection were affirmed in the Mexican constitutions of the 19th century. The current 1917 constitution also recognized social and economic rights. In recent years, so-called third-generation rights have also been incorporated.

A number of amendments to the constitution in recent years have added new fundamental rights and broadened and perfected several existing rights. For example, changes to Article 1 in 2001 added the right of all persons not to be discriminated against by reason of ethnic or national origin, gender, age, different capacities, social conditions, health conditions, religion, opinions, preferences, marital status, or any other reason contrary to human dignity. The principle of the fundamental dignity of the human being, while implicit in the original text, had not been explicitly included until the 2001 amendment.

The recognition and protection of the rights and cultures of the indigenous peoples were given constitutional status. In penal matters, the guarantees of the penal process have broadened, both for the accused and for the victim.

Concerning family matters, amendments have established the legal equality of the sexes and added statutes for family protection and responsible parenthood. The right to health care and the right to housing were also introduced into the constitution.

The majority of these fundamental rights are found in Chapter 1 of the constitution, ambiguously and inappropriately titled Individual Guarantees, outlined in Articles 1 through 29.

Article 123 enumerates the social rights and guarantees of the working class, which were elevated to constitutional rank in 1917 for the first time in the history of Western constitutionalism. They include such stipulations as the maximal duration of the working day, wages, the weekly rest, the prohibition of the employment of minors, the participation of the workers in the profits of the company, the principle of equal salary for equal work, the protection of women during pregnancy, the right of the workers to form unions, stability in employment, and the right to strike.

The human rights recognized in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 also form a part of national law, as do those of the 1969 American Convention on Human Rights.

Impact and Functions of Fundamental Rights

The constitution not only considers fundamental rights to be of utmost importance and relevance for the democratic rule of law, but establishes a far-reaching system for their protection. The ruling principle is that recognition of a right is not sufficient without the effective judicial protection of the state.

The trial of *amparo* constitutes the most important constitutional guarantee of human rights. The structure and breadth of this procedural institution are considered an important contribution of Mexican legal philosophy to universal legal culture. It is incorporated into Article 8 of the 1948 Universal Declaration of Human Rights of the United Nations.

By now, Mexicans have developed a complex legal structure of *amparo* that encompasses several procedural instruments. Depending on the situation, an *amparo* can be used for the protection of personal freedom, in contesting of unconstitutional laws, as a form of appeal against judicial sentences, as a protest against the acts and the resolutions of the administration, and as protection of the social rights of the peasants.

In 1990 Mexico established the National Human Rights Committee (CNDH), equivalent to the ombudsperson in other countries and to similar committees in the federal states. It is a national system for the nonjurisdictional protection of human rights, which responds quickly and in a simple way to the complaints of citizens that their fundamental rights have been violated. This committee is headed by a president, nominated by the federal executive with the approval of the Senate for a term of five years. The term can be extended only once. This organ has complete autonomy over its functions and its budget and is judicial in nature.

Limitations to Fundamental Rights

The constitution asserts that fundamental rights can be limited or restricted only in particular cases that it enumerates. Thus, for example, the freedom of thought and freedom of the press are limited by the rights of others and by the respect for private life and public peace. Foreigners are restricted in their rights in political matters, including the right to active and passive voting and the right of association. The rights to associate and assemble are limited by the conditions that associations and assemblies must be legal, that the participants in a gathering may not be armed, that no insults be proffered against authorities, and that there be no violence or threats. The right to freedom of work, industry, and commerce is subject to the limiting condition that the activity be legal. Limitations or restrictions that are not found expressly established in the text of the constitution cannot be added by law, either by the Congress of the union or a Local Congress.

The constitution anticipates extreme conditions when fundamental rights may not only be limited, but also temporarily suspended, as in the case of invasion, serious disturbance of public peace, or any other event that may place society in great danger or in conflict. Under these conditions, constitutional rights can be suspended through rigorous proceedings established by the constitution. Such measures can be implemented by the president of the republic with the consent of the secretaries of state and the attorney general of the republic and with the approval of the Congress of the union. Even then, not all individual rights can be suspended—only those that may act as obstacles to the rapid resolution of the event; the restrictions must be for a limited time, whether throughout the country or in a specific place. Along with the power to suspend constitutional guarantees, the Congress of the union can grant the executive extraordinary powers to legislate on certain matters for the duration of the state of emergency.

ECONOMY

The Mexican constitutions of the 19th century were strongly influenced by economic liberalism. The norms that ruled the economy were those related to freedom of commerce, industry, and labor: the right to property

without any major limitations, and freedom in economic activities in which the state participates to assure free competition and to prohibit monopolies.

The current 1917 constitution introduced social constitutionalism, which set the foundation for a state of social democratic rights, although the reality differs greatly from the constitutional model. The constitution allowed greater powers of intervention to public authorities on issues of importance concerning the economy, land, free competition and monopolies, labor issues, and foreign commerce.

In later amendments, other important principles of an economic character were incorporated into the constitution, such as the leadership of the state. The state was given the leading role in national development to guarantee that it be integral, that it strengthen the sovereignty of the nation and its democratic regime. The state should aim, through economic growth, employment, and a more just distribution of wealth, to allow the full exercise of the liberty and dignity of the people, groups, and social classes.

Another principle found in the constitution is that of a mixed economy, which is understood as the concurrence with social responsibility of the public, social, and private sectors for national economic development; this must not affect other forms of economic activity that contribute to the development of the nation. The constitution establishes the process of democratic planning, which aims to ascertain, through the participation of the diverse social sectors, the needs of society in order to incorporate them into the plan of national development and other programs.

RELIGIOUS COMMUNITIES

The human right to religious freedom for individuals and groups is guaranteed in the constitution. However, there are some restrictions that evoke historical conflicts between the state and the Catholic Church.

The original text of the current constitution contained several provisions that constituted serious violations to this fundamental right. While, on one hand, it recognized the freedom of religious beliefs and worship, on the other, churches were denied legal personality. Religious instruction in public and private schools was banned. Ministers of worship were denied political rights—active or passive—and were even denied the right to criticize the fundamental laws of the country, not only in public meetings but in private ones as well.

In 1992, the constitutional provisions on religious matters were reformed, and a more open regime was established to recognize and protect the rights of religious freedom. Along with individual rights, which already existed in the original document, churches and religious groups were now allowed to acquire legal personality under the generic name of *religious association* by registration with the Secretariat of Government.

The law determines the requirements that a church or religious group must fulfill in order to register as a religious association. The observance, practice, propagation, or instruction of a religious doctrine must have been exercised for a minimum of five years. It must also have been recognized and taken root among the population, it must have statutes, and it must have sufficient means to fulfill its objectives. Religious associations and their ministers still cannot own or administer licenses for radio and television stations or acquire, possess, or administer any other form of mass media. Religious instruction is authorized for private schools but not for public schools. Ministers have the right to vote but may not hold elective office.

According to the constitution, the leading principle that guides all laws relating to religious issues is that of the separation of the church and state. Mexico is a secular state. The constitution grants the Congress of the union the exclusive power to legislate on religious matters. It also establishes the principle of equality for all religious associations, whereby the state cannot establish any form of preference or privilege in favor of any religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The army is organized and regulated by the Congress of the union and the president of the republic. The president is the supreme commander and may freely deploy armed forces for purposes of internal security and the exterior defense of the federation.

The president of the republic is also in charge of appointing the higher commanders of the army, with the ratification of the Senate. The remaining officers are appointed and promoted by following strict regulations determined by the constitution.

The Mexican army has achieved a high grade of professionalism and depoliticization. Its submission to civil political power is entrenched as well.

In May 1942, as a consequence of the sinking of Mexican ships by Nazi German submarines, Mexico declared war on Germany, Italy, and Japan. While its participation in World War II (1938–45) was mostly symbolic, the merit of the members of Squadron 201, who completed several missions in the Pacific in which five Mexican pilots died, cannot be denied. In World War I (1914–18), Mexico remained neutral.

Given the emergency provoked by the world wars, compulsory military service was introduced and continues to this day. Service is required for male citizens who are 18 years of age. In reality, such military service is often restricted to brief, light outdoor instruction on Sundays.

With respect to the participation of the military forces in public security, the Supreme Court of Justice of the Nation has determined that the armed forces can participate in civil activities that promote public security in situations that do not require the suspension of guarantees. In

doing so, they must strictly abide by the constitution and the laws and respect the fundamental rights guaranteed by the constitution.

Conscientious objectors are not considered exempt from military service in defense of the republic under the terms stated by the law.

AMENDMENTS TO THE CONSTITUTION

The constitution is relatively rigid and in theory is difficult to change. It can be amended only by a positive vote of two-thirds of the members of the Congress of the union. In addition, amendments and additions require the approval of the majority of the state legislatures.

The constitution does not explicitly foresee the possibility that it could be completely revised, but neither does it forbid it. There would be no constitutional obstacle to a thoroughgoing reform, if it were done according to the established constitutional procedure.

A new constitution could not be issued by an assembly or congress convoked expressly for this purpose, since the constitutional text does not provide for such an eventuality. It is also not possible to replace the present constitution with one imposed by revolutionary groups, since it is expressly stated that the constitution will not lose force or vigor even when a rebellion interrupts its observance.

In contrast to the 19th-century constitutions, the 1917 constitution has had hundreds of amendments. For several decades a system of authoritarian presidentialism existed in the country, in which the federal and local legislatures lacked independence. The president only had to send a project of constitutional reform for it to be automatically approved by the Congress of the union and the local congresses, whose members belonged almost entirely to the Institutional Revolutionary Party (PRI), the official party.

This situation changed after 1988, when the PRI lost its majority in the Chamber of Deputies, and the process of transition to a democracy began, culminating on July 2, 2000, with the election of a president of the republic nominated by the opposition.

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FEDERATED STATES OF MICRONESIA

At-a-Glance

OFFICIAL NAME
Federated States of Micronesia

CAPITAL
Palikir, Pohnpei

POPULATION
110,000 (2005 est.)

SIZE
271 sq. mi. (702 sq. km), islands sprinkled over 1,000,000 sq. mi. of ocean

LANGUAGES
Chuukese, Pohnpeian, Yapese, Kosraean, Woleaian, Kapingingamarangi, Ulithian, and Nukuoran, English (common language)

RELIGIONS
Roman Catholic, Protestant

NATIONAL OR ETHNIC COMPOSITION
Chuukese, Pohnpeian, Yapese, Kosraean, Woleaian, Kapingingamarangi, Ulithian, and Nukuoran (sometimes generically referred to as Micronesian)

DATE OF INDEPENDENCE OR CREATION
Constitutional government May 10, 1979; Trust Territory dissolved November 3, 1986

TYPE OF GOVERNMENT
Hybrid executive, parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral legislature

DATE OF CONSTITUTION
Ratified in plebiscite July 12, 1978; constitutional government initiated May 10, 1979

DATE OF LAST AMENDMENT
July 2, 1991 (ratified by referendum)

The Federated States of Micronesia is a hybrid executive and parliamentary democracy based on the rule of law. There are clear operating divisions of executive, legislative, and judicial powers within the national government, but the president and vice president are selected from and by the legislative branch, known as the Congress. The president is head of state, ceremonial leader, and head of the administration. Organized as a federal system, the Federated States of Micronesia comprises four states—Chuuk, Kosrae, Pohnpei, and Yap—and a central government.

The constitution is the supreme law of the land and the primary guide for this young Pacific Island nation. It provides broad guarantees of human rights, which are respected by all public authorities. If a violation occurs in individual cases, remedies are enforceable by independent state and federal judiciaries, subject to review and final decision by the Federated States Supreme Court. Religious freedom is guaranteed.

The Federated States of Micronesia has no military, having delegated defense matters to the United States under a Compact of Free Association, which spells out a special working relationship between the two countries.

The developing economy is a market economy.

CONSTITUTIONAL HISTORY

The Federated States of Micronesia (FSM) is a tropical Pacific Island nation located north of the equator in the Caroline Islands, extending west over some 2,000 miles in the area between Hawaii and the Philippines. About 110,000 people live on approximately 600 islands, most of which are coral atolls sprinkled across 1,000,000 square

miles of ocean. All told, the FSM comprises a land area of approximately 270 square miles. About half of the population resides on the four high volcanic island state capitals of Kosrae, Pohnpei, Chuuk, and Yap. At least six different indigenous languages and numerous dialects are spoken by FSM citizens, but English is the commonly used language.

Spain laid claim to the area during the 19th century. In 1898, the Spanish American War led to dissolution of most of what then remained of the former Spanish Empire. Germany "purchased" Micronesia from the Spanish and continued to claim control of the area until displaced by Japan during World War I (1914–18). In 1919, Japan received authority to govern the area as part of a League of Nations mandate. Japan withdrew from the League of Nations in the mid-1930s, but Japanese hegemony over the islands continued until World War II (1938–45).

Micronesia was an area of considerable conflict in that war. It was ultimately placed under the control of the United States and its allies. From 1947 through 1986, the area now known as the FSM remained part of the Trust Territory of the Pacific Islands, a United Nations Trusteeship administered by the United States.

On July 12, 1978, the Trust Territory districts of Truk (now called Chuuk), Ponape (now Pohnpei), Kusaie (now Kosrae), and Yap voted in a plebiscite to join under the new FSM constitution. The constitution went into effect on May 10, 1979. The new national government became fully functional when the national judiciary was certified on May 5, 1981. The Trust Territory of the Pacific Islands, with approval of the United Nations, was formally dissolved in 1986. The FSM is now an independent, self-governing nation, and a member of the United Nations, with a relatively new form of working arrangement with the United States known as free association. Traditional systems continue to play a significant role in the daily life of people in substantial parts of the Federated States of Micronesia.

FORM AND IMPACT OF THE CONSTITUTION

The Federated States of Micronesia have a written constitution, modeled upon that of the United States but with numerous modifications. The constitution is the supreme law. International law, including the Compact of Free Association with the United States, must be in accordance with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

The four states differ considerably in geographical area, population size, and economic strength. All have identical rights in legislative, administrative, and judicial competencies. The constitution endows the national government with a broad range of powers, primarily relating to foreign affairs, defense, maritime, and commercial matters. Except other powers of indisputably national character, powers not expressly delegated to the national government or prohibited to the states are state powers.

LEADING CONSTITUTIONAL PRINCIPLES

The national government is a hybrid form of executive and parliamentary democracy. Except that the president and vice president are selected from and by the Congress, there is a strong division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent.

The constitutional system is defined by a number of leading principles: The Federated States of Micronesia is a democracy, a federation, and a republic, based on the rule of law. On the federal level, political participation is shaped as an indirect, representative democracy.

Religious freedom is guaranteed. The constitution states, "No law may be passed respecting the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes."

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the Congress, and the judiciary. A public auditor is appointed by the president, with the advice and consent of the Congress. Within three of the states, Yap, Pohnpei, and Chuuk, traditional leaders play a significant role as well.

The President

The president, the head of state, is both a ceremonial leader and head of the administration of the national government. Elected by the Congress, the president serves a four-year term and can be reelected for a second term. The president must be a member of Congress, elected by one of the four states to serve as that state's at-large senator. As a practical matter, this power of the Congress to elect and reelect the president affects the balance of powers, weakening the presidency and making it difficult for a president to advocate a strong position contrary to the will of the Congress.

The president appoints the cabinet with the advice and consent of Congress. The president and the cabinet have authority to set government policy and to administer the national government. The weakness in the presidency is exacerbated by the fact that the president runs for popular election only in one state, when vying to become an "at-large" member of the Congress. The absence of formal political parties and lack of effective nongovernmen-

tal media further diminish the capacity of the president to establish a true national political base and serve as an effective balance to the national Congress.

The Congress

The Congress is unicameral, the central representative organ of the people in the national government, and the sole legislative body in the FSM empowered to enact the statutes that constitute the primary body of national law.

The Congress has 14 members, chosen in free, general, and direct elections. Each of the four states, on the basis of state equality, elects one at-large member. To be eligible for election to serve as president or vice president of the national government, a candidate must be elected for one of these four at-large positions. The other 10 members are elected from congressional districts apportioned by population. Each state is permitted at least one proportionate senate member, and the larger states have additional members.

The Lawmaking Process

Congress is the sole body empowered to enact the statutes that constitute the primary body of national law. To become law, a bill must pass two readings on separate days. To pass first reading, an affirmative two-thirds of all members is required. On final reading, each state delegation casts one vote, and an affirmative two-thirds vote of the states is required.

A bill passed by Congress is presented to the president for approval. The president may return the bill with relevant objections. If the president does not return a bill within the appropriate period, it becomes law. If the president vetoes the bill, Congress may override the veto through repeating the original voting process.

The Judiciary

If a violation of the constitution occurs, there are effective remedies enforceable by independent state and federal judiciaries, with courts in each state. Their decisions regarding national constitutional violations and remedies are subject to modification and overruling by the Federated States of Micronesia Supreme Court.

Although the constitution authorizes additional courts, there is presently only one national court, the Supreme Court, which consists of a trial division and an appellate division. Cases at the trial level are heard by one justice. The remaining justices are available to hear an appeal from the case, as the appellate division.

The Supreme Court has jurisdiction over cases that involve issues of national law; cases in which opposing parties are diverse, that is, are from different states of the Federated States of Micronesia; and cases in which one party is from another nation. Justices are appointed by the president, subject to advice and consent of Congress, and enjoy lifetime appointments, subject to impeachment powers of Congress.

Traditional Leaders

Within three of the states, Yap, Pohnpei, and Chuuk, traditional leaders play a significant role; by custom they can affect certain rights of people within the respective traditional systems. The constitution recognizes the existence of traditional leaders but does not vest them with formal governmental powers. It states, "Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition"; provides for statutory protection of "traditions of the people of the Federated States of Micronesia"; and requires court decisions to be "consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia."

THE ELECTION PROCESS

Citizens 18 years or older are entitled to vote in national elections. No candidate runs nationwide. Only members of the Congress are elected during national elections, and each is elected from within the borders of his or her own state.

POLITICAL PARTIES

There are no formal political parties.

CITIZENSHIP

Citizenship of the Federated States is primarily acquired by birth; a child acquires citizenship if one of his or her parents is a citizen.

FUNDAMENTAL RIGHTS

The constitution guarantees human rights in the Declaration of Rights article, which is patterned closely on the Bill of Rights in the United States Constitution, except that the Declaration of Rights prohibits capital punishment and does not support a right to bear arms. Rights in the Declaration of Rights are binding for all public authorities in any circumstances.

ECONOMY

Although many areas, especially the outer islands, operate on a subsistence economy built on fishing and farming, the economic system contemplated by the constitution is a free enterprise market economy, subject to certain adjustments aimed at protecting the small indigenous population from being overrun by outside forces. For example, the constitution prohibits landownership by noncitizens and noncitizen corporations, including corporations partially owned by noncitizens.

RELIGIOUS COMMUNITIES

The constitution provides, “No law may be passed respecting the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes.”

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution delegates to Congress power to provide for the national defense, and that power has been delegated to the United States in the Compact of Free Association.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be proposed by a constitutional convention, popular initiative, or Congress. Every 10 years, Congress must submit to the voters the question, Shall there be a convention to revise or amend the constitution? If the majority says yes, a convention must be convened. Proposed amendments become part of the constitution when approved by three-fourths of the votes cast on the amendment in each of three-fourths of the states.

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Edward C. King

MOLDOVA

At-a-Glance

OFFICIAL NAME
Republic of Moldova

CAPITAL
Chisinau

POPULATION
3,388,071 (2004 census) and 739,700 residents in Transnistrian region (1989 census)

SIZE
13,067 sq. mi. (33,843 sq. km)

LANGUAGES
Moldovan (official), Russian, Gagauz

RELIGIONS
Eastern Orthodox 98%, Jewish 1.5%, Baptist (about 1,000 members), Catholic, and other 0.5% (2000)

NATIONAL OR ETHNIC COMPOSITION
Moldovan 76.1%, Ukrainian 8.4%, Russian 5.8%, Gagauz 4.4%, Romanian 2.1%, Bulgarian 1.9%, other 1.3% (2004 census); in Transnistrian region (1989 census) Moldovan 38.0%, Ukrainian 26.4%, Russian 28.5%, Gagauz 0.6%, Bulgarian 2.0%, other 4.4%

DATE OF INDEPENDENCE OR CREATION
August 27, 1991 (from the Soviet Union)

TYPE OF GOVERNMENT
Parliamentary republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 29, 1994

DATE OF LAST AMENDMENT
July 15, 2004

Moldova is a parliamentary republic based on the rule of law with a clear division of executive, legislative, and judicial powers. It is a unitary state, made up of 32 districts, four municipalities, and the autonomous territorial unit of Gagauzia. The constitution guarantees the principle of decentralization of public services; it is, however, not much observed in practice, because of the small size of the districts and their dependence on the central government. The constitution includes the traditional set of human rights and civil freedoms. Although there is a well-described system of legal remedies available for redressing human rights violations, the implementation of this system and the independence of the relevant public authorities have been widely questioned.

The president is the head of state. According to the constitution, Parliament plays the central political role; however, when the president is supported by the majority of Parliament members, he or she in fact becomes the central political figure. The president therefore directly depends on the Parliament, which is the representative body of the people. Free, equal, general, and direct elections of the members of Parliament are guaranteed. Moldova has a pluralistic system of political parties, which all contribute to the definition and expression of public political will.

Religious freedom is guaranteed, and state and religious communities are separated. By constitution, Moldova has a socially oriented market economy.

CONSTITUTIONAL HISTORY

The Republic of Moldova presently occupies most of the territory of what was historically known as Bessarabia. An independent Moldovan state emerged briefly in the

14th century C.E., but the region subsequently fell under Ottoman Turkish rule in the 16th century. After the Russo-Turkish War (1806–12), the eastern half of Moldova, between the Prut and Dniester Rivers (Bessarabia), was ceded to Russia, while Romanian Moldova (west of the Prut) remained under Turkish rule. Romania, which gained independence in 1878, regained control of the eastern half of Moldova in 1918.

As a result of reunification, the constitution of Romania of 1866 became applicable on the territory of Moldova. The 1866 constitution was one of the most liberal constitutions in Europe and was inspired by the ideas of the French Revolution, but it no longer corresponded to the reality of a new, enlarged state. In 1923, a new constitution, drafted by the National Liberal Party, was adopted. The next constitution of 1938, in force only two years, introduced a royal dictatorship.

After the Molotov-Ribbentrop pact of 1940, Romania was forced to cede eastern Moldova to the Soviet Union, which established the Moldovan Soviet Socialist Republic by merging the annexed Bessarabian portion and the autonomous Moldovan republic east of the Dniester, created by the Soviet Union in 1924. The first constitution of the Moldovan Soviet Socialist Republic was adopted in 1941; in the spirit of all the other Soviet constitutions, its main goal was the consolidation of the proletarian dictatorship. The system of soviets of popular deputies as well as the socialist economic system was introduced. In the context of Soviet reforms that followed the breakdown of the Stalinist regime, a new constitution of the Moldovan Soviet Socialist Republic, the so-called Constitution of Developed Socialism, was adopted in 1978. This constitution confirmed the principles of state property, economic planning, and strict centralization. The constitutional provisions on the independence of Moldova had no real force.

Moldova declared its independence from the Soviet Union in August 1991, the start of its transition toward democratic principles. The opposition's drive for immediate reunification with Romania led to a separatist movement of the Gagauz (Christian Turk) minority in the south, which was defused by the granting of local autonomy in 1994. However, unrest in the majority Slavic Transdnistrian region on the east bank of the Dniester River, where in 1992 the government negotiated a cease-fire with Russian and Transdnistrian officials, led to the rise of a separatist movement, which shortly proclaimed itself as the "Transdnistrian Moldovan Republic."

The need for political and economic reform led to constitutional reform. Moldova became a democratic, sovereign, independent, and unitary state, based on the principles of the rule of law. The new constitution was adopted on July 29, 1994, and entered into force on August 27, 1994. Since then, Moldova has actively sought Western recognition. It ratified the main international human rights instruments and became a member state in the main regional and international institutions.

FORM AND IMPACT OF THE CONSTITUTION

Moldova has a written constitution, codified in a single document. The Moldovan constitution is the supreme law of the country and takes precedence over all other national laws. If an international treaty contains provisions contrary to the constitution, it cannot enter into force unless the latter is revised. In general, the law in Moldova does comply with the constitution, whose principles follow international standards.

BASIC ORGANIZATIONAL STRUCTURE

Moldova is a unitary state made up of 32 districts (*raions*), four municipalities, and the autonomous territorial unit of Gagauzia governed by a special statute. Gagauzia has significant autonomy in political, economic, and cultural affairs, within the limits of its authority and pursuant to provisions of the Moldovan constitution. The territory on the east bank of the Dniester River, the self-proclaimed Transdnistrian Moldovan Republic, may be assigned special forms and conditions of autonomy.

Public administration is based on the principles of local autonomy and decentralization of public services. The local public authorities are assigned the task of solving local public affairs. District councils coordinate the activities of the local public authorities and are responsible before the national government.

LEADING CONSTITUTIONAL PRINCIPLES

Moldova is a republic. There is a division of the executive, legislative, and judicial powers, based on the constitutional principle of separation and cooperation of powers.

The Moldovan constitutional system is defined by a number of general principles: Moldova is a sovereign, unitary, and democratic republic, governed by the rule of law, incompatible with dictatorship or totalitarianism, in which the rights and freedoms of people, justice, and political pluralism represent supreme state values. Political participation is shaped as a direct and representative democracy. Any state action impairing the rights of the people must have a basis in organic laws adopted by the Parliament. In the context of the multiethnic composition of Moldova, its national unity constitutes the foundation of the state. The constitution implicitly contains a number of rights and freedoms guaranteed to its citizens, which are to be implemented in accordance with the Universal Declaration of Human Rights and other conventions and treaties endorsed by Moldova.

CONSTITUTIONAL BODIES

The main bodies enshrined in the constitution are the president, the prime minister and administration, the Parliament, the judiciary, and the Constitutional Court.

The President

The president of Moldova is the head of state, its representative in international relations, and the guarantor of national sovereignty and territorial integrity. The president has the prerogative to dissolve Parliament before the end of its term; he or she designates a candidate for the office of prime minister and appoints the administration on the basis of a vote of confidence by Parliament. The president promulgates laws adopted by the Parliament, issues decrees, concludes international treaties in the name of the state, appoints judges, and is the commander in chief of the armed forces.

After the constitutional amendment of 2000, Moldova became a parliamentary republic; the president was now chosen not by the people, but by a secret vote in Parliament. The president is elected for a four-year term and can be reelected only once. The role of the president depends on the political affiliation of the majority in Parliament. When supported by the majority, the president becomes the central political figure in the state.

The Administration and Prime Minister

It is the role of the administration to carry out the domestic and foreign policy of the state and to exert general control over the work of the executive. The administration is responsible to the Parliament and requires its approval of its programs.

The administration consists of a prime minister, ministers, and their cabinets. The prime minister exercises the leadership of the administration and coordinates the activity of its members.

The Parliament

The Parliament is the supreme representative body of the people and the sole legislative authority of the state. It consists of 101 members, who are elected in a general, direct, free, equal, and secret balloting process for a four-year-term. The Constitutional Court validates the election of members of Parliament. The speaker of the Parliament is elected by the majority of votes cast by the members in a secret ballot.

While the main competence of the Parliament is passing laws and ratifying international treaties, it is also empowered to declare referenda, provide legislative interpretations, approve the main directions of the state's internal and external policy, and approve the national budget. Under the conditions prescribed by law, the Parliament has the prerogative to carry a motion of no confidence in the administration.

The Lawmaking Process

The Parliament is endowed with the competence to pass constitutional, organic, and ordinary laws. This is done in cooperation with various other constitutional bodies. The right to legislative initiative belongs to members of Parliament, the president of Moldova, the administration, and the People's Assembly of the autonomous territorial unit of Gagauzia. Before entering into force, the laws must be promulgated by the president. In case objections raised by the president are rejected by Parliament, the president must then promulgate the law.

The Judiciary

According to the constitution, the judiciary is independent of the legislative and executive powers. Since the 2003 judicial reform, justice in Moldova is administered by the Supreme Court of Justice, five Courts of Appeal, three specialized courts (military and economic), and Courts of Law. According to the constitution, judges are to be independent, impartial and irremovable under the law. However, the procedure of their appointment raises concerns. Judges and the presidents of the courts are nominated by the Superior Council of Magistrates and appointed by the president of Moldova. The president and judges of the Supreme Court of Justice are proposed by the Superior Council of Magistrates and are appointed by Parliament.

The Constitutional Court

The Constitutional Court is not a judiciary body. It deals exclusively with constitutional disputes, with the aim of guaranteeing the supremacy of the constitution. It is composed of six judges, appointed by Parliament, the administration, and the Superior Council of Magistrates. Many of its decisions have had the highest legal and political impact. In a major precedent, the Constitutional Court ruled in 1997 that the institution of the *propiska* (the residence permit) violated the constitutional right to freedom of movement; it was therefore abolished. The mechanism for implementing this decision, however, is still lacking.

THE ELECTION PROCESS

Elections in Moldova are based on universal, equal, direct, and free suffrage. All citizens who have attained the age of 18 have the right to stand for office and to vote in the election. Candidates for the president of the country should be over 40 years old, have lived permanently in the country for at least 10 years, and speak Moldovan, the official language. The elections are organized and undertaken by the Central Electoral Commission, which is a permanent body. The mandates are validated by the Constitutional

Court. Regional elections in Gagauzia are organized by the ad hoc Gagauz Election Commission.

POLITICAL PARTIES

Moldova has a pluralistic system of political parties and ensures the right to free association to all its citizens. All parties are equal before the law and contribute to the definition and expression of public political will. Political parties need to register with the Ministry of Justice. They are required to have local branches in at least half of the administrative units. The number of their adherents must be annually confirmed by the Ministry of Justice. Parties can be dissolved by a decision of the Supreme Court of Justice. The Constitutional Court has the competence to decide the constitutionality of a party.

CITIZENSHIP

A person acquires citizenship if one of his or her parents is a Moldovan citizen, regardless of the place of birth, or if the child is born on the territory of Moldova and the parents are stateless or foreign persons. Moldova allows its citizens to hold dual citizenship. No citizen of the Republic of Moldova may be extradited or expelled from the country. Any request to acquire or renounce Moldovan citizenship must be addressed to the president of the republic. The president's decree can be appealed to the Supreme Court of Justice.

FUNDAMENTAL RIGHTS

In its constitution, the Republic of Moldova guarantees respect for the traditional set of human rights and civil freedoms to all its citizens and pledges equal treatment as guaranteed by the main international rights documents. The dignity of individuals and their potential to develop their personality are supreme values of the state. Constitutional provisions for human rights and freedoms must be implemented in accordance with the Universal Declaration of Human Rights and other conventions endorsed by the Republic of Moldova. The basic rights set out in the constitution have binding force for the legislature, executive, and judiciary in any circumstances.

Impact and Functions of Fundamental Rights

According to the constitution, human rights represent the supreme value of the state and should have priority over all other areas of law. This is a novelty for Moldovan society, which had a strong socialist emphasis for 45 years and an unstable rights system. All persons are expected to exercise their constitutional rights and freedoms in good faith, without violating the rights of others.

Limitations to Fundamental Rights

No laws suppressing fundamental human rights and freedoms can be adopted in Moldova. The exercise of certain rights or freedoms may be restricted only by law and only for a specific period. The restriction must be proportionate to the conditions that prompted it and must not affect the ultimate existence of the right.

ECONOMY

According to the constitution, Moldova has a socially oriented market economy based on the coexistence of freely competing private and public properties, the interaction of market forces, free enterprise, and fair competition. It ensures freedom of association and assembly and the right to establish and join trade unions.

Assistance from international financial organizations has been crucial for repaying large government debts and reducing poverty. Privatization of important state-owned industries is under way.

RELIGIOUS COMMUNITIES

Considering the multiethnic composition of its population, the constitution recognizes and guarantees to all its citizens the right to preserve, develop, and express their religious identity in the spirit of tolerance and mutual respect. No one shall be discriminated against on the basis of religion either by the public authorities or by other individuals.

Religious communities are autonomous vis-à-vis the state, and all enjoy equal state support. There is no established state church; however, there are many areas where the authorities and religious organizations cooperate. Religious communities are free to organize themselves and administer their affairs independently. The state ensures both lay and religious education.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Republic of Moldova has proclaimed its permanent neutrality. The national armed forces constitute the framework for performing military services, ensuring national defense, guarding the borders, and maintaining public order. The president of the Republic of Moldova is the commander in chief of the armed forces. The president exercises general leadership of the national defense system and coordinates the activities of administration authorities in national defense issues. The president declares a state of war and with prior approval from the Parliament declares partial or general mobilization. It is the competence of the Parliament to approve the state's military doctrine. The military always remains subject to civil government.

Performance of military service is binding for all male citizens of the Republic of Moldova over the age of 18 and is voluntary for women. The basic military service is 12 months. A citizen can be released from the military service as a conscientious objector but must perform alternative civil service.

AMENDMENTS TO THE CONSTITUTION

The revision of the constitution may be initiated either by the administration, one-third of the members of Parliament, or at least 200,000 voting citizens of the Republic of Moldova in at least half of the administrative-territorial units. Before their submission to Parliament for adoption, constitutional law drafts must obtain a written opinion (recommendation) from the Constitutional Court, supported by at least four judges. The amendment is then passed by a two-thirds majority.

Certain provisions relating to sovereignty, independence, and the unity of the state as well as its permanent neutrality may be revised only by referendum with a majority vote of the voting citizens. No revision suppressing the fundamental rights and freedoms of citizens is allowed. The constitution may not be revised during a state of emergency or war.

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Ludmila Shargov

MONACO

At-a-Glance

OFFICIAL NAME
Principality of Monaco

CAPITAL
Monaco

POPULATION
35,000, including 6,000 Monegasques (2005 est.)

SIZE
0.75 sq. mi. (1.95 sq. km)

LANGUAGE
French (official)

RELIGIONS
Roman Catholic 90%, other 10%

NATIONAL OR ETHNIC COMPOSITION
Monegasque 16%, Italian 16%, French 47%, other 21%

DATE OF INDEPENDENCE OR CREATION
1641, 1814, 1861

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 17, 1962

DATE OF LAST AMENDMENT
April 2, 2002

The Principality of Monaco is a sovereign and independent state, constituted as a hereditary and constitutional monarchy, with respect for fundamental rights and freedoms and the rule of law. Monaco is unusual for its small dimensions and its privileged relationship with France.

Monaco is a "microstate." It has but a single municipality, also called Monaco but legally distinct from the state, although its territory corresponds to that of the state. The character of an independent and sovereign state gives the principality an international status, expressed in its diplomatic relations with other states and by its admission to the United Nations Organization in 1993 and to the Council of Europe in 2004. The accession of Monaco to the Council of Europe has been a decisive element in the confirmation of its international status and the development of its constitutional status.

The links with France are underlined by the constitution itself, which cites the "particular treaties signed with France." The Treaty of July 17, 1918, establishes "a friendship," which, being "protective," is confining. On October 24, 2004, a treaty "destined to adopt and to confirm relations of friendship and cooperation between the Principality of Monaco and the French Republic" that takes better account of the independence and sovereignty of the principality was concluded. The Convention of July 28, 1930, under which France nominates the highest officials of the cabinet (the minister of state), judiciary, and administration, is currently under renegotiation.

The political and economic system is characterized by its liberties; Monacan residents also enjoy economic and social rights. The prince is the fundamental political figure within the state, but separation of executive, legislative, and judicial functions is guaranteed. There is a free market economy. Catholicism is the religion of the state, but freedom of religion or belief is guaranteed.

CONSTITUTIONAL HISTORY

Monaco, once ruled by the Italian city of Genoa, became a possession of the Grimaldi family in 1297. It has seen periods of "protection" by Spain (1524–1641) and annexation by France (1793–1814), but it became completely independent in 1861.

The first constitution was promulgated on January 5, 1911. It was characterized notably by the proclamation of rights and freedoms, whose guarantee was entrusted to a Supreme Tribunal, which is one of the oldest bodies of constitutional jurisdiction in the world.

A new constitution was promulgated on December 17, 1962. Its drafting, performed with the assistance of very high-ranking jurists, was marked by a crisis in relations with France. It gave the Monacan state the essential constitutional structures that are still in force today.

The constitutional revision of April 2, 2002, was passed to ensure entry into the Council of Europe. The reports submitted by representatives of the council had suggested certain amendments. The modifications reinforce the rule of law and democracy.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is made up of one single and permanent document, at the apex of the legal system. The Supreme Tribunal can punish any infringements of rights and liberties by a law, regulation, or other administrative act.

According to Article 1, the principality is a sovereign and independent state within the framework of general principles of law and particular treaties with France. The wording can be interpreted as placing general principles of international law and the particular treaties with France above the constitution. However, one can also say that those general principles and particular treaties draw their authority in Monaco from their very recognition by this constitutional provision, which does not position them above it. In fact, observers have questioned whether it gives them constitutional rank at all.

BASIC ORGANIZATIONAL STRUCTURE

The Principality of Monaco is a unitary state. Its territory forms one single municipality, which has its own administration and authorities (municipal council, mayor).

LEADING CONSTITUTIONAL PRINCIPLES

The constitutional principles are expressed in the first articles of the constitution: “The principle of government is the hereditary and constitutional monarchy. The principality is a state of law attached to the respect of fundamental freedoms and rights.”

The prince reigns and governs. The executive power lies in the prince’s high authority, the legislative power is exercised by the prince and the National Council, and the judicial power is exercised by courts and tribunals. The separation of executive, legislative, and judicial functions is guaranteed.

CONSTITUTIONAL BODIES

The fundamental institution is the prince. Other bodies are the executive government, the National Council, and the judicial bodies.

The Prince

The position of the prince is determined by the constitution and by a sovereign regulation adopted in 1882 and modified in 2002 at the same time the constitution was amended. The sovereignty of the Principality of Monaco is hereditary in the direct and legitimate descent of the princes of Monaco of the Grimaldi dynasty. The succession is reserved to the direct and legitimate descendant of the reigning prince by order of first born with priority to the male descendant.

The prince exercises sovereign authority in conformity with the provisions of the constitution and the law. In the international field, the prince represents the principality in its relations with foreign powers. The prince signs and ratifies treaties, in some cases after they have been approved by law, which applies to treaties that affect the constitutional organization or create budgetary burdens.

In domestic matters, the executive government is exercised under the high authority of the prince. The prince signs sovereign decrees, which without exception have already been discussed in the Council of Government. The prince makes the necessary decrees for the execution of laws and for the application of international treaties and appoints high officials in the executive and the judiciary. The prince also can veto the decisions of the minister of state.

The prince signs bills of laws that are presented to the prince by the executive government. Such bills cannot be submitted to the National Council without the prince’s consent.

The Executive Government

The executive government is administered by a minister of state, assisted by the Council of Government, the members of which are appointed by the prince and the minister of state. According to conventions that link Monaco with France, the appointment of the minister of state is subject to recommendations by the French government. It is by tradition a French high civil servant, and most often a diplomat. However, once appointed minister of state, he or she becomes exclusively an official of the principality.

The minister of state represents the prince and directs the activities of the executive, administers the public forces, and presides over the Council of Government.

The minister of state and the Council of Government are responsible for the administration of the principality to the prince, who can terminate their functions at any moment.

National Council (Conseil National)

The National Council constitutes the "parliament" of the principality. It consists of 24 members who are elected for a term of five years. The prince can dissolve the National Council.

The National Council has two sessions per year, neither of which may exceed three months. The minister of state and the Council of Government have access to the National Council and must be heard by it whenever they demand.

The Lawmaking Process

The passing of a law requires the consent of the prince and the National Council. Initiative for a bill belongs to the prince; it is then presented to the National Council with the prince's consent by the minister of state. The National Council discusses and votes on bills and can amend them.

The National Council can also propose new laws, but they become bills only by an explicit decision of the minister of state, or implicitly, if the minister of state does not react to the proposition within a period of six months. The minister of state can also interrupt the legislative procedure by a declaration to the National Council on which debate follows.

The National Council votes the budget. Only a law can establish direct or indirect taxes and duties.

The Judiciary

The judicial power is vested in theory in the prince, who, however, delegates full exercise to the courts and tribunals. The independence of the judges is guaranteed. The director of the judicial services is directly affiliated to the prince and does not form part of the Council of Government.

The Supreme Tribunal is composed of five ordinary and two supplementary members appointed for four years by the prince on the recommendation of different bodies. The Supreme Tribunal has constitutional jurisdiction to decide on internal regulations of the National Council and on the laws insofar as they infringe upon the freedoms and rights enshrined in the constitution. The Supreme Tribunal has administrative jurisdiction to decide on the validity, interpretation, or annulment of administrative decisions and of sovereign decrees made for the execution of laws.

Jurisdiction in all other matters is entrusted to a number of other judicial bodies: the Tribunal of First Instance, the Court of Appeal, the Criminal Tribunal, and the Court of Revision.

THE ELECTION PROCESS

The National Council and the Municipal Council are elected by universal and direct suffrage in a combined system of majority and proportional representation.

All Monacan citizens regardless of gender who are at least 18 years of age have the right to vote. Those over 25 years old are eligible to be elected to the National Council and those 21 years of age to the Municipal Council.

POLITICAL PARTIES

There are no political parties in a traditional sense. However, different groupings assemble lists for the elections. In 2003 elections to the National Council the majority was won by the list that had presented itself as the opposition to the outgoing majority. There is high participation in the elections.

CITIZENSHIP

Monacan citizenship is acquired by birth according to the *ius sanguinis* principle. Foreigners can be naturalized by sovereign decree.

Those foreigners who have been residents in Monaco for a long period are called "children of the country" and enjoy the same benefits as do the Monacans themselves. All foreigners enjoy rights and freedoms that are not formally reserved for nationals.

FUNDAMENTAL RIGHTS

Monaco is a state based on the rule of law and respect for the fundamental freedoms and rights, which are guaranteed in Title 3 of the constitution. Equality before the law is guaranteed as well as individual freedom and safety, the inviolability of domicile, the right to privacy and family life and to privacy of correspondence, freedom of belief, freedom of assembly, freedom of association, and freedom to submit petitions.

In economic and social matters, the inviolability of private property is guaranteed as well as the freedom to work; the right to strike and to form trade unions; the right of Monacans to state aid in case of poverty, unemployment, illness, invalidism, old age, and maternity; and the right to free primary and secondary education.

Since Monaco is a signatory state to the United Nations Pact on Civil and Political Rights and the United Nations Pact on Economic and Social Rights, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the rights and freedoms proclaimed by these international instruments form part of Monacan law.

ECONOMY

The Monacan economy is a free market economy.

RELIGIOUS COMMUNITIES

The Catholic religion is the religion of the state. The majority of the Monacan population is Catholic. However, freedom of religion and belief and their public exercise are guaranteed.

MILITARY DEFENSE AND STATE OF EMERGENCY

There are no armed forces; nor is there a specific military law. The defense of the Monacan state is guaranteed by the convention concluded with France.

AMENDMENTS TO THE CONSTITUTION

The total or partial revision of the constitution is subject to mutual consent of the prince and the National Council. The initiative for a revision can be taken only by the National Council with a majority of two-thirds of its members (16 of 24).

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Pierre Delvolvé

MONGOLIA

At-a-Glance

OFFICIAL NAME
Mongolia

CAPITAL
Ulaanbaatar

POPULATION
2,791,272 (2005)

SIZE
603,909 sq. mi. (1,564,116 sq. km)

LANGUAGES
Khalkha Mongol 90%, Turkic, Russian (1999)

RELIGIONS
Buddhist Lamaist 50%, none 40%, shamanist and Christian 6%, Muslim 4% (2004)

NATIONAL OR ETHNIC COMPOSITION
Mongol (mostly Khalkha) 94.9%, Turkic (mostly Kazakh) 5%, other (including Chinese and Russian) 0.1% (2000)

DATE OF INDEPENDENCE OR CREATION
July 11, 1921 (from China)

TYPE OF GOVERNMENT
Parliamentary-presidential system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
February 12, 1992, at 12:00 hours

DATE OF LAST AMENDMENT
December 14, 2000

Mongolia has a mixed parliamentary and presidential system of government with a division of executive, legislative, and judicial powers. Organized as a unitary state, Mongolia is made up of 18 provinces and three autonomous cities. The constitution of the post-Soviet state provides for liberal and social human rights and a Constitutional Court.

The powerful president is the head of state and the prime minister is the chief executive. Both the president and the cabinet are responsible to the strong Parliament, the highest organ of state power. Free, general, equal, and direct elections of the members of Parliament are guaranteed. There is a pluralistic system of political parties.

Religious freedom is guaranteed and state and religious communities are separate. The economic system can be described as a social market economy. The military is subject to the civil government in terms of law and fact. Mongolia is constitutionally obliged to pursue a peaceful foreign policy.

CONSTITUTIONAL HISTORY

In 1203 C.E., a single Mongolian state was formed. It was based on nomadic tribal groupings under the leadership of Genghis Khan, who became khan of all Mongols in 1206, when the Great Mongol Empire was established. The Mongols sent conquering armies to nearly all of Asia and European Russia, even to central Europe and Southeast Asia. Kublai Khan, Genghis Khan's grandson, conquered China and established the Yuan dynasty (1279–1368 C.E.). When the Mongol dynasty in China was overthrown, the empire began to decline. In 1640, the Grand Code (Ikh Tsaaz) was written.

The Manchus, after they had conquered China in 1644 and formed the Qing dynasty, added parts of Mongolia to their control in 1691, when Khalkha Mongol nobles swore an oath of allegiance. These nobles enjoyed considerable autonomy. In 1727, Russia and Manchu China concluded the Treaty of Khiakta. The treaty delim-

ited the borderline between China and Mongolia, which still exists in large part today.

The northern part of the territory, also called Outer Mongolia, was a Chinese province (1691–1911), an autonomous state under Russian protection (1912–19), and again a Chinese province (1919–21). In 1921, Mongolia declared its independence from China on the basis that its allegiance had been to the Manchus, not to China. The formalization of Mongolian-Soviet relations then was accelerated, whereas China did not recognize the autonomous theocratic government (led by a holy ruler). The Mongolian People's Republic, based on the first Mongolian constitution, was proclaimed in November 1924, under Soviet Russian auspices. The constitution abolished the system of monarchial theocracy, provided for a legislative consolidation of state power, proclaimed a basic statement of socioeconomic and political rights, and included a national plan to establish socialism.

During World War II (1939–45), Japanese forces invaded eastern Mongolia and were finally defeated by a Soviet-Mongolian army. The constitutions in the following years continued to demonstrate Soviet influence. In 1940, the second Mongolian constitution was adopted, modeled on the Soviet constitution of 1936. In 1960, the third Mongolian constitution was adopted. It included a commitment to a socialist society and culture and the aim of establishing a communist society.

The decline of the Soviet Union in the 1990s was mirrored by political changes in Mongolia. The Politburo of the Communist Party, the Mongolian People's Revolutionary Party (MPRP), resigned in 1990, and Mongolia's first multiparty elections were held. In 1992, the fourth Mongolian constitution was adopted and a Constitutional Court was established.

FORM AND IMPACT OF THE CONSTITUTION

Mongolia has a written constitution, codified in a single document. The constitution consists of 70 articles and takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Mongolia.

BASIC ORGANIZATIONAL STRUCTURE

Mongolia is a unitary state made up of 18 provinces (*aimags*) and the three autonomous cities of Ulaanbaatar, Darhan, and Erdenet.

LEADING CONSTITUTIONAL PRINCIPLES

Mongolia has a mixed parliamentary-presidential system of government. There is a division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent.

The fundamental purpose of state activity is characterized by a number of leading principles: The Mongolian state ensures democracy, justice, freedom, equality, national unity, and respect for law.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the prime minister and cabinet of ministers, the parliament, and the judiciary, including the Constitutional Court.

The President

The president is the head of state. The president nominates the prime minister, who is the head of the administration, in consultation with the majority parties in Parliament. The prime minister is elected or deposed by Parliament.

The president is popularly elected for a four-year term and can be reelected only once. Candidates are nominated by each of the political parties that are represented in Parliament.

The president enjoys some more prerogative rights such as the rights to initiate and veto laws and to issue decrees. However, the president is responsible to Parliament and can be removed from office on the basis of a finding of the Constitutional Court, if an overwhelming majority of members of Parliament agrees.

The Executive Administration

The executive administration comprises the prime minister and other members of the cabinet, who are chosen by Parliament on the basis of the prime minister's recommendation in consultation with the president. The term of the cabinet is four years; it starts at the moment the prime minister is appointed by Parliament.

The cabinet is responsible for the implementation of state laws and is accountable for its work to the Parliament. If one-fourth of the members of Parliament propose the dissolution of the cabinet, Parliament must vote on the matter within 15 days. The president may also propose a no confidence vote, and the cabinet itself may submit a draft resolution requesting a vote of confidence.

The State Great Hural (Parliament)

The State Great Hural, the national Parliament, is the supreme legislative power. The constitution stresses the importance of Parliament and underlines in Article 21 that it is the highest organ of state power. Besides ordinary legislation, it is competent to define a number of policies, such as the basic domestic and foreign policies of the state.

The State Great Hural consists of a single chamber with 76 members. Its term is four years. However, if "extraordinary circumstances arising from sudden calamities," martial law, or the outbreak of public disorder prevents regular elections, the Parliament retains its mandate until these circumstances cease to exist and the new Parliament is sworn in.

The Lawmaking Process

The president, members of the Parliament, and the cabinet have the right to initiate legislation. Citizens and organizations can forward suggestions on draft laws as well.

The president may veto any law or decision of Parliament, but Parliament can override the veto by a two-thirds majority of members present. Parliament then promulgates national laws through publication, and, if not specified otherwise, they are effective within 10 days from the day of publication.

The Judiciary

The judiciary is independent of the administration. A General Council of Courts is constitutionally empowered to nominate judges, who are then confirmed by Parliament and the president.

The judicial system consists of the Supreme Court, *aimag* (provincial) and capital city courts, *soum* and *intersoum* (subdivisions) courts, and district courts. The Supreme Court is the highest judicial body, constitutionally empowered to review all lower court decisions.

The Constitutional Court of Mongolia is known as the Constitution Tsets. Its jurisdiction extends solely to the interpretation of the constitution. If it decides that an act is unconstitutional, the act is considered invalid.

According to Article 50, a Supreme Court decision is final. However, some people believe that the Constitutional Court has the power to review a Supreme Court's decision if the decision breaches the constitutional rights of a citizen.

THE ELECTION PROCESS

All Mongolians over the age of 18 have the right to vote in elections.

Presidential Elections

The president is elected on the basis of universal, free, and direct suffrage by secret ballot. There is a two-round system; the second round is held if no candidate receives a majority of the votes cast in the first round. The second round involves only the two candidates who have obtained the largest number of votes. All Mongolians are eligible to run if they are 45 years of age and have resided in the country for five years.

Parliamentary Elections

Members of Parliament are elected on the basis of universal, free, and direct suffrage by secret ballot. Mongolians who have reached the age of 25 years have the right to stand for elections.

There have been significant changes to the electoral system in the past. Under the current system, the winning candidate is the one who gains more votes than any other candidate (first-past-the-post system).

POLITICAL PARTIES

Since the MPRP, which had governed from 1921 until 1996, yielded its monopoly on power, a pluralistic system of political parties has evolved. Discrimination against and persecution of a person for joining a political party are constitutionally prohibited.

CITIZENSHIP

Mongolian citizenship is primarily acquired by birth: A child acquires Mongolian citizenship if one of his or her parents is a Mongolian citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

The 1992 Constitution of Mongolia provides a wide range of human rights and freedoms. Starting with the general equal treatment clause in Article 14, the constitution guarantees that all persons are equal before the law.

Article 16 enumerates the traditional set of liberal human rights and civil liberties as well as some social human rights, such as a right to a basic general education free of charge.

Impact and Functions of Fundamental Rights

The constitution acknowledges the importance of human rights in the preamble. To strengthen their protection further, a National Human Rights Commission was established by Parliament in 2001. According to its reports, the most serious human rights challenges are in the areas of law enforcement and criminal prosecution. Political opponents of the government have suffered human rights violations, including arbitrary detention and ill treatment.

Limitations to Fundamental Rights

The fundamental rights are not without limits, but no fundamental right may be disregarded completely. Some rights may not be suspended even in a state of emer-

gency, such as the right to life and freedom of thought, conscience, and religion.

Article 19 contains a general limitation clause. In exercising rights and freedoms one shall not infringe on national security, the rights and freedoms of others, or public order.

ECONOMY

Mongolia has an economy based on public and private forms of property. The state regulates the economy with a view to ensuring the nation's economic security, the development of all modes of production, and the social development of the population. Taken as a whole, the Mongolian economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

Buddhist monasteries were dissolved, their property was seized, and monks were secularized under the communist regime in 1938. Today, freedom of conscience or religion is guaranteed as a fundamental right. The separation of church and state is constitutionally recognized, and their relationship is regulated by law.

MILITARY DEFENSE AND STATE OF EMERGENCY

It is a constitutional duty in Mongolia to defend the motherland and to serve in the army. Conscription for men is at 18 to 25 years of age and is compulsory for a minimal term of one year. Conscientious objection is recognized. The president is the commander in chief of the armed forces and head of the National Security Council.

The constitution distinguishes among a state of emergency, martial law, and the state of war. The president declares a state of emergency or a state of war in an emergency. Parliament must approve or disapprove the presidential decree within seven days; otherwise it is deemed void.

Parliament itself can declare a state of emergency, if there are unforeseen dangers, or if state authorities are "not able to cope with public disorders." The Parliament may also declare martial law if public disorders create a real threat of an armed conflict. Furthermore, Parliament can declare a state of war if the sovereignty and independence of Mongolia are threatened.

In case of a state of emergency or war, human rights and freedoms may be subject to limitations, but only by law. Such a law must not affect the right to life; the freedom of thought, conscience, and religion; or the right not to be subjected to torture or inhuman and cruel treatment.

AMENDMENTS TO THE CONSTITUTION

Amendments may be initiated by the president, members of Parliament, the cabinet, or the Constitutional Court. If two-thirds of the members of Parliament so decide, a national referendum on the amendment is held.

The amendment itself is adopted by a majority of three-fourths of all members of Parliament. If an amendment fails twice, it may not be reconsidered before a new Parliament convenes. The first constitutional amendment was made in 2001.

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Michael Rahe

MOROCCO

At-a-Glance

OFFICIAL NAME
Kingdom of Morocco

CAPITAL
Rabat

POPULATION
30,088,000 (2005 est.)

SIZE
275,117 sq. mi. (712,550 sq. km)

LANGUAGES
Arabic (official), Amazigh (Berber), French

RELIGIONS
Islam (state religion) 99%, Judaism about 3,000 members

NATIONAL OR ETHNIC COMPOSITION
Arabs, Berbers, Jews

DATE OF INDEPENDENCE OR CREATION
March 2, 1956

TYPE OF GOVERNMENT
Constitutional monarchy; semiparliamentarian regime

TYPE OF STATE
Unitary decentralized state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 7, 1962

DATE OF LAST AMENDMENT
October 10, 1996

Morocco is a constitutional, democratic, and social monarchy. The system recognizes the legitimacy, permanency, and priority of the monarchy and at the same time recognizes the need of the people for representation. This compromise serves as a basis for a certain form of rule of law.

There is a separation of powers. Morocco is a unitary state that is experiencing more and more decentralization. The constitution enshrines and guarantees fundamental rights by an independent judiciary.

The king is the head of state. He reigns, governs, and constitutes the center of the Moroccan constitutional system. He is the secular and spiritual head of the country, whose historical, religious, and national legitimacy places him over all other powers.

The prime minister, coordinator of ministerial activities, is responsible before the king and the bicameral Parliament. Elections are free, equal, and general. Multipartism is enshrined in the constitution and in fact.

Freedom of religion is guaranteed, although Islam is the state religion. The economic system is liberal. The military depends on the civil government.

According to its constitution, Morocco is bound by the principles of the United Nations Charter. The constitution affirms the country's determination to work for the maintenance of peace and "for its attachment to the universally accepted human rights."

CONSTITUTIONAL HISTORY

Situated in the extreme west of Africa, broadly opening into the Mediterranean, Morocco, formerly called the Extreme Maghrib (West), saw successive occupations of which only one left permanent traces: Islam. The Arab Muslims conquered territory and society. However, at the start of historical times, Morocco was inhabited by the Berbers, a population whose origin remains a mystery. They have since maintained the uniqueness of their society.

The Extreme Maghrib was occupied by Phoenicians, Carthaginians, Romans, Visigoths, and Byzantines. The 2,000-year Jewish presence is also worth mentioning. It dates back to antiquity but was invigorated by the Jewish expulsion from Spain in 1492, still a determining element

in the Jewish Maghrebian memory. Spanish Jews had considerable impact and contributed in forming Moroccan culture in many fields (costume, arts, jewelry, music, food, other). Better treated than in Europe, Jews lived in harmony with Muslims ("the Moroccan exception") with the exception of some painful episodes in times of troubles (political tensions and droughts). After the independence of Morocco a considerable number of Moroccan Jews emigrated, mostly to Israel and France, where they retain a sense of Moroccan identity.

The Arab Muslim conquest was achieved by the Arab chief Oqba Ibnou Nafi'i, founder of the city of Kairouan in Tunisia, who extended Muslim domination over all of the local population. Succeeding Arabic and Berber dynasties created a state that annexed all of the Maghrib (North Africa), a great part of Spain, and regions south of the Sahara. It even succeeded in resisting the otherwise triumphant advances of Portugal and Spain in the 15th and 16th centuries. The dynasties had to reckon with powerful religious brotherhoods and great tribes. Its climax of cultural and spiritual strength is represented by the Quaraouyine, built in Fes under the Idrissides, considered to be the first university and mosque of the world created by a woman, the educated Fatima El Fihrya.

In 791 C.E., the state of Morocco was founded by Idriss I, a descendent of Ali, son-in-law of the Prophet Muhammad. He founded the first dynasty of the Idrissides with the city of Fes as its capital. Later, in the 11th century, the Berber dynasty of the Almoravides under Yusuf Ibn Tashfine took power and made Marrakech its capital. His project was the political unification of Morocco and Muslim Spain. At that time, the Andalusian civilization in Spain extended to the Maghrib. Under the next Berber dynasty of the Almohades in the 12th century, headed by Ibn Tumart, Marrakech remained the capital, with the mosque of Koutoubia as its landmark. In times of decline, the Berber dynasty of the Marinids (13th-14th centuries) reached out to Fes, conquered the cities of Tlemcen and Tunis, but did not succeed in retaining Spain.

Later on, the Arab dynasty of the Sa'dis (1548–1659) made itself famous by the victories of Sultan Ahmad Al-Mansur in the battle of the three kings (including the king of Portugal and a dethroned Moroccan sultan) in 1578 and by the conquest of the city of Timbuktu.

In 1666, the Arab dynasty of the Alawis under Mawlay ar-Rashid tried to reunify Morocco by way of a coherent economic and military strategy. From 1672 to 1727 Mawlay Ismail reigned as absolute monarch, subdued the local powers, and founded the Sharif Empire. His power stretched to Senegal. He founded a professional army and maintained fruitful diplomatic relations, especially with France and England. Mohammed III (1757–90) lowered the high taxes, issued a stable currency, and reconstituted the army. He also reinforced the numerous diplomatic relations. There are more than 40 international treaties from his reign, and Morocco was the first country to recognize the independence of the United States of America after its Declaration of Independence.

The government of Mohammed III is remembered for the construction of the city of Mogador by the French architect Gournot. Moulay Abd ar-Rahman (1822–59) reconquered Oujda from the Turkish Ottoman Empire and extended his powers to the Algerian coast. When he supported the emir Abdelkader of Algeria, Morocco experienced intense political tensions with France and Spain.

Moulay al-Hassan I (1873–94) faced the challenge of consolidating his power by gathering the tribes around him and modernizing the state. Morocco faced difficult economic, political, social, administrative, and military conditions at the beginning of the 20th century, when it found itself caught in Western aspirations. The "Moroccan crisis" was the product of competition among the European powers such as France, Spain, England, and Germany. Military defeats (Isly 1844, Tetouan 1860), the imposition of unequal treaties (Madrid 1880, Algeciras 1906), the high national debt of the country (especially under the reign of Moulay Abd al-Aziz, 1894–1904), and the secret accord between European powers to divide Morocco (French-Spanish convention of October 3, 1904) contributed to the loss of sovereignty of the kingdom in the Convention of Fes on March 30, 1912, which established the French protectorate. The protectorate developed quickly into direct administration. The French tried to divide the ethnicities of the country with the promulgation of the famous Berber Dahir (decree) of 1930, which is considered an attempt to break up the unity of the Moroccan people.

The administration of the protectorate radicalized the demands of the national movement, led by a number of great personalities (el-Fasi, el-Quazzani, Balafrej, Bouabid, Ben Barka, el-Khateb, Torres, Nacirri, and others), which created the Committee of Moroccan Action in 1934. The signing of the Manifesto of Independence (1944) and the armed resistance (el-Khattabi) increased tension between the parties and underlined the mutual ideological influence between the national movement and the monarchy.

The precarious situation of France after World War II (1939–45) and the growing intensity of revolts and rebellions in Morocco led to negotiations between the national movement and the French government, which culminated in the conference of Aix-les-Bains and the treaties of Celle-Saint-Cloud of October 31, 1955. These treaties marked the end of the protectorate. The treaties provided for the return of the deposed king, Mohammed V, and established the option of a Moroccan government formed on the basis of negotiations among different Moroccan interests and an evolution toward a constitutional monarchy.

The constitutional ideas of the organization and limitation of powers, division of responsibilities, and consultation were not unfamiliar to Morocco even before the protectorate. Governed by Muslim and customary law, Morocco was familiar with institutions such as *shoura* (consultation), *jemaas* (local assemblies), and ulemas (religious legislators). Immediately before the protectorate, the

1908 constitution, inspired by Ottoman ideas, established a regime of rights and freedoms, separation of powers, and a bicameral parliamentary system. During the protectorate, the Democratic Constitutional Party was created. The constitutional idea did not contradict the idea of nationalism. Both contributed to focusing Moroccan power and action in practice to regain sovereignty.

From independence in 1956 until 1962, the date of the promulgation of the first Moroccan constitution, Morocco saw a parliamentarism without parliament, under a customary constitutional regime, the *bey'a*. A code of public freedoms was adopted—the Charter of 1958—and a fundamental law was promulgated on June 2, 1961, as a precondition for a constitutional regime. Elections were held for a consultative assembly.

Moroccan parliamentarism has always been the joint project of the monarchy and the national movement, though they have aimed at different structures and procedures. For the monarchy, democratization had to develop in several steps, taking account of the Moroccan social situation of that time, whereas the parties of the national movement demanded immediate democracy.

Although the monarchy failed in its first attempt to create a constitutional council, it decided to draft the constitution itself. The national movement, however, called for a constitutional assembly. The dispute stayed alive for 38 years, until the 1996 constitution was drafted. All constitutional developments in Morocco before that date were discredited by the nonparticipation of the progressive minority of the national movement, who refused to participate in the government.

The first Moroccan constitution was thus the fruit of a silent pact between the royal will and popular consent. The 1962 constitution was considered progressive at its time; contrary to those in other states that had recently regained their independence, it guaranteed a multiparty system in its text as well as in political practice.

The decisive year 1975 rallied all political forces around the issue of territory, that is, the retrieval of the Sahara provinces, formerly under a Spanish protectorate. Before that date, the regime could have been considered authoritarian, as it struggled against military rebellions and the rise of the Left, of which one party was republican. After 1975, a consensus was reached that held for a while despite many challenges (cancelled elections, periods of hunger, others).

By the 1990s, an inflexible policy was facing democratic demands from the opposition and civil society. The country faced World Bank demands for urgent social evolution, the unresolved territorial issue, and the worldwide pressure for democracy that followed the fall of the Berlin wall. At the end of the reign of Hassan II, clear signs of an opening were visible: constitutional amendments, more guarantees of fundamental rights, the creation of administrative courts, the founding of the Ministry for Human Rights, the ratification of international instruments on human rights, the release of political prisoners, and the founding of a Consultative Council for Human Rights.

The succession to the throne of King Mohammed VI in 1999 maintained these trends, although some signs of tensions have appeared, notably after the terrorist acts of May 16, 2003. While Mohammed V could be described as the liberator and Hassan II as the builder of the modern state, Mohammed VI seems to be positioning himself as the constructor of the rule of law, despite the opposition of radical Islamists, who question his religious status and want to introduce Quranic law, and reactionary monarchists, who consider the division of powers to be *siba* (anarchy).

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Morocco is one single document with 108 articles. Islam has an important place in two nonsecularized contexts: in constitutional law (particularly concerning the status of the head of state) and in family law. These are always open to progressive interpretation, as recently occurred in the amendment of the family code leading to more equality and better protection of the rights and freedoms of women and the family.

Alongside the written constitution are customary constitutional law and constitutional practice.

Ratified international treaties form part of the hierarchy of norms that have status at least equal to that of law. The constitution does not say anything about the role of international treaties, but law, jurisprudence, and royal interventions seem to head in the direction of the superiority of international conventions to law.

The hierarchy of norms is difficult to determine; nevertheless it is possible to infer a normative system.

The "constitutional bloc" comprises Islam, the constitution, and custom. The organic laws follow, then the ordinary laws (international treaties are at least equal to laws), the regulations, and jurisprudence. Royal acts called *dahirs* are outside the hierarchy of norms and are not open to judicial recourse.

BASIC ORGANIZATIONAL STRUCTURE

Morocco is a decentralized unitary state that grants some autonomy to local entities, which include regions, prefectures, provinces, and urban and rural communities.

There are 16 regions. They are placed over the prefectures and the provinces. The rural communities have financial autonomy. Local representatives are elected for six-year terms by universal and direct suffrage.

LEADING CONSTITUTIONAL PRINCIPLES

Morocco is a Muslim state. The king is "commander of the faithful." Human rights as universally recognized are

guaranteed. Morocco is a democracy and a constitutional monarchy that has national sovereignty.

CONSTITUTIONAL BODIES

The main constitutional bodies are the king, the bicameral Parliament, the executive administration, and the judiciary, including the Constitutional Court.

The King

The Crown of Morocco is hereditary and passes from the father to the male descendants in direct line and by order of primogeniture, unless the king while alive designates a successor other than his son. The king is a minor until he reaches the age of 16 years, and in this case a regency council exercises the constitutional rights of the Crown.

The person of the king is inviolable and sacred: "The King is the commander of the believers, supreme representative of the nation, symbol of its unity, guarantor of the perpetuity and continuity of the state, guardian of the respect of Islam and the constitution. He is the protector of the rights and freedoms of the citizens, social groups, and collectivities" (Article 19).

The king appoints the prime minister and on the suggestion of the latter appoints the other members of the executive administration. He chairs the Council of Ministers, promulgates the laws within 30 days, can dissolve either or both chambers of Parliament, and can address messages to the nation and to Parliament, but the latter cannot be the object of any debate.

The king exercises his powers by *dahir* (decree), often countersigned by the prime minister. He accredits the ambassadors before foreign powers and signs and ratifies the treaties; only those treaties that entail public financing need the prior approval of Parliament.

The king presides over the Superior Council of Magistrates, the Supreme Council of Education, and the Supreme Council of National Development and Planning. He appoints the judges and exercises the right of pardon. The king can ask Parliament for a new reading of a bill of law; if the bill is not accepted, the king can submit it to a referendum.

In case of a threat to territorial integrity or circumstances that endanger the proper functioning of constitutional institutions, the king can, after consultation with the presidents of the chambers and the president of the Constitutional Court, declare a state of exception, which does not involve the dissolution of Parliament. Morocco experienced a state of exception regime between 1965 and 1970 after the failure of the first parliamentary experience.

The king must inform Parliament before issuing a declaration of war.

The Parliament

The Parliament is bicameral. The House of Representatives is composed of 325 elected members (since 2002, 30 seats are reserved for women). It is elected from a national list for five years by universal and direct suffrage. The House of Counselors has 270 members elected for nine years, one-third renewed every three years by universal indirect suffrage. Three-fifths of the members of the House of Counselors are representatives of local communities, and two-fifths are representatives of professional organizations and of employees.

The Parliament sits for two sessions a year; an extraordinary session can also be summoned. Members of Parliament are protected by parliamentary immunity except if they are caught in the act of committing a serious crime. Members of Parliament can be members of the executive government.

Parliament has powers to create laws in the fields determined by the constitution and to control the executive administration by using questions, investigative committees, and the threat of censure. In order to dismiss the executive government by a vote of no confidence, the House of Representatives needs an absolute majority, and the House of Counselors needs a majority of two-thirds. The latter can also address a motion of admonition to the executive administration or call to order any act or policy it finds unsuitable.

The Lawmaking Process

The initiative for bills rests with the prime minister and with Parliament. They are sent for examination to the relevant committees.

The two chambers must adopt identical texts. If they do not, the executive administration can call for a joint committee; if that fails, the House of Representatives has the last word, by an absolute majority.

Organic laws, as well as parliamentary rules, cannot enter into force until they have been declared to be in conformity with the constitution by the Constitutional Council.

The Executive Administration

The executive administration is made up of the prime minister and the cabinet ministers. It is responsible before the king and before Parliament. After the appointment of the executive government the prime minister presents his or her program before Parliament. In the House of Representatives there are a debate and vote; in the House of Counselors there is only a debate. The prime minister needs the confidence of the House of Representatives.

The prime minister is responsible for the execution of laws, administers the country, and issues ordinances by decree. The prime minister does not determine the policy of the nation and is more of a "supercoordinator" below the king.

The Judiciary

The judicial power is independent of the legislative and executive powers. Decisions are made in the name of the king. The judges are appointed by *dahir* on the recommendation of the Superior Council of the Magistrate. The judges cannot be removed.

The current organization of the judiciary reflects the French model and functions along the same principles: independence of the judges, pyramidal and hierarchical organization, headed by a centralized jurisdiction charged with watching over the good application of the law. There are homogeneous jurisprudence and diversity of means of recourse. Administrative courts were created in 1990 and courts of commerce in 1997.

The Constitutional Council (Conseil Constitutionnel)

The Constitutional Council was created by the amendment of 1992 to strengthen the rule of law by controlling the constitutionality of laws. It is composed of 12 members who are appointed for nine years and cannot be reappointed. Six judges are nominated by the king, three by the president of the House of Representatives, and three by the president of the House of Counselors after consultation with the parliamentary groupings. One-third of each category is renewed every three years. Currently it is composed in its majority by jurists (academics, judges, or advocates). One of the judges is a woman.

The Constitutional Council can be addressed by the king, the prime minister, the presidents of the chambers, or one-quarter of the members of each chamber. The call is performed before promulgation of a law; it thus is a preventive control.

The Constitutional Council decides on the conformity with the constitution of organic laws (important laws specified in the constitution), ordinary laws, and parliamentary rules; it decides on jurisdiction to make ordinances and legislation and verifies the status of members of Parliament (ineligibility and incompatibility). It can judge disputes about elections to the legislature and referendums. The Constitutional Council is consulted by the king prior to the declaration of a state of exception or the dissolution of Parliament.

The decisions of the Constitutional Council are binding on all public powers and all administrative and judicial authorities. It makes its decisions within one month except in cases of urgency.

Recently the Constitutional Council has been especially active in controlling elections for the legislature. It has also made decisions that protect fundamental rights such as access to employment and offices, the exercise of parliamentary mandates, freedom of communication, the right to join or not to join a political formation, and the independence of the judiciary.

Audit Office (La Cour des Comptes)

The Audit Office is charged with administration of the budget and finance laws. It assists Parliament and the executive administration and reports to the king. The regional audit offices control the expenses and management of local communities and associations.

The High Court

The High Court is composed in equal parts of members elected from each chamber of Parliament and is chaired by a member nominated by the king. The High Court judges the members of the executive administration who are charged with crimes and offenses committed in exercising their functions. The accusation requires one-quarter of the members of one of the chambers and then the consent of two-thirds of its members.

THE ELECTION PROCESS

On the eve of the legislative elections of September 2002, the rules for election were amended in order to obtain more representative results and a more legally and ethically proper campaign. The changes included greater penalties for electoral fraud, introduction of minimal female representation, lowering of the voting age to 18 years, and inclusion of nonparty candidates who obtain a minimal number of voter signatures. The elections are secret, personal, optional, and individual. There is no voting by proxy or absentee voting.

Moroccan citizens resident abroad can vote only in referenda. Some of them formed a nongovernmental organization to campaign for their right to vote; however, they lost their case before the Supreme Court.

A number of officials, such as military personnel, judges, or governors, are ineligible to vote.

Elections take place by proportional representation.

POLITICAL PARTIES

Article 3 of the constitution enshrines pluralism and prohibits a single-party system. In 1959, the Moroccan courts dissolved the Moroccan Communist Party (PCM) on the basis of a royal discourse that declared the Marxist-Leninist doctrine incompatible with the principles of Islam. However, the party survived under a different name. The only current criterion for banning a party is that its program is considered to contradict the principles of the constitution.

The freedom to found a political party is guaranteed to all Moroccans without any discrimination based on race, gender, belief, or region of origin.

CITIZENSHIP

Moroccan citizenship is primarily acquired by birth. The child of a Moroccan father, regardless of the child's country of birth, acquires Moroccan citizenship. The child of a Moroccan mother and an unknown or stateless father also acquires Moroccan citizenship. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

From the first constitution on, a whole title has been dedicated to fundamental rights. The 1992 amendments add to the preamble an affirmation that Morocco is committed to human rights as they are universally recognized. This change places Morocco under the rein of the international conventions that it has ratified.

The 1996 revision added freedom of enterprise, in line with the current conception of a slim, disengaged state, removing itself from the sectors of production and distribution in order to encourage the system of competition.

The accent is placed on civil and political rights, although economic and social rights are present as well. The following are guaranteed: equality before the law in access to public offices, in education, and in the exercise of civil rights of the two genders; freedom of opinion, expression, assembly, association, and movement; safety; inviolability of domicile and communication; the right to strike; the right of property; and freedom of exercise of religion.

Impact and Functions of Fundamental Rights

Various institutions have been founded for the protection of fundamental rights: the Ministry of Human Rights; the Consultative Council for Human Rights; the Constitutional Council, and the Administrative Courts; the mediator called Diwan al Madhalim, which receives and pursues citizens' complaints about decisions or acts of a public authority; the Courts of Commerce; the Institution of Equity and Reconciliation (IER), which works for the collective memory and reconciliation of the state and the victims of injustices under previous regimes.

Several changes to existing laws have strengthened fundamental rights. The code of criminal procedure includes stronger limits on police custody and preventive confinement, and a new labor code has strengthened workers' rights.

The family code was made more egalitarian. The family is now considered the common responsibility of both spouses; the notion of obedience of the wife has disappeared; the minimal marriage age is 18 years for both men and women; the father's consent to marriage is no longer obligatory; verbal repudiation has disappeared in favor of divorce by mutual consent, which is guaranteed; polygamy has been placed under more severe restrictive conditions; and the rights of the child have been strengthened. These changes were supported by royal intervention and by the work of nongovernmental women's groups.

The creation of the High Authority of Communication and Audiovisual Media on August 31, 2002, put an end to the state monopoly in radio and television broadcasting. It is mandated to fight for a pluralist and diversified broadcast sector.

The new press code promulgated in 2002 strengthened freedom of the press and entrusted the judicial authorities with powers to suspend or dissolve newspapers. Sometimes the press oversteps boundaries, which causes censorship and endangers freedom of speech. These exceptions, however, are rather few for this geographical region.

Pluralism also applies to the recognition of the Berber culture. Thus, the Royal Institute of the Amazigh Culture (IRCAM) was founded by the king on October 17, 2001, to work for the recognition, promotion, and teaching of the Berber culture and language. Some members of this institution resigned recently, in protest that demands for constitutional recognition of the Berber language had not yet been taken into account.

Limitations to Fundamental Rights

An antiterrorist law imposed after the attack of May 16, 2003, in Casablanca included a prolongation of police custody and limitations to the secrecy of communication. The organic law on the right to strike limits this right. The equality guaranteed in the constitution for the political rights of both genders raises the question of equality in other fields. Another important limitation to fundamental rights is individual citizens' lack of access to the Constitutional Council.

ECONOMY

The right to property is guaranteed, as are freedom of enterprise and freedom for trade unions. Privatization and nationalization require a law. The administration's development plans concern strategy, objectives, and means of action rather than traditional detailed planning. The goal is sustainable human development. The constitution provides for an Economic and Social Council, representing economic interests and civil society; however, this has not yet been instituted.

RELIGIOUS COMMUNITIES

There is freedom of religion but not freedom of conscience. For the latter, the constitution is silent. Morocco, though having ratified the International Pact on Civil and Political Rights, does not adhere to the universal concept of freedom of religion. Islam is the religion of the state.

Jewish citizens are considered to be nationals and thus are not banned from any function, mandate, or activity. They have been counselors to the king, members of the executive administration, members of Parliament, judges, members of the opposition, active in civil society, and cherished writers.

It is worth mentioning the strong moral and courageous attitude of the late Mohammed V when he refused during the Nazi period to collaborate with the French government of Vichy, which ordered him to extradite his subjects of Jewish religion, declaring, "I do not have Jews; I have but Moroccan citizens!"

MILITARY DEFENSE AND STATE OF EMERGENCY

In principle, the armed forces are subordinate to the civil powers. The king is commander in chief of the royal armed forces; he appoints the civil and military officers and can delegate this right. There is a minister of national defense.

A state of emergency can be declared by the king together with the Council of Ministers for a period of 30 days; it can be prolonged by law.

There is no military conscription.

AMENDMENTS TO THE CONSTITUTION

The initiative for an amendment to the constitution rests with the king and with Parliament. In case of a royal initiative, it can be adopted directly by referendum. In case of a parliamentary initiative, a majority of two-thirds is needed in each chamber before passing it to a referendum.

All the amendments that have passed to the present originated as royal initiatives. This is the settled constitutional practice.

There are untouchable provisions or "eternity clauses" that cannot be amended: the provisions relating to Islam and to the monarchical form of the state.

The parties of the national movement have addressed a memorandum to the king that lists demands such as a more balanced division of powers, a more effective role for the prime minister, and a better guarantee of fundamental rights. The memorandum marks a breach with the past, when the national movement demanded that a constituent assembly be summoned. By the addressing of a memorandum to the king, an old demand has been dropped, and a culture of systematic opposition has been replaced by a culture of participation.

Some in the opposition have reconciled themselves with the current constitution and merely deplore its incomplete implementation, concluding that the time for major revision has not yet arrived.

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Nadia Bernoussi

MOZAMBIQUE

At-a-Glance

OFFICIAL NAME
Republic of Mozambique

CAPITAL
Maputo

POPULATION
18,811,731 (July 2004 est.)

SIZE
308,646 sq. mi. (799,390 sq. km)

LANGUAGES
Portuguese (official), Makua-Lomwe, Cishona, Xitsonga, Swahili, Ciyao, Cisena, Chenwa-Nyanja, Echuawabo, Shimaconde, Cicopi, Bitonga, English

RELIGIONS
Christian (Catholic, Protestant) 30%, Muslim 10%, Hindu and traditional African 60%

NATIONAL OR ETHNIC COMPOSITION
Makua, Makonde (northern region), Sena (central region), Shangan (southern region) 99%, other 1%

DATE OF INDEPENDENCE OR CREATION
June 25, 1975

TYPE OF GOVERNMENT
Presidential state

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 16, 2004

DATE OF LAST AMENDMENT
No amendment

Mozambique is a presidential democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. It is organized territorially into 11 provinces, including Maputo City which recently gained the status of a province, and many districts, administrative centers, localities, and villages. It has a strong central government. The constitution of Mozambique contains a bill of rights ensuring fundamental rights. In the event of violations, the constitution also contains remedies enforceable by an independent judiciary, which includes courts and the Constitutional Council.

The president of the Republic of Mozambique is the head of state, the head of the executive administration, the guardian of the constitution, and the commander in chief of the armed forces: however, the latter two functions are mostly representative. The president, a prime minister who is not head of the executive administration, ministers, provincial governors, and administrators compose the executive government structure.

Free, equal, general, and direct elections of the president and members of parliament are guaranteed. A pluralistic system of political parties has intense political impact.

Religious freedom is constitutionally guaranteed, and state and religious communities are separated. The economic system can be described as a market economy. The military is subject to the civil government in both law and fact.

CONSTITUTIONAL HISTORY

Mozambique, a former Portuguese colony, was discovered for Portugal in 1489 by Vasco da Gama on his way to India. During the 1884–85 Berlin Conference on Colonization, the geographical area now called the Republic of Mozambique was “officially” allocated to Portugal.

In the 1960s, the first liberation movements to fight against Portuguese colonization emerged as the Frente de Libertação de Moçambique (Front for the Liberation of Mozambique [FRELIMO]). The struggle led to independence from Portugal in 1975.

After independence in 1975, a civil war emerged in Mozambique between the ruling party (FRELIMO) and the rebel movement called Resistência Nacional de Moçambique (RENAMO). The civil war continued for about 16 years. In October 1992, RENAMO and FRELIMO signed a General Peace Agreement. Since independence in 1975, three new constitutions have been adopted in succession, in 1975, 1990, and 2004.

FORM AND IMPACT OF THE CONSTITUTION

Mozambique has a written constitution, codified in a single document, that takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Mozambique. The African Charter and the United Nations Charter apply directly in the country without transformation into ordinary law; other international treaties and agreements must be transformed into ordinary law to be applied within Mozambique.

BASIC ORGANIZATIONAL STRUCTURE

Mozambique is a unitary state made up of 11 provinces. The provinces are subdivided into districts, administrative centers, localities, and villages. These subprovincial municipalities are decentralized from the central government with limited autonomy in dealing with some matters, although they are still very dependent on state funds.

LEADING CONSTITUTIONAL PRINCIPLES

Mozambique's system of government is a presidential democracy. The constitution provides for the separation of the executive, legislative, and judicial powers; the independence of the judiciary is constitutionally guaranteed.

In the Mozambican constitution, the following principles are enshrined: Mozambique is a unitary republic based on the rule of law and legal pluralism; it is secular, social, sovereign, and respectful of human rights.

CONSTITUTIONAL BODIES

The constitution provides for three branches of government: the executive, legislative, and judicial. The main constitutional bodies are the executive administration, including the president, ministers, and vice ministers; the Assembly of the Republic; the Council of State; the Constitutional Council; and tribunals and courts.

The Executive Administration

The executive branch includes the president and the cabinet ministers and vice ministers. The president of the Republic of Mozambique is the head of state, the head of the executive administration, the guardian of the constitution, and the commander in chief of the armed forces. The president is elected for a five-year term and can be reelected only once. Any further reelection is possible only when five years has elapsed since the last mandate.

The president has the authority to appoint and dismiss the prime minister, cabinet ministers, vice ministers, governors, rectors and vice rectors of public universities, and the attorney general. The president also has the power to dissolve the Assembly of the Republic.

The Legislature

The legislative branch of government comprises the Assembly of the Republic, which is the central representative organ of the people. There are 250 members representing several political parties in the assembly. Its period of office is five years. The members of the assembly are elected in a general, direct, free, equal, and secret balloting process.

The Council of State

The Council of State was introduced in 2005 when the new constitution was implemented; it serves as the political consultation organ for the president of the republic. Members include the president of the Assembly of the Republic, the president of the Constitutional Council, and former heads of state and prime ministers.

The Constitutional Council

The Constitutional Council is a new organ in the Mozambican constitution. It is charged with the administration of justice in constitutional matters and matters related to elections.

The Judiciary (Courts and Tribunals)

The courts and tribunals administer justice in the name of the people. A special law determines their respective subject matters and geographic jurisdictions. The Supreme Court of Justice is the highest court in Mozambique.

The Lawmaking Process

The main function of the Assembly of the Republic is to pass laws. Deliberations can begin only when more than half of the members are present. After the assembly passes a law, the president of the republic must sign it and publish it in the official gazette in order for it to become the law in Mozambique.

THE ELECTION PROCESS

All Mozambican citizens over the age of 35 years have the right to stand for presidential elections. They may vote in both presidential and parliamentary elections when they are over the age of 18 years.

POLITICAL PARTIES

The Mozambican constitution provides for the right of association. Mozambique has a pluralistic system of political parties, with two major political parties: FRELIMO and RENAMO. The multiparty system is a basic structure of the constitutional order, and the political parties are a fundamental element of public life. The creation of political parties is regulated by ordinary law and guaranteed by the constitution.

CITIZENSHIP

A child acquires citizenship if one of his or her parents is a Mozambican citizen, regardless of where the child is born. Citizenship also can be acquired by naturalization.

FUNDAMENTAL RIGHTS

The constitution provides for a bill of fundamental rights, and it accepts and applies directly in Mozambican law the United Nations Charter and the African Charter. The constitution also states that the interpretation of fundamental rights should be in accordance with the African Charter on Human Rights and the United Nations Universal Declaration of Human Rights. Application of international instruments protecting fundamental rights by the local courts in Mozambique is very rare, partly because of the lack of appropriate knowledge of such instruments by the judges.

Chapters 3 and 4 of the Mozambican constitution provide for traditional civil and political rights as well as economic, social, and cultural rights. These chapters also contain provisions that guarantee the rights of women, the disabled, and elderly people.

Impact and Functions of Fundamental Rights

The constitution provides for a set of traditional human rights and their enforcement mechanisms. The foundations for democracy are enshrined in the Mozambique constitution. In Mozambique there is no special legal, independent entity apart from the tribunals to hear and decide cases related to human rights violations.

Limitations to Fundamental Rights

The fundamental rights in the Mozambican constitution can be limited or suspended only in very limited cases, such as a state of emergency, state of war, public disorder, or severe, widespread moral lapses. Such limitations must be applied to all citizens equally, and any decree limiting rights must specify the legal basis for the limitation.

ECONOMY

Mozambique has an open market economy, although the constitution does not specify any particular economic system. The constitution does provide for some rights related to the economy, such as freedom of association, the right to property, and the prohibition of expropriation of private property, except for the public interest and by law.

RELIGIOUS COMMUNITIES

The Mozambican constitution in Article 54 guarantees freedom of religion or belief. Religious associations are regulated by ordinary law. The constitution provides for separation of state and church; there is no state religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

In Mozambique the executive administration is responsible for creating and maintaining the armed and security forces, namely, the police, the army, and the intelligence service. The army also can be used for civil purposes in some special cases.

Basic military service in Mozambique is compulsory for a period of two years for both women and men over the age of 18 years. After the two-year period, recruits may become professional soldiers serving for fixed periods or for life. Civil service may be performed by those who cannot perform basic military service. The military always remains subject to civil government.

AMENDMENTS TO THE CONSTITUTION

Amendments to the Mozambican constitution can be proposed by the president of the republic or by one-third of the members of the Assembly of the Republic. Approval requires two-thirds of the members of the assembly. The following provisions can be amended only by referendum: fundamental rights, the system of government, the autonomy of the municipalities, and the constitutionally guaranteed independence of judges.

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João Miguel Fernandes

MYANMAR

At-a-Glance

OFFICIAL NAME
Union of Myanmar

CAPITAL
Pyinmana

POPULATION
52,000,000 (July 2004 est.)

SIZE
261,970 sq. mi. (678,500 sq. km)

LANGUAGES
Burmese, ethnic minority languages

RELIGIONS
Buddhist 89%, Christian (Baptist 3%, Roman Catholic 1%) 4%, Muslim 4%, animist 1%, other 2%

NATIONAL OR ETHNIC COMPOSITION
Burman 68%, Shan 9%, Karen 7%, Rakhine 4%, Chinese 3%, Indian 2%, Mon 2%, other 5%

DATE OF INDEPENDENCE OR CREATION
January 4, 1948

TYPE OF GOVERNMENT
Military regime

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
No legislature; laws issued by military decree of ruling State Peace and Development Council (SPDC)

DATE OF CONSTITUTION
January 3, 1974 (defunct)

DATE OF LAST AMENDMENT
1974 constitution no longer in force since September 18, 1988

Burma, today officially called Union of Myanmar, has had three official names since independence from Great Britain: the Union of Burma (January 1948 to March 1974), the Socialist Republic of the Union of Burma (March 1974 to September 1988), (again) the Union of Burma from September 1988 to May 1989, and the Union of Myanmar (the last two name changes were made by order of the ruling State Law and Order Restoration Council, May 1989). It has had two constitutions.

The 1947 constitution established a parliamentary form of government, whereby political parties operated freely, a prime minister chosen by the lower house of the legislature held executive power, and a ceremonial president acted as the formal head of state. The supreme court enforced citizens' rights and the judiciary was independent.

With the military coup of March 1962, the liberal parliamentary constitution of 1947 effectively ended. The group of army officers who took power at that time ruled by military decree for 12 years. In January 1974, a new constitution entered into force; in effect, it legalized and perpetuated one-party rule under the Burma Socialist Programme Party (BSPP).

Massive protests against one-party rule resulted in another military takeover, by the State Law and Order Restoration Council (SLORC), on September 18, 1988. The protests, known as the 1988 Uprising, were crushed, but at the same time the one-party system ended. After the SLORC takeover, political parties were allowed to operate, albeit under severe restrictions, and some were allowed to contest the May 1990 elections.

However, more than 15 years after these elections the political parties—the National League for Democracy (NLD) and its allies—have still not gained political power or nominally share it with the ruling SLORC or with the State Peace and Development Council (SPDC). They continue to operate under severe restrictions. Since January 1993, a military-run National Convention has been meeting periodically to draft basic principles for a promised new constitution. There is no timetable for this

drafting process; nor is there any indication as to how such a constitution is to be adopted. The country remains under military rule, as the State Peace and Development Council rules by decree.

This article presents and briefly compares selected provisions of the defunct 1947 liberal and 1974 one-party constitutions, as well as some of the principles or provisions agreed upon by the National Convention. Since September 1988, Burma does not have a constitution in force. Therefore, the agreed upon principles adopted so far in the National Convention must be seen as highly contingent.

CONSTITUTIONAL HISTORY

The Union of Burma gained independence from Britain on January 4, 1948. During the 19th century, the British and the Burmese fought three wars (1824–26, 1852, 1885). After the third Anglo-Burmese war in November 1885, the whole country was annexed into the British Indian Empire on January 1, 1886.

Prior to the regaining of independence in January 1948, a 111-member Constituent Assembly met from June to September 1947 and adopted the constitution on September 24, 1947. The constitution was fully in force with independence in January 1948.

The 1947 constitution can be described as based on the British Westminster parliamentary form of government. It established a two-chamber parliament. The lower chamber, the Pyithu Hluttaw (Chamber of Deputies in the official English translation), was elected nationwide on the basis of universal adult suffrage, while the upper chamber, the Lumyosu Hluttaw (Chamber of Nationalities), was elected or appointed on the basis of ethnicity, with designated numbers of representatives from the various indigenous ethnic groups. Political parties operated freely; the leader of the political party that received most votes in the Chamber of Deputies (also known generally as parliament, even in Burmese) became the prime minister, who was also the head of the administration. The president was the head of state, but this was largely a ceremonial post. The constitutional system that was practiced during the time of the 1947 constitution can be generally described as prime ministerial or parliamentary rather than presidential.

The 1947 constitution lasted until the military coup of March 2, 1962. On that day a group of army officers led by the late General Ne Win (1910?–2002) took power. On the day of the coup the president, the chief justice of the union, the prime minister, and the cabinet ministers were arrested. Parliament was abolished by a decree of the Revolutionary Council on March 3. The Supreme and High Courts of Burma were abolished by another decree, on March 30. A 17-member Revolutionary Council (RC) was formed. Later, a revolutionary administration was also formed, consisting mainly of active duty military officers. The RC, which issued laws by decree during its 12-year existence, can be considered the legislature and the revolutionary government can be considered the cabinet of that era. Membership in the RC and the revolutionary government overlapped, especially in the early days.

The 1947 constitution was never formally abolished either by decree or by military announcement. But it can be safely said that it ceased to function sometime after March 1962. On July 4, 1962, the Revolutionary Council formed a new political party, the Burma Socialist Programme Party (BSPP). The system of multiple political parties competing for elections also ended when the RC issued the Law Protecting National Unity on March 23, 1964. All political parties except the BSPP were banned and their assets confiscated.

From 1962 to 1974, when the new constitution took force, no formal constitution operated in the country. In December 1973, a referendum was held to adopt a new constitution, which is now known as the 1974 constitution. The referendum presented an illusory choice. If the people rejected the draft constitution, then the RC would continue to rule by decree. If the constitution was adopted, then power would be transferred to the Pyithu Hluttaw, a unicameral legislature almost all of whose members were members of the single and ruling BSPP. The chairman of the Revolutionary Council was U Ne Win. The chairman of the Burma Socialist Programme Party was also U Ne Win. Not surprisingly, the official tally showed that 90.19 percent of the voting populace had endorsed the new constitution.

After the adoption of the 1974 constitution, U Ne Win became the first president of the Socialist Republic of the Union of Burma, on March 4, 1974. The preamble of the 1974 constitution pledged that “we the people will faithfully follow the leadership of the Burma Socialist Programme Party.” Article 11 stated: “The State shall adopt a single-party system. The Burma Socialist Programme Party is the single political party and it shall lead the state.”

The 1974 constitution itself effectively ended as a result of a coup, on September 18, 1988. For several months there had been widespread demonstrations against the ruling BSPP government. On September 11, 1988, an emergency session of the Pyithu Hluttaw passed a resolution to hold multiparty elections “not earlier than 45 days and not later than 90 days” from that date. Just a week later on September 18, 1988, another group of army officers took over power and formed a military junta called the State Law and Order Restoration Council (SLORC). The SLORC abolished all organs of state power that were formed under the 1974 constitution. The SLORC changed its name to State Peace and Development Council (SPDC) on November 15, 1997. Each group in turn declared that they were not bound by any of the provisions of either the 1947 or the 1974 constitution.

Within 10 days of SLORC takeover on September 18, 1988, the main opposition party, National League for Democracy (NLD), was formed under its general secretary, Daw Aung San Suu Kyi (Nobel peace prize laureate for 1991). The former BSPP renamed itself the National Unity Party

(NUP). Multiparty elections took place on May 27, 1990. Ninety-one political parties contested in the elections. The NLD won nearly 60 percent of the votes and 81 percent of the seats—392 of the 485 seats contested. But the new National Assembly was never allowed to convene. After the election the SLORC, in violation of its promises before the election, issued an announcement (Order 1/1990) on July 27, 1990, that the role of elected delegates was not to act as a legislature but to draft a new constitution.

Since 1990, many elected members of parliament have been arrested. Some managed to flee the country. Some resigned or were forced to resign.

On January 9, 1993, a National Convention to draft the principles of a new constitution was convened, only to be adjourned the next day. Of the 702 delegates, only 86 were from the NLD. Even before the convention began, the SLORC had already stipulated six objectives that had to be followed. They were (and still are) (1) nondisintegration of the union; (2) nondisintegration of national solidarity; (3) perpetuation of sovereignty; (4) flourishing of a genuine multiparty system; (5) further flourishing of the noblest and worthiest of world values, namely justice, liberty, and equality; and (6) participation of the Tatmadaw (the armed forces) in the national political leadership of the future state.

Between January 9, 1993, and March 30, 1996, the National Convention was convened and adjourned a few times. In November 1995, the NLD delegates boycotted to protest restrictions and the predetermined agenda. As a result of the boycott, the NLD delegates were expelled from the convention. Since 1996, the convention has met only twice, in 2004 and 2005. It was adjourned on March 30, 1996, to be reconvened only after eight years on May 17, 2004, and it was again adjourned in July 2004. It was convened again in February 2005 and was yet again adjourned in March 2005.

As of mid-2005 only certain "basic principles" have been "agreed upon" by the National Convention which has been held periodically since 1993. As of the time of writing (February 2006) not even a partially completed draft of a future constitution exists. It is not known when the constitution might be completed or how it might be adopted.

FORM AND IMPACT OF THE CONSTITUTION

From September 18, 1988, until the beginning of 2006, the country did not have a constitution.

BASIC ORGANIZATIONAL STRUCTURES

Under the current de facto arrangement, at the top of the state hierarchy is the State Peace and Development Council (SPDC), which is the supreme body of the state. Among other functions it issues laws, which are usually signed by the chairman of the State Peace and Development Council, Senior General Than Shwe, who is referred to in the official media as head of state. He has held those posts since April 1992. He is also the commander in chief of the armed forces.

There is an administration, which since October 1994 has been headed by Prime Minister Lieutenant General Soe Win. (Until August 2003, Senior General Than Shwe was also the prime minister; at that time he relinquished that post in favor of General Khin Nyunt, who was put under house arrest on corruption charges in October 2004.)

The SLORC established a Supreme Court, which originally consisted of five members. The current Supreme Court consists of 15 judges, all appointed by the ruling SLORC or SPDC. There are a chief justice and two deputy chief justices. The SLORC and SPDC can remove justices as well. For example, on November 13, 1998, five of the then-six judges of the Supreme Court were "permitted to retire."

LEADING CONSTITUTIONAL PRINCIPLES

The principles agreed upon by the National Convention can be described as a military-presidential system or a praetorian-presidential system.

CONSTITUTIONAL BODIES

The organs of state power under the 1974 constitution were the unicameral (one-party) Pyithu Hluttaw, the Council of State, the Council of Ministers, the Council of People's Justices, and the Council of People's Attorneys. All the members of these bodies were also members of the Pyithu Hluttaw and reported to it.

Since September 1988, the main organs of state power are the State Peace and Development Council (SPDC), which can be regarded as a legislature, headed by its chairman, who is also officially designated as the head of state; the cabinet appointed by the SPDC; and the Supreme Court, whose members are also appointed by the SPDC.

The President

According to the agreed upon principles of the National Convention, the president would be both head of state and head of the administration. He or she would have to be at least 45 years old and would have to have political, military, and administrative experience. The president's parents, spouse, and children could not be the subjects of any foreign power, and the person must have resided in the country continuously for at least 20 years.

The president would be elected by an electoral college consisting of representatives of the Pyithu Hluttaw (House

of Representatives), of the Amyotha Hluttaw (House of Nationalities), and of the Tatmadaw (army). Since there would at least be a few members of the Tatmadaw in the first two electoral groups, and considering the qualifications required for the presidency, it is all but certain that only a military man or a former military man would be likely to become president. Each of the three groups would nominate a candidate. The whole Pyidaungsu Hluttaw (Union Parliament, a joint session of the two chambers) would vote on the three candidates; the candidate who received most votes would become president, and the two other candidates would become vice presidents.

The Parliament

According to the principles agreed upon in the National Convention, there will be two chambers in parliament: the Pyithu Hluttaw, filled largely by nationwide elections, and the Amyotha Hluttaw, elected on the basis of state divisions. In both chambers, one-fourth the members would be appointed by the commander in chief of the armed forces.

The Lawmaking Process

Currently, the SPDC issues new laws, makes amendments to preexisting laws, and repeals laws. There are no formal or conventional rules to this process.

The Judiciary

Currently, under the Supreme Court are Divisional Courts, District Courts, and Township Courts. The judges in these courts are generally appointed by the Supreme Court with the approval of the SPDC.

In the 1947 constitution, the top courts were totally separate from and independent of both the executive and the legislature. In the 1974 constitution, the members of the top judicial body, the Council of People's Justices, were all members of the unicameral one-party legislature, the Pyithu Hluttaw, and they were responsible to it.

According to the principles agreed upon in the National Convention, the Supreme Court judges must not concurrently be members of the legislature. The president would appoint the chief justice of the union and other Supreme Court judges on the approval of the Pyidaungsu Hluttaw or Union Parliament. However, the Union Parliament "shall not have the right to reject the person nominated by the president for appointment of the chief justice of the Union unless it can clearly prove that the person does not meet the qualifications for the post of the chief justice of the Union (or as Supreme Court judges) as prescribed by the constitution." Similar provisions have also been agreed upon for the appointment of ministers by the president.

THE ELECTION PROCESS

Multiparty elections were held under the 1947 constitution in 1951, 1956, and 1960. Elections in which candidates from the ruling Burma Socialist Programme Party (BSPP) ran unopposed were held under the provisions of the 1974 constitution in 1974, 1978, 1981, and 1985.

What were officially designated as "multiparty democratic general elections" were held on May 27, 1990. The leading opposition party, NLD, overwhelmingly won the elections.

The Nobel peace prize laureate Aung San Suu Kyi was disqualified from standing in the 1990 elections because her husband was a British national. Another top NLD official, the former general Tin U, was also barred from the election on the grounds of his conviction in what was seen as a politically motivated prosecution.

POLITICAL PARTIES

There were single-party elections in 1974, 1978, 1981, and 1985, in which voters could vote only for the BSPP candidate. These elections were similar to those held in the former Soviet Union and other countries where only one ruling party is allowed.

In the 1990 elections, by contrast, 91 political parties participated. Since then, many political parties have been deregistered by the Election Commission. The main opposition party, NLD, operates under extremely harsh conditions. Many NLD offices have been closed, and the top two NLD leaders, Aung San Suu Kyi and the former general Tin U, have been under house arrest since May 30, 2003. Quite a few of the middle-ranking NLD officials are also in jail under various charges.

CITIZENSHIP

The 1982 citizenship law provides for three types of citizenship: full, associate, and naturalized citizens.

FUNDAMENTAL RIGHTS

Under the 1947 constitution, certain fundamental rights, mainly of a civil and political nature, were enforceable in courts. They were protected by the Supreme and High Courts.

Under the 1974 one-party constitution, the courts were also supposed to enforce certain enumerated rights. But the judiciary was controlled by the ruling party and failed to fulfill that responsibility. The current Burmese judiciary is also under the control of the military authorities.

Impact and Functions of Fundamental Rights

The provisions of both the 1947 and 1974 constitutions are not applicable in the country since September 1988. Hence the "rights" mentioned in these two defunct charters have no role, impact, or function.

Limitations to Fundamental Rights

Both the 1947 and 1974 constitutions contained some provisions limiting civil and political rights under certain conditions. Although violations of fundamental civil and political rights could be challenged before the nation's courts under the 1947 constitution, since 1962 no litigation has successfully challenged violations of fundamental rights.

ECONOMY

During the Revolutionary Council period (1962–74) and the 1974 constitution period Burma's economic system was officially described as a "socialist economic system." It was characterized by large-scale nationalizations, state ownership of most industries and enterprises, and central economic planning. In 1963, the Revolutionary Council promulgated the Law Protecting the Socialist Economy, which remained in force until 1988, when it was repealed by the SLORC.

Since 1988, both the SLORC and the SPDC have followed a more market-oriented economic system, and laws have been issued on foreign investment. Since then, business dealings and transactions operate under an informal system of corruption and patronage of both domestic and foreign businesspersons.

RELIGIOUS COMMUNITIES

The majority (about 85 percent) of Burmese are Buddhists. There are also Christians, Muslims, Hindus, animists, and others. Nevertheless, except for a brief period in 1961 when the 1947 constitution was amended to accord Buddhism the "recognition that it was a religion of an overwhelming majority of its citizens," Buddhism has never obtained official recognition. Even then, the status of Buddhism did not prevent non-Buddhists from freely practicing their own religion; freedom of worship was guaranteed under the same 1961 constitutional amendment. The "status" of Buddhism as a "state religion" did not survive the military takeover of March 1962. Although the 1947 constitution was not formally abolished after the takeover, its designation of Buddhism as the state or official religion died together with the entire constitution.

The 1974 one-party constitution mentioned freedom of religion but also stipulated that "religion could not be used for political purposes. Laws will be made to implement this provision." The principles adopted by the National Convention so far do not mention Buddhism.

There have been many charges that the SLORC and SPDC persecute some Christians and Muslims. Though there could be some truth in those allegations, those who bear the main brunt of SLORC and SPDC violations of human rights are Buddhists.

MILITARY DEFENSE AND STATE OF EMERGENCY

For most of the time since independence Burma has been under various forms of military rule. Such rule has been direct and openly exercised since 1988. It is believed that between 40 and 50 percent of the national budget is spent for the military. Since 1988, the armed forces have doubled their number of soldiers and their fire power. There are currently about 350,000 to 500,000 soldiers in the armed forces of the country.

Under the provisions agreed upon by the National Convention, when the commander in chief of the armed forces (whose post is different from that of the president) is of the view that there is a national emergency, then he has the right to take over the reins of power. In addition, the Tatmadaw (armed forces) may administer their own affairs free of legislative or parliamentary supervision.

AMENDMENTS TO THE CONSTITUTION

The now-defunct 1974 one-party constitution stated that certain key provisions could be amended only if three-fourths of the members of the legislature approved, along with a majority of all eligible voters in a national referendum. Among such entrenched provisions is Article 11, which stated, "The state shall adopt a single party system. The Burma Socialist Programme Party is the sole political party and it shall lead the state."

On September 11, 1988, in the wake of massive demonstrations against the BSPP government and demands for multiparty elections, the Pyithu Hluttaw passed a resolution "overcoming the constitution," in effect setting aside the one-party provision of the 1974 constitution by scheduling multiparty elections without going to the people via referendum. In any case, a week later the State Law and Order Restoration Council seized power.

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Myint Zan

NAMIBIA

At-a-Glance

OFFICIAL NAME
Republic of Namibia

CAPITAL
Windhoek

POPULATION
2,044,147 (July 2006 est.)

SIZE
318,252 sq. mi. (824, 268 sq. km)

LANGUAGES
English (official); other spoken languages, including Oshiwambo dialects, Oshiherero, Khokoe (Nama/Damara), Kavango and Lozi dialects; Afrikaans, German

RELIGIONS
Christian (Lutheran 50–60%, Catholic, Anglican, independent African churches, pentecostals) 90%, traditional African religion 10%

NATIONAL OR ETHNIC COMPOSITION
Ethnicity not reflected in national census; estimates based on census language statistics: Wambo (consists of five smaller tribes) 43%, Herero 7%, Damara 7%, Nama 5%, Kavango 9%, Caprivian 4%, Rehoboth Baster 4%, Colored 4%, Tswans 5%, two Nomadic groups (San 3% in the east, Himba 0.5% in the northwest); white (Afrikaner, German, Portuguese, and English-speaking whites) 4%; other 4.5%

DATE OF INDEPENDENCE OR CREATION
March 21, 1990

TYPE OF GOVERNMENT
Presidential democracy with parliamentary features

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
March 21, 1990

DATE OF LAST AMENDMENT
December 24, 1998

Namibia is a presidential democracy with a directly elected president. The president appoints the cabinet, which consists of the prime minister, deputy prime minister, and other ministers. The constitution provides for a clear division of the legislative, executive, and judicial powers of the state. Namibia is a unitary state. The country is divided into 13 regions, but the political power of the regions is limited. The legal system provides for an independent judiciary and a prosecutorial authority independent of any political influence or intervention. The constitution includes an entrenched Bill of Rights. In terms of the entrenchment clauses, no existing rights can be taken away. The individual can defend his or her right against both the state and other individuals and institutions. Namibia sees itself as a Rechtsstaat based on the rule of law.

The directly elected president is the head of state. General elections for Parliament and the presidency are conducted every five years. Namibia is a multiparty democracy.

The constitution guarantees religious freedom and protection of minorities. The Bill of Rights also includes an antidiscrimination clause.

Namibia has a mixed economy with a constitutional guarantee of property rights. While the economy has some centralized elements, it also adheres to basic trade and economic freedom and other market economy trends.

The defense force is mandated by the constitution to defend the territory and national interest of Namibia. The Namibian defense force has been involved in peacekeeping operations in Africa.

CONSTITUTIONAL HISTORY

The boundaries of Namibia were, as were those of most African countries, drawn by the European colonial powers at the end of the 19th century. Before the arrival of the German occupation forces, Namibia was populated by some 12 tribes who had very different customs and vaguely demarcated areas over which the tribal kings had jurisdiction.

From 1890, German forces in Namibia subjugated the native tribes. This policy resulted in the death of 75 percent of the Herero population and 50 percent of the Nama and Damara populations.

After World War I (1914–18), South Africa received a mandate to govern Namibia under the guidance of the League of Nations. The South African authorities governed Namibia as a fifth province rather than as a league mandate.

After a popular uprising against the forced removals of indigenous people from the city of Windhoek to a township on the outskirts in 1921–22, many young Namibians left the country. The two major liberation movements, South West African National Union (SWANU) and South West Africa People's Organization (SWAPO), started working for the independence of Namibia. In 1966, the People's Liberation Army of Namibia (the military wing of SWAPO) clashed with South African forces at Omgulubashe in the north of the country. This was the beginning of a long and bitter armed struggle.

In 1978, the internal pro–South African political parties accepted in principle a United Nations resolution demanding the independence of Namibia. They were, however, unwilling to talk to SWAPO, by then the only significant liberation movement.

The next important initiative was the drafting of the constitutional principles by the Western Contact Group or the Eminent Persons Group, consisting of Canada, France, Germany, Great Britain, and the United States, in 1984. The principles were eventually accepted by both South Africa and SWAPO.

In 1988, South Africa agreed to United Nations–supervised elections. Elections for a Constituent Assembly were held in November 1989, and the Assembly met for the first time on November 21. A draft was distributed on January 25, 1990. On February 9, 1990, the constitution was accepted unanimously. Namibia became independent the following month, on March 21.

FORM AND IMPACT OF THE CONSTITUTION

Namibia has a written constitution, which takes precedence over common law and statutory law. The High and Supreme Courts have the authority to review the common law and statutory law in the light of the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Namibia is a unitary state. All laws of parliament are applicable in the entire country. The High Court, with its seat in Windhoek, has jurisdiction over all the country.

The country is divided into 13 regions, governed by elected Regional Councils. The Regional Councils have limited legislative and governmental powers.

LEADING CONSTITUTIONAL PRINCIPLES

Namibia is a presidential constitutional democracy. The president is directly elected by the people. The president appoints the cabinet from sitting members of Parliament. There are several checks and balances built into the system. The High and Supreme Courts of Namibia have review powers over the laws of the country. The decisions of the Supreme Court are binding on Parliament. The judiciary and the prosecutorial authority are independent.

The leading principles in the Namibian constitutional system can be defined as constitutional democracy with a directly elected president, who with a cabinet appointed by the president fulfills the executive functions of government. Namibia is a secular state and consequently neutral on the religion of its people. The government is compelled by the constitution to uphold the rule of law.

CONSTITUTIONAL BODIES

The most important constitutional bodies are the directly elected president; the cabinet ministers; Parliament, consisting of the National Assembly and the National Council; and the judiciary. The offices of the ombudsperson and prosecutor-general are independent constitutional offices.

The President

The president is the political and ceremonial head of state, directly elected by the people for five years. The president can serve only two terms. The constitution was amended in 1999 to provide that the founding president, Sam Nujoma, would be allowed to serve a third term because he was not elected directly by the people in 1989, when the Constituent Assembly was transformed into the National Assembly and the National Assembly elected the president.

The president appoints and dismisses members of cabinet and is the commander in chief of the national defense force.

The Cabinet

The president, the prime minister, and the other presidentially appointed ministers form the cabinet, which func-

tions as the executive branch of government. The prime minister is the leader of government business in Parliament. The fact that the president is directly elected and is the dominant figure in the cabinet makes the cabinet the dominant office in Namibian political and public life.

Parliament

Parliament consists of two chambers, the National Assembly and the National Council. The National Council is chosen by the elected regional councils, each electing two members.

The legislative power of Namibia is vested in the National Assembly subject to the review powers of the National Council. The National Assembly has 72 members, directly elected for five years from party lists. The National Assembly approves the budgets of government ministries and directorates, agrees to the ratification of international agreements, and ensures that apartheid, tribalism, and colonialism do not manifest themselves in Namibia.

The National Council reviews all legislation of the National Assembly.

The Lawmaking Process

The legislative power of Namibia is vested in the National Assembly subject to the review powers of the National Council. The National Council can either approve legislation or send it back with recommendations. After the National Assembly has reconsidered the bill, it does not send it back to the council. If the National Council objects to the principle of a bill, and the National Assembly does not reaffirm the bill with a two-thirds majority, the bill lapses. Once the National Council gives final approval, the bill is sent to the speaker, who sends it to the president. The president signs the act into law.

The Judiciary

Namibia has an independent judiciary, subject only to the constitution and the law. It consists of community courts, magistrate courts (lower courts), the High Court, and the Supreme Court.

The community courts exercise customary law in the traditional communities. Appeals lie with the magistrate courts. The magistrate courts are lower courts with limited jurisdictions. Appeals from the magistrate courts lie with the High Court. The High Court and the Supreme Court have review jurisdiction over the constitutionality of legislation. Supreme Court decisions are binding on all courts in Namibia, and High Court decisions on all lower courts.

The prosecutorial authority is vested in an independent prosecutor-general.

THE ELECTION PROCESS

All Namibians over the age of 18 have both the right to stand for election and the right to vote in elections. Elections are by secret ballot on party lists, except in the case of regional councils, in which elections take place in constituencies. The members of the National Council are elected by the regional councils.

POLITICAL PARTIES

Namibia is a multiparty democracy. The party system is an integral part of the Namibian political system. The election of members of Parliament is on party lists in accordance with proportional representation.

CITIZENSHIP

Namibian citizenship is primarily based on birth in Namibia. Both children of Namibian citizens and those of ordinary residents obtain citizenship by birth. A child born elsewhere whose father or mother was a Namibian citizen at his or her birth can apply for citizenship by descent. Ordinary residents who have been in the country for at least five years can apply for citizenship by registration.

FUNDAMENTAL RIGHTS

An enshrined Bill of Fundamental Human Rights and Freedoms forms part of the Namibian constitution (Chapter 3). Chapter 3 protects the right to life, liberty, and dignity (especially in judicial proceedings). It protects persons against torture, slavery, forced labor, and arbitrary detention and against discrimination on the grounds of sex, race, color, ethnic origin, religion, creed, or social or economic status.

The constitution guarantees equality before the law, a fair trial, privacy, and the right to marry and found a family. It protects property rights, the rights of children, and the right to political activity, culture, and education.

The constitution also protects fundamental freedoms, such as freedom of speech, conscience, religion, peaceful assembly, association, and movement.

No rights can be taken away by means of constitutional change.

Impact and Functions of Fundamental Rights

Human rights are generally respected in Namibia. The independent courts jealously guard over the rights and freedoms protected by the constitution. When citizens allege violations of their rights and freedoms, the courts give the broadest meaning possible to their rights.

Limitations to Fundamental Rights

The fundamental rights and freedoms are not without limits, but limitations must be reasonable, of general application, and not aimed against individuals.

ECONOMY

The Namibian constitution describes economic order in Namibia as a "mixed economy with the objective of securing economic growth, prosperity and a life of human dignity." The Bill of Rights guarantees the right to freedom of occupation, association, and property and the rights of workers. The constitution makes membership in the International Labor Organization (ILO) and adherence to the international conventions and recommendations of the ILO objectives of the state.

RELIGIOUS COMMUNITIES

The constitution defines Namibia as a secular state. However, religious freedom is guaranteed as well as the right not to be discriminated against on the grounds of religious belief. Consequently, there is no state church, and no specific religion is taught in state schools. Religious instruction in state schools is informative and neutral.

Religious communities do not receive church taxes or any other form of financial assistance from the state. The religious communities are free to administer their own affairs and to express their religious liturgy in terms of their own history and customs.

MILITARY DEFENSE AND STATE OF EMERGENCY

Namibia has a permanent defense force, staffed by full-time professional soldiers. There is no conscription. The defense force is subject to civil government.

The president can declare a state of emergency at times of national disaster, national defense, or public emergency. The National Assembly may at any time revoke such a declaration. The president may make regulations and suspend the operation of any rule of common law or statute during a state of emergency for the protection of national security and public safety. If these regulations lead to detention without trial, an advisory board shall review the detention on a regular basis.

AMENDMENTS TO THE CONSTITUTION

Only a two-thirds majority in the National Assembly can amend the constitution. No rights in the enshrined Bill of Rights can be taken away by an amendment of the constitution. In 1999, the constitution was amended to make provision for the founding president, Sam Nujoma, to serve a third term, whereas the constitution allows only two terms. There have been no other amendments made to the constitution.

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Nico Horn

NAURU

At-a-Glance

OFFICIAL NAME
Republic of Nauru

CAPITAL
Yaren

POPULATION
12,320 (2005 est.)

SIZE
Land 8 sq. mi. (21 sq. km) Ocean 123,552 sq. mi. (320,000 sq. km)

LANGUAGES
Nauruan, English

NATIONAL OR ETHNIC COMPOSITION
Nauruan 58%, other Pacific Islander 26%, Chinese 8%, European 8%

RELIGIONS
Protestant (approximately 66%), Roman Catholic (approximately 34%)

DATE OF INDEPENDENCE OR CREATION
January 31, 1968

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 31, 1968

DATE OF LAST AMENDMENT
May 17, 1968

Nauru is a republic that has a parliamentary democratic form of government, based on the rule of law and a clear separation between the legislative and executive branches of government and the judicial branch. It is a unitary state, but the Nauru Island Council has substantial power as a local government body.

There is a written constitution, which contains provisions that recognize fundamental human rights and freedoms, which are enforceable by the Supreme Court. The country is a republic, with a parliamentary system on the British model.

CONSTITUTIONAL HISTORY

Nauru, which was settled by people of Micronesian descent, first attracted the attention of Europeans in 1798, when it was discovered by Captain John Fearn of the British ship *Hunter,* who named it Pleasant Island, because of its attractive appearance. Whaling ships started to call for water and supplies in the 1830s, and some beachcombers, dropped off from ships of various countries, started to live with the indigenous clans, contributing to the almost incessant clan warfare that developed. In the 1870s, several German trading companies established themselves and pressed their home government for protection. In 1888, the island was subsumed within the protectorate that Germany established over the Marshall Islands.

The island stayed under German control until after World War I (1914–18), when it was placed by the League of Nations as a mandate under Britain. The British government made an agreement with Australia and New Zealand to provide joint administration of the island; Australia took the dominant role. During World War II (1939–45), the island was occupied by the Japanese, who deported many of the inhabitants to work on Truk in the Caroline Islands. The island was returned by the United Nations to Australian administration after World War II as a trusteeship territory. The United Nations insisted that the island quickly gain independence, and this was achieved on January 31, 1968.

The legal system of Nauru comprises the constitution and legislation enacted by Parliament since independence, as well as preindependence ordinances made

by the Australian administrator. Certain Australian and English legislation, adopted by the Customs and Adopted Laws Act of 1971, is also part of the legal system, as well as subsidiary legislation made under that law. Moreover, principles of common law and equity apply, so far as is appropriate to the circumstances of Nauru. Nauruan custom is also part of the legal system. It regulates land titles, disposition of real and personal property among living people and by will, succession to the property of Nauruans who die intestate, and any matters affecting Nauruans only. The Nauruan customs that allowed certain persons to deal with the property of others without their consent or to take custody or control of a child without the consent of the parents were abolished.

FORM AND IMPACT OF THE CONSTITUTION

A Constitutional Convention prepared the constitution that entered into force on the day of independence, January 31, 1968. The convention remained in session and issued amendments a few months later. The constitution states that it is the supreme law of Nauru, and that any inconsistent law must be held void to the extent of the inconsistency.

BASIC ORGANIZATIONAL STRUCTURE

Nauru is a unitary state. However, local government, known as the Nauru Island Council, has important powers and a substantial income, which have resulted in effect in a two-tier system of government.

LEADING CONSTITUTIONAL PRINCIPLES

Nauru is a republic. As are many other republics in the South and Central Pacific, it is based upon the English model of parliamentary democracy, rather than the American or French model of a presidential republic.

Fundamental human rights and freedoms are recognized by the constitution, and the Supreme Court has been given power to grant redress for any infringements.

CONSTITUTIONAL BODIES

The main bodies established by the constitution, in order of their appearance in the constitution, are the president, the legislature, the Supreme Court, and the public service.

The President

The president, who must be a member of Parliament, is elected by Parliament and may be removed by a vote of no confidence passed by at least half of the members. The president is authorized to appoint four or five members of Parliament as ministers. The president and the ministers form the cabinet, in whom the executive power of the country is vested. The cabinet is collectively responsible to Parliament and may be removed by a vote of no confidence by at least half the members of Parliament.

The Legislature

The legislature, called Parliament, is a unicameral body comprising 18 members. Members of Parliament are directly elected by electors on a common roll under a preferential voting system devised by an Australian administrator, known as the Dowdall system. Voters express preferences for each of the candidates running in their districts. There are eight districts, each of which elects more than one member of Parliament.

Parliament has a life of three years. It can be dissolved earlier by the speaker of Parliament, acting on the advice of the president, if it fails to act on a motion to remove the president and cabinet.

The Lawmaking Process

Proposed laws must be approved by a majority of the members of Parliament present and voting, with the Speaker having a casting vote if votes are equally divided. A proposed law which has been passed by Parliament becomes a law when the Speaker certifies that it has been passed by Parliament.

The Supreme Court

The Supreme Court of Nauru has, in addition to the normal civil and criminal jurisdiction of a superior court, jurisdiction to enforce the constitution and to determine the right of a person to be, or to remain, a member of Parliament. Appeals from decisions of the Supreme Court lie with the High Court of Australia. There are two subordinate courts—the District Court, composed of the resident magistrate and at least three lay magistrates, which has jurisdiction in minor civil matters, and the family court, presided over by the resident magistrate, which has jurisdiction in matters of divorce and maintenance and custody of children. Judges of the Supreme Court are appointed by the president and may be removed on the ground of proved incapacity or misconduct by a resolution passed by at least two-thirds of the members of Parliament. The resident magistrate and lay magistrates are also appointed by the president.

The Public Service

The public service is appointed, disciplined, and removed by the chief secretary. This chief secretary is appointed by, and can be removed by, the cabinet.

THE ELECTION PROCESS

Nauruan citizens 20 years or older are entitled to vote and to stand for election for Parliament unless they are disqualified from so doing. The constitution does not specify the electoral system. However, the country has adopted a system similar to that devised by the French scientist Jean-Charles de Borda in the 17th century, whereby voters express preferences in diminishing order for as many candidates as are standing for election; the candidates who receive the highest total of votes are elected. In Nauru the method is referred to as the Dowdall system, after its inventor, Desmond Dowdall, an Australian who was secretary for justice in Nauru in the early 1970s. Whether Dowdall was aware of the Borda system is not known.

POLITICAL PARTIES

There are no restrictions on the formation of political parties. However, as in many South Pacific island countries, political parties have not been significant and political groupings have been mainly based on personalities.

CITIZENSHIP

Persons born before independence automatically became citizens of Nauru if they were members of the Nauruan community as defined in the Nauruan Community Ordinance 1956–66. Persons born after independence automatically become citizens of Nauru if at the time of their birth they had parents who were both Nauru citizens or one parent who was a Nauruan citizen and another who was a Pacific Islander; or if they were born in Nauru and do not have citizenship of another country. Women married to Nauruan citizens are entitled to receive Nauruan citizenship upon application.

FUNDAMENTAL RIGHTS AND DUTIES

The constitution recognizes the fundamental human rights to life, liberty, and security of the person; enjoyment of property; protection of the law; protection from forced labor, torture, and inhuman and degrading treatment; and freedom of conscience, expression, assembly, and association. These rights and freedoms are enforceable by the Supreme Court.

ECONOMY

The economy of Nauru has been based almost entirely on large deposits of phosphate, as is recognized by Article 93 of the constitution, which maintains an agreement made between the government of Nauru and the governments of Australia, New Zealand, and the United Kingdom. At one time, Nauru was one of the most productive countries of the Pacific island countries, but the phosphate supplies are now almost exhausted. Investment of the phosphate royalties was seriously mismanaged, so that the country is currently going through a painful economic downturn. Australian officials have been involved in trying to rectify the situation.

RELIGIOUS COMMUNITIES

The right to freedom of worship and assembly is recognized and protected by Articles 11 and 13 of the constitution. The people of Nauru are Christian, about two-thirds members of Protestant churches, especially the Nauru Congregational Church and the Nauru Independent Church, and one-third members of the Roman Catholic Church.

MILITARY DEFENSE AND STATE OF EMERGENCY

Nauru has no army. The president may declare a state of emergency if satisfied that a grave emergency that threatens the security or economy of the country exists. Such a declaration lapses after seven days if Parliament is sitting, or, in any other case, after 21 days, unless it has been approved by a majority of the members of Parliament. While a state of emergency is in effect, the president may make such orders as appear to the president to be reasonably required for securing public safety, maintaining public order, or safeguarding the interests or maintaining the welfare of the community; such orders are to have effect notwithstanding the fundamental human rights and freedoms recognized by the constitution and notwithstanding any inconsistency with any law.

AMENDMENTS TO THE CONSTITUTION

Most provisions of the constitution can be amended by a law enacted by Parliament with the support of at least two-thirds of the total members of Parliament. Certain provisions can be amended only by a bill enacted by two-thirds of the total members of Parliament, as well as two-thirds of the voters at a national referendum.

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Don Paterson

NEPAL

At-a-Glance

OFFICIAL NAME
Kingdom of Nepal

CAPITAL
Kathmandu

POPULATION
27,676,547 (July 2005 est.)

SIZE
56,757 sq. mi. (147,000 sq. km)

LANGUAGES
Nepali 58%, Newari 3%, Tibeto-Burman languages 20%, Indian languages 19%

RELIGIONS
Hinduism 90%, Buddhism 8%, Muslim, Christian, and other 2%

NATIONAL OR ETHNIC COMPOSITION
Tamang, Gurung, Newar, Rai, Sherpa, Tharu, others (tribal groups); Brahman and Chhetri (major caste groups); Indians, Tibetans

DATE OF INDEPENDENCE OR CREATION
1768

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 9, 1990

DATE OF LAST AMENDMENT
No amendment

Nepal is a landlocked country lying between China to the north and India to the south. It is a constitutional monarchy. The current constitution was promulgated on November 9, 1990, after a period of major political unrest that forced King Birendra to relinquish royal powers and agree to a new democratic constitution. Nepal was an emerging parliamentary democracy until October 2002, when the head of state, King Gyanendra (2001 to date), dissolved Parliament. He was facing political opposition and an ongoing insurgency by Maoist guerrilla forces that now operate throughout Nepal. In February 2005, he announced a state of emergency, which has seriously escalated the political conflict in Nepal. On May 18, 2006, parliament passed a resolution containing far-reaching changes in the constitutional system.

CONSTITUTIONAL HISTORY

Modern Nepal emerged in the 18th century after the process of unification and conquest started by King Prithivi Narayan Shah (1722–75). This process was completed during the reign of Bahadur Shah (1775–95). However, Nepal was defeated in the Anglo-Gurkha war (1814–16); after the signing of the Treaty of Sugauli the concept of a greater Nepal faded. By the mid-19th century, the Rana family had seized de facto control and the monarchy was unable to counter the growth in Rana power.

In the 1930s, the first political parties emerged in Nepal, notably the Nepal Praja Parishad in 1938. As opposition to Rana rule mounted, the Nepal National Congress Party was established in 1946 by Nepali students in India. This party joined the Nepali Democratic Congress in April

1950 to form the Nepali Congress Party with the aim of ousting the Rana regime.

However, the flight of King Tribhuvan to New Delhi in November 1950 added a new twist to the process of political change. The king gave moral backing to the opponents of the Rana regime and a compromise was reached in January 1951 among the king, the Rana regime, and the political parties supporting an armed struggle in Nepal. After a period of political uncertainty, a constitution was announced by royal proclamation in February 1959.

This new constitution was not to last long. In December 1960, King Mahendra dissolved the first elected government and suspended the constitution. During the next 30 years, the monarchy governed on the basis of a second amendment to the constitution issued in 1962, vesting all powers in the king. In the years to follow, the *panchayat* system was developed. The system, based on the Five Man Village Council, provided for locally elected, nonparty representative government at the ward, village, district, and zone levels, as well as a National Council appointed by the king. A third amendment to the constitution, which sought to refine the *panchayat* system by allowing direct elections by universal suffrage to the National Assembly, was issued in 1980.

The amendments in 1962 and in 1980 could not prevent the tensions that mounted among the ordinary people, which increased in the Kathmandu valley in early 1990, leading to the widespread arrest of opposition leaders, who were either held under house arrest or imprisoned. A major general strike was held in April 1990, forcing King Birendra to compromise, and in November 1990 a new constitution was promulgated for Nepal. In the mid-1990s, Maoist opponents of the monarchy began an armed insurgency that continues. The massacre of King Birendra and the immediate royal family in June 2001 by Crown Prince Dipendra had a major impact on Nepali politics. His successor, King Gyanendra, dissolved Parliament and appointed a transitional government on October 11, 2002, under Article 127 of the Nepalese constitution. King Gyanendra took extraordinary steps in February 2005 when he assumed direct control of government. His actions have seriously damaged the democratic system in Nepal and may prevent a peaceful solution to the Maoist insurgency. The resolution passed by the parliament on May 18, 2006, may lead to far-reaching changes in the constitutional system

FORM AND IMPACT OF THE CONSTITUTION

The current constitution, promulgated in 1990, is the result of a process of constitutional evolution over the 30-year period that followed the overthrow of the Rana regime. It emphasizes the rule of law in Nepal and seeks to establish human rights.

BASIC ORGANIZATIONAL STRUCTURE

Nepal is divided into 14 zones and 75 districts that are grouped into five development zones. After the prodemocracy movement in 1990, the former village *panchayat* was renamed the Village Development Committee. The town *panchayat* was renamed the Municipal Development Committee. Each district is under a chief district office that is responsible for law and order and coordination of the work of the various government agencies.

LEADING CONSTITUTIONAL PRINCIPLES

The 1990 constitution sought to establish a democratic parliamentary system with universal suffrage and free elections. It marked a move away from royal authority and toward popular political participation. The constitution recognizes the ethnic, linguistic, and religious diversity in Nepal and the importance of the rule of law. However, the insurgency by Maoist guerrillas and the dissolution of Parliament by the king have undermined the emerging, if unstable, parliamentary democracy.

CONSTITUTIONAL BODIES

The main bodies are the king, the State Council, the Council of Ministers, the House of Representatives, the National Assembly and the judiciary. Below these are the zonal and district levels of government.

The King

Article 27 describes the king as a descendent of King Prithvi Narayan Shah and an adherent to the Hindu religion. This article highlights the importance of descent and continuity in succession to the throne. In the constitutional monarchy the power of the Crown is vested in the executive; however, recent events have seen the king's resumption of executive control.

The king is advised by a State Council (Raj Parishad) that is also responsible for designating a regent in the event of the king's incapacitation. The State Council consists of members of the royal family, the Council of Ministers, and leading national figures. It holds fewer powers than it did in the past.

The Council of Ministers

Article 36 provides that the king will appoint as prime minister the leader of the party that commands the majority in the House of Representatives. The prime minister will act as a chairman of the Council of Ministers, which

is appointed on his recommendation by the king. Under Article 35, executive power is vested in the Council of Ministers and the king. The Council of Ministers is, under the constitution, the effective administration of Nepal.

The Legislature

There are two elements that together with the king form the legislature. The House of Representatives (Pratinidhi Sabha) is composed of 205 members, each elected from a district constituency for a five-year fixed term. The National Assembly (Rashtriya Sabha) consists of 60 members—10 royal nominees, 35 (including at least three women) elected by the House of Representatives, and a further 15 elected by an electoral college.

The Lawmaking Process

Parliament is empowered to enact any law, unless otherwise provided for by the constitution. A bill passed by one house of Parliament is transmitted to the other house; if it is passed by the receiving house as well, it is presented to the king for royal assent. This royal assent makes the bill an act. The king can, however, send the bill back for further deliberation. If the bill is then presented to the king, he has to give his assent within 30 days. When a bill is rejected by the National Assembly, the House of Representatives has the authority to override the decision.

The Judiciary

The constitution provides for a three-tier judiciary—a Supreme Court, appellate courts, and district courts. The chief justice is to be appointed on the recommendation of a constitutional council, and other justices of the Supreme Court on the recommendation of a judicial council. In theory, the courts are independent and free of outside influence, with the Supreme Court having the power to declare any law contrary to the constitution.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Each Nepali citizen of age 18 is entitled to vote or stand for election. Political parties are free to canvass for votes, and elections are subject to investigation by an Election Court. The term of the House of Representatives is five years, and if a vacancy arises, a by-election is held.

POLITICAL PARTIES

Article 112 of the constitution provides for the organization of political parties and for the freedom of political participation. Currently, the main political parties in Nepal are the Nepal Congress, the Communist Party of Nepal/United Marxist-Leninist, the National Democratic Party, and the National People's Front. Political parties may not be based on religion, caste, community, tribe, or region. There are various smaller political groups, mainly antimonarchist groups, and student groups in the capital.

CITIZENSHIP

Under Article 8, a person is deemed to be a citizen if he or she is domiciled in Nepal, born in Nepal, or has a father who has Nepalese citizenship or is a naturalized citizen. Dual nationality is not recognized under Article 9. Citizenship may be terminated for naturalized citizens only after due legal process.

FUNDAMENTAL RIGHTS

Part 3 of the 1990 constitution sets out the fundamental rights to which the Nepalese are entitled. These include equality irrespective of caste, religion, race, and gender. Fair trials, the right to bail, due process of law, and freedom from cruel and unusual punishment are established as part of the fundamental rights of all Nepalese citizens.

Impact and Functions of Fundamental Rights

The constitution recognizes vulnerable groups, notably women, children, and the physically and mentally handicapped, who must be protected from exploitation. Article 11(4) specifically prohibits discrimination against untouchables, members of Hindu society who are perceived as socially unclean and are highly stigmatized.

Limitations to Fundamental Rights

Fundamental rights are, in varying degrees, subject to laws that impose reasonable restrictions based on interests such as the sovereignty and integrity of Nepal; harmonious relations among the people of various castes, tribes, or communities; or public morality.

ECONOMY

There are no articles in the constitution, directly dealing with the economy. However, trade is regulated by the government and there are prohibitions against trafficking in people and slavery. The prohibition against exploitation in Article 20 applies to the use of child labor in factories or mines.

RELIGIOUS COMMUNITIES

Nepal is officially a Hindu kingdom. During the process of preparing the current constitution, there were fierce

debates over whether or not to enshrine Hinduism in the constitution. Article 4 of the 1990 constitution describes Nepal as a "multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom." However, although Hinduism is the official religion of Nepal, Article 19 provides for the freedom of religion, subject to a prohibition against proselytization.

MILITARY DEFENSE AND STATE OF EMERGENCY

The king is the supreme commander in chief. The king appoints a commander in chief on the prime minister's recommendation. The prime minister heads the National Security Council.

There is a current state of emergency due to the ongoing Maoist insurrection against the monarchy. The insurgency began in the mid-1990s and has claimed thousands of lives. In 2000, five platoons of the Royal Nepalese Army were deployed in districts where there had been no previous army presence. This action was followed by the creation of the armed police force in 2001. A cease-fire was declared in July 2001 but has since broken down. King Gyanendra has used the emergency powers under Articles 115 and 127 to assume power, just as King Mahendra, his father, did in 1960.

AMENDMENTS TO THE CONSTITUTION

The 1990 constitution represents a modification of the earlier constitutions promulgated after the collapse of the Rana regime. It marks a major move toward establishment of the rule of law.

Article 116 addresses the amendment process. Two-thirds of both the House of Representatives and the National Assembly are required to pass an amendment. The king has 30 days to assent or return the proposed amendment with comments. The king has to assent to the amendment if it is presented to the king again.

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Richard Whitecross

THE NETHERLANDS

At-a-Glance

OFFICIAL NAME
Kingdom of the Netherlands

CAPITAL
Amsterdam

POPULATION
16,193,000 (2005 est.)

SIZE
16,033 sq. mi. (41,526 sq. km)

LANGUAGES
Dutch

RELIGIONS
Roman Catholic 31%, Protestant 21%, other (Muslim 5.7% and Hindu 0.6%) 8%, none 40%

NATIONAL OR ETHNIC COMPOSITION
Dutch 81%, Western nonnatives 8.7%, non-Western nonnatives (Turkish background 2.1%, Moroccan background 1.8%) 10%

DATE OF INDEPENDENCE OR CREATION
November 1813

TYPE OF GOVERNMENT
Parliamentary monarchy

TYPE OF STATE
Decentralized unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
March 30, 1814

DATE OF LAST AMENDMENT
April 9, 2002

The Kingdom of the Netherlands is a parliamentary democracy, based on the rule of law. It is a decentralized unitary state. The constitution focuses on establishing the basic organizational structure of the state rather than providing substantive guidance on laws. Courts are not allowed to review the constitutionality of acts of parliament; judgment is left to the parliamentary legislature itself.

The government consists of the monarch and the ministers. The monarch (currently a queen) is head of state. The monarch acts under ministerial responsibility. Ministers are answerable to both houses of parliament; they are not members of parliament. Lack of confidence obliges ministers individually, or collectively, to offer their resignation. The lower house of parliament is directly elected; the upper house is elected by the States Provincial, the legislatures of the provinces. The party system is pluralistic. Elections are organized on the basis of proportional representation, with free and secret ballots.

The constitution contains a catalog of fundamental rights and includes social rights. Freedom of religion or belief is guaranteed. Church and state are separated. The economic system is a social market system. The military is under the supreme command of the government. The constitution states that the government shall promote the development of the international legal order.

CONSTITUTIONAL HISTORY

The starting point of the Netherlands as an independent political entity is usually held as 1579, when the Union of Utrecht was concluded by the seven sovereign provinces of the Northern Netherlands, declaring their autonomy against the Spanish rule of King Philip II. Internationally, the Republic of the United Netherlands was fully recognized at the Peace of Münster in 1648.

The focus of the confederate republic was on common defense and foreign affairs. At the head of the republic was the *stadhouder,* the highest civil servant of the State General, the body consisting of the delegates of the sovereign provinces; he combined civil duties with leadership of the fleet and army of the union. In 1747, the position became hereditary, the prerogative of the descendants of a brother of William of Orange. The old republic was replaced in 1795 by the Batavian Republic under the guidance of revolutionary France.

The period between 1795 and 1814 saw several constitutions: the modern republican constitution of 1798, the more traditional constitutions of 1801 and 1805, and the constitution of the Kingdom of Holland of 1806, under which a brother of Napoléon was made king. In 1810, France annexed the Netherlands outright, but independence was regained in 1813. The son of the last *stadhouder* returned to the country and was crowned on December 2. He later became King William I. The constitution of 1814 established a decentralized unitary state.

In 1815, after the Congress of Vienna, Belgium became part of the Netherlands, and the constitution was revised accordingly. After Belgium became independent in 1830, a revised constitution was issued in 1840.

The revision of 1848 was of paramount importance. It introduced many fundamental rights and laid the groundwork for the parliamentary system of government. It also determined the organizational structure of the provinces and municipalities. From then until the general revision of 1983, 11 partial revisions took place. Of these, the revision of 1917 stands out. It introduced proportional representation to the electoral system and universal suffrage for men and women, independently of social or economic status. It also introduced public funding for private denominational elementary schools on a par with that for nondenominational public schools. Ordinary legislation later extended this principle to other school levels and types, including universities.

Shortly after World War II (1939–45), a process was set in motion to consider a general revision of the constitution. Concrete proposals were introduced in parliament in the mid-1970s. These led to the general revision of 1983. Five partial revisions have taken place since then.

The changing relationships between the Netherlands and the overseas territories after World War II led to the establishment of the Charter of the Kingdom of the Netherlands in 1954. In its present version, it regulates the constitutional structure of the Netherlands, the Netherlands Antilles, and Aruba. The constitution must comply with the charter.

The Netherlands has an open and positive attitude toward international law and the international legal order. From the start, the Netherlands has been a member of international organizations such as the Council of Europe, the North Atlantic Treaty Organization (NATO), the predecessors of the European Union, and global institutions such as the United Nations.

The capital city is Amsterdam. However, the seat of government is (and has always been) in The Hague.

FORM AND IMPACT OF THE CONSTITUTION

The Dutch constitution is a single, normative document containing 142 articles. The constitution is stable, despite frequent alterations. The most notable change, introduced by the general revision of 1983, concerns the protection of fundamental rights.

The constitution reflects an open attitude toward international law. So-called self-executing provisions of treaties and of resolutions by international organizations are binding after they have been published. Courts cannot apply any statutory regulations that, in the court's judgment, conflict with these provisions. European Union law takes precedence over Dutch law.

The Dutch constitution provides the basic outlines for the organization of the state, determines what happens at important moments, and prescribes important procedures. It has a more modest impact on the broader legal and political life of the country.

One reason is that the constitution itself prohibits the courts from reviewing the constitutionality of acts of parliament. The parliamentary legislative body itself determines the constitutionality of its own acts.

Another reason is that even when dealing with the basics of the organization of the state, the constitution is not exhaustive, leaving various areas of constitutional law unmentioned. The most prominent rule of the parliamentary system, the so-called no confidence rule in the relation of ministers to parliament, is unwritten. The process of the formation of a cabinet is also not discussed.

The constitution provides guarantees for the independence and impartiality of the judiciary, but most of the actual organization of the judiciary is determined by act of parliament. Processes such as the dynamic between the administration and parliament, or between the administration and parliament on the one side and the courts on the other, escape the wording of the constitution. The same is true for processes of centralization and decentralization (only the basic organization of provinces and municipalities is defined), or for the dynamics between state and society. Although the constitution provides the legal framework for attribution of powers to supranational authorities, the actual and growing impact of European law is obviously not reflected in it.

The constitution does not contain an explicit statement on the hierarchy of national norms. The hierarchy between norms created at the national, provincial, and municipal levels is largely a matter of custom. Courts test the validity of legal norms vis-à-vis higher norms—for example, regulations against laws passed by parliament—but they are not allowed to test acts of parliament against the constitution.

The Dutch constitution does not contain a preamble or create a value system, as the German constitution does. There is no hierarchy in the fundamental rights contained in the constitution. The leading constitutional principles, those of a social and liberal democracy, are reflected in the guarantees of fundamental rights and implicitly expressed further through a set of mechanisms and procedures. The constitution does not contain an expression of the source of authority.

BASIC ORGANIZATIONAL STRUCTURE

The Netherlands is a decentralized unitary state. Absolute monarchy and strong centralization have never taken root in the Netherlands. In the course of the last century, however, there has been a creeping, but distinct tendency toward centralization. This concerns legislation rather than administration.

The Netherlands has three territorially organized tiers of government. There are 12 provinces and currently between 450 and 500 municipalities.

Municipalities are headed by a council and administered by an executive including the mayor. The mayor is appointed by royal decree. The executive and the mayor are responsible to their councils and can be dismissed or forced to resign.

Provinces are organized on a similar basis, with minor differences; for example, the appointed commissioner of the monarch chairs the executive without actually being a member of it. Furthermore, the commissioner of the monarch also fulfils certain national functions. Over the course of time, the position has evolved from being the "eyes and ears" of The Hague in the province to a promoter of the interests of the province in The Hague. The provincial council is called the States Provincial.

Municipalities are active in fields such as housing, education, culture, recreation, welfare, public health, and public order. Provinces are active in fields such as water regulation, road maintenance, environment and nature protection, and environmental hygiene. Furthermore, provinces fulfill a crucial role as a middle tier in planning law and execute many coordinating activities.

Both municipalities and provinces implement higher law. They have autonomous legislative and administrative powers only insofar as the "higher" tiers of government leave room for them and the subject matter falls in their sphere of concern.

LEADING CONSTITUTIONAL PRINCIPLES

The Netherlands is a parliamentary democracy, based on the rule of law. The judiciary is independent. Ministers and secretaries of state who lose the confidence of either house of parliament are obliged to offer their resignation. This is called the no confidence rule.

The Netherlands is a constitutional monarchy. The monarch is inviolable. The "title to the Throne shall be hereditary and shall vest in the legitimate descendants of King William I, Prince of Orange-Nassau." The rules of succession are contained in the constitution. The actions of the monarch are subject to ministerial responsibility. Only in very limited areas, notably in setting in motion the formation of a new cabinet, does the monarch have decisive influence.

The Netherlands is a decentralized unitary state. It is a social and liberal democracy. Freedom of religion and belief is guaranteed. The state is neutral with respect to religion and belief. Church and state are separated. The Netherlands has a tradition of an open and positive attitude toward the international legal order.

CONSTITUTIONAL BODIES

The main bodies at the central level of government designated in the constitution are the monarch, the administration (composed of the prime minister, the ministers, and state secretaries), the lower house of parliament, and the upper house of parliament. The judiciary is independent. Other bodies explicitly mentioned in the constitution are the Council of State, the Court of Audit, and the national ombudsperson. The Council of State has its origin in the Conseil d'Etat established in the Netherlands in 1531 by the emperor Charles V. It advises the administration and parliament on draft legislation; one division of the council functions as the highest independent administrative court in cases in which no special administrative court procedure exists.

The Monarch

The monarch is the head of state and, together with the ministers, part of the administration. An act of parliament regulates membership of the royal house, but the rules of succession are determined by the constitution. The constitution provides for the occasions in which the royal prerogative is not, or cannot be, exercised by the monarch.

The monarch acts under ministerial responsibility. Royal signature is required for an act of parliament to be promulgated. Royal decrees are countersigned by a minister.

In the process leading to the formation of a new cabinet, the monarch usually appoints one or more "informers" after consulting various officials, and a "former" of a cabinet, usually the designated prime minister. This occurs without countersignature. The prime minister of the cabinet that results, however, is responsible to parliament for its establishment.

The monarch is president of the Council of State. Usually the Council of State is presided over by its vice president.

The Administration

Article 42 of the constitution states that the administration consists of the king and the ministers. The constitution mentions concrete tasks of the administration in various places. In general, it states that the Council of Ministers shall consider and decide upon overall administration policy and shall promote the coherence thereof. One responsibility of the administration is to promote the development of the international legal order.

Prime Minister

The prime minister presides over the Council of Ministers (or cabinet), and certain appointments to high offices need his or her signature. The prime minister is "first among equals"; no hierarchical relationship exists among ministers.

A number of modern developments have made the office of prime minister more crucial. The prime minister speaks to the public on behalf of the Council of Ministers after its meetings; the coordinating role of the office has become more important; and its importance has increased at the international—notably the European—level.

Ministers

Ministers are appointed by royal decree. Some, but not all, are heads of department. Cabinet ministers are collectively and individually responsible to both chambers of parliament; the most important political relation is with the lower house. Ministerial responsibility entails responsibility of ministers for their own conduct and for that of their state secretaries, their civil servants, and the monarch (and other members of the royal house). Lack of confidence obliges ministers individually or collectively to offer their resignation. If a cabinet minister offers his or her resignation for political reasons, the secretary of state does likewise; however, the converse does not follow. Cabinet ministers and state secretaries enjoy immunity and privilege as parliamentarians do.

In case of dissolution of a house of parliament, custom requires ministers to offer their resignation. Dissolution for other than political reasons is, in certain instances, prescribed by the constitution.

While neither a minister nor a state secretary of state can be a member of parliament, an exception is made when a resignation has been offered; pending a decision on the matter, the minister can become a member of parliament.

Parliament

The States General represents the entire Dutch people. It consists of a lower house and an upper house.

Lower House of Parliament

The lower house is directly elected for a four-year term on the basis of proportional representation. It consists of 150 members.

The lower house is the center of political activity. Although ministers and state secretaries are fully answerable to and need the confidence of both houses and must provide requested information to members of either house, the political significance of the lower house is greater. This is also true with respect to the right to inquiry. In addition, the lower house has the right to introduce and amend a bill.

Members of both houses enjoy parliamentary privilege. In the formulation of the constitution, they "may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States-General or of its committees or for anything they submit to them in writing." The Supreme Court tries present and former members of both houses for offenses committed while in office. A royal decree or resolution of the lower house sets this in motion.

The system of proportional representation has included a wide variety of parties in parliament, reflecting the pluralistic nature of the electorate, which leads to coalition governments. These are usually based on detailed agreements negotiated between the coalition partners in the lower house. Thus, a tight connection is established between the administration and its political base of support in the lower house, which does not always allow the cabinet room for maneuver.

Upper House

The upper house is elected by the 12 States Provincial on the basis of proportional representation. It consists of 75 members.

The upper house is a more deliberative body, as reflected in its constitutional position. The house is part of the legislature, but it has no right to introduce a bill; neither does it have the right to amend a bill. The house has the right of inquiry and its members have the right to request information from ministers and state secretaries.

As the relationship between administration and the lower house has become closer over the years, making it less likely for the house to challenge the administration, the upper house has gained a higher political profile. In addition, the 1983 constitution reduced its term from six years to four years and replaced the system of alternating elections with one single election for the entire house.

Thus, at times the upper house may be more representative of the mood of the nation than the lower house. In addition, the upper house is less likely to be dissolved; after all, if the 12 States Provincial that chose them are still sitting, dissolution will accomplish no change. Of course, it depends on the issues at hand, on political constellations, and on the personalities of the politicians involved.

Although the upper house is more aloof from day-to-day politics, ministers and state secretaries are fully responsible to it. The no confidence rule also functions with regard to the upper house.

The Lawmaking Process

The Cabinet and the State General enact an act of parliament jointly. The right to introduce a bill resides with the cabinet and the lower house. The upper house does not have this right. A minister's proposal (which constitutes the overwhelming majority) needs prior approval of the Council of Ministers and prior consultation with the Council of State. The proposal, accompanied by explanatory memorandum, by the advisory opinion of the Council of State, and by the Cabinet's reaction to this advisory opinion, is then introduced as a bill to the lower house. The lower house has the right to amend the bill. After adoption by the lower house, the bill is introduced in the upper house.

The upper house does not have the right to amend the bill; it can either adopt it or reject it. There is no mediation committee between the houses. However, if the upper house makes clear that it does not agree with the bill on some point, through the threat of rejecting the bill it can pressure the cabinet or the lower house to introduce a revised bill and in the meantime adjourn further treatment of the bill. When a bill is passed through both houses, it needs the signature of the king and the countersignature of a minister. To take effect, the act must be promulgated.

A bill that is introduced by the lower house proceeds to the upper house and is then submitted to the cabinet. In such a case, the lower house consults the Council of State.

In some cases, mostly concerning the Crown, extraordinary situations, or the constitution itself, a strengthened majority is needed. For such occasions, the constitution requires both houses to meet in joint session.

The Judiciary

The constitution provides only basic outlines and conditions for the judiciary. The actual system is determined by act of parliament. The general court system (for civil and criminal cases) is organized on a national level and made up of one Supreme Court, five courts of appeal, 19 district courts, and 61 subdistrict courts.

The organization of recourse in administrative cases is profoundly characterized by the 19th- and 20th-century ambivalence toward dealing with complaints against the administration. The key question was, Should such complaints be dealt with by an independent court or by a higher branch of the executive itself? As no principled decision was made, a patchwork of recourses emerged using both approaches, through the executive body—with the highest recourse to the Crown—or through the various specialized and independent administrative courts. These courts existed alongside the general independent court system for civil and criminal cases.

The European Court on Human Rights has ruled that the appeal to the Crown as the ultimate recourse in administrative cases, to determine an individual's civil rights or obligations or to decide on a criminal charge against him or her, is contrary to Article 6 of the European Convention on Human Rights, because it does not meet the standards of independence. As a result, the appeal to the Crown was replaced by an appeal to a branch of the Council of State serving as an independent administrative court.

In recent years, an effort has been made to integrate the administrative courts in the general system. Thus, for most administrative cases, initial appeals can be made to an administrative section of the general courts. The integration process is continuing.

THE ELECTION PROCESS

All persons of Dutch nationality have both the right to stand for election and the right to vote in elections of general representative bodies. This is guaranteed as a fundamental right and further specified in the constitution with respect to both houses of parliament and the decentralized councils. The right is subject to restrictions and exceptions by act of parliament. The age threshold is 18 years.

Dutch nationality is no longer a requirement to vote in, or to stand for, municipal elections.

POLITICAL PARTIES

Political parties are not mentioned in the constitution; nevertheless, they play an important role in the political process. The Netherlands has a multiparty system, stimulated by the electoral system of proportional representation and a low threshold of entrance—one seat is sufficient for representation in parliament.

Candidature takes place through political parties. However, members of parliament are obliged to represent not their party, but the people. They are not legally bound by any political instructions or party discipline. However, their behavior may have repercussions for their functioning within the party or for their future candidature.

Political parties are required to have the legal form of an association. They receive only limited subsidies of public funds.

Political parties can be banned only by a court decision. Banned parties cannot register to take part in elections. The criteria for banning a political party are the same as those for any forbidden legal entity in conjunction with Article 140 of the Criminal Code.

Although a political party has been banned, such an event is highly exceptional and the general attitude is in favor of a free democratic process.

CITIZENSHIP

The leading principle for acquiring Dutch citizenship is that of *ius sanguinis*. Therefore, Dutch citizenship is

primarily acquired by birth. A child acquires Dutch citizenship if one of his or her parents is a Dutch citizen, regardless of where the child is born. The law provides for the possibility of naturalization in a number of cases, such as long and legal residence in the country.

FUNDAMENTAL RIGHTS

Fundamental rights are guaranteed in the first chapter of the Dutch constitution. This is to express their importance to the legal order.

Prior to the 1983 revision, fundamental rights were found in several different parts of the constitution. The 1983 revision reformulated rights that were already explicit, such as freedom of religion; extended other rights, such as freedom of opinion; and added new rights, such as the right to privacy. For the first time, a systematic catalog of social rights was added to the constitution. Changes regarding rights were made outside the first chapter as well, including a few rights that may be seen as fundamental, such as public access to information, independence of the judiciary, the ban on the death penalty, and conscientious objection to military service.

Most classic rights are guaranteed to everyone without respect to nationality; a few rights are specifically addressed to Dutch nationals, such as the right to be equally eligible for appointment to public service or electoral rights. Insofar as relevant and not explicitly stated otherwise, minors also enjoy fundamental rights. It is also acknowledged that insofar as relevant, fundamental rights protect groups and organizations.

The sequence of fundamental rights in the first chapter does not imply any hierarchy. Thus, Article 1 on equal treatment and nondiscrimination does not, by definition, take preference over other rights.

Impact and Functions of Fundamental Rights

Fundamental rights have many functions, such as defensive, participatory, and entitlement. Generally speaking, fundamental rights in the Netherlands share in all these functions, to the extent recognized in modern Western constitutional thought.

Traditionally, classic rights protect the individual from state interference, whereas social rights oblige the state to act. This difference between classic rights and social rights is not as clear-cut as it seems. With regard to classic rights, the constitution implies, or even explicitly requires, public authority action. For instance, the right to access a court requires a legal infrastructure with a solid judicial system; the constitution explicitly requires "rules to protect privacy." Courts carefully explore the "active component" in classic rights, such as a public obligation to provide billboard space for expression of one's opinion through the press. Social rights are usually formulated as a concern of the government instead of a right for the citizen, but exceptions exist. Generally speaking, classic rights are legally enforceable; this is different for social rights. In line with the preceding, courts carefully explore this field too.

Fundamental rights, both classic and social rights, primarily address the relationship between the state and private individuals. In that sense, they are equally important to all branches of government. Even in instances when they are not enforceable through a court (whether through the ban on judicial review of parliamentary legislation in accordance with the constitution, or in cases concerning social rights), the legislature and the administration are under an obligation to respect these rights.

Fundamental rights are also relevant to the relationships of private individuals. Their relevance may be specified and solidified through legislation (e.g., equal treatment legislation) or given shape in court decisions, through direct reference to the constitution, or through interpretation of open legal norms.

The impact of international law in the Dutch legal system is clearly visible in the field of fundamental rights. Moreover, Dutch courts are under an obligation to apply international fundamental rights, giving preference to them above Dutch law. This is significant, especially given that courts are not allowed to review acts of parliament regarding their conformity to the Dutch constitution. The European Union's fundamental rights law is also gaining increasing importance.

Limitations to Fundamental Rights

Fundamental rights are subject to limitation. The constitution specifies which body has the authority to limit fundamental rights, defines purposes to be met by the restriction, and/or introduces a specific procedure to be followed. In practically all cases, the competent authority for limiting fundamental rights is the parliamentary legislature. It may or may not be allowed to delegate this authority, depending on the formulation used by the constitution. Thus, the main guarantee for the protection of fundamental rights is found in the legislative process.

The notion of a "limitation" of a right is far-reaching: Not only are deliberate limitations regarded as such, so are those measures that are not aimed at explicitly limiting rights but may limit a fundamental right as a side effect. The combination of this broad notion of a "limitation" and the strict, centralizing system of competent authority is meant to provide a maximum of freedom to the citizen. The 1983 revision has led to a systematic effort to make legislation conform to the new constitutional standards. The courts have slightly mitigated this strict dogma in a sensible way, thus adjusting personal freedom to the requirements of everyday life.

ECONOMY

The Dutch system can be characterized as a liberal democracy, with a free market and social rights, therefore, a

mixed economy or a social market economy. The general mood of society, alternating political preferences, and major economic trends and fluctuations influence the flavor and balance of the mix at any particular time.

The constitution makes no explicit statement on the economic system. It provides underpinnings in the chapter on fundamental rights. Fundamental rights protect the freedom of property, choice of profession, and freedom of assembly and association; the latter includes freedom of economic organization and freedom to establish trade unions. The constitution also mandates that parliament establish rules "concerning the legal status and protection of working persons and concerning codetermination."

The constitution also defines it as a concern of the authorities to ensure sufficient employment opportunities. Similarly, it mentions the security of the means of subsistence of the population and the distribution of wealth. It requires parliament to legislate "rules concerning entitlement to social security" and guarantees "Dutch nationals resident in the Netherlands who are unable to provide for themselves" the right to financial benefits from the state.

RELIGIOUS COMMUNITIES

The Dutch constitution contains no explicit statement on the institutional arrangements with religious communities, nor on the relationship between church and state. The principles implied by the constitution, and generally acknowledged, are separation of church and state neutrality with regard to religion or belief. Churches as organizations are not mentioned in the constitution.

The constitutional basis for the position of religious communities and their relation to public authorities are the fundamental rights guaranteed by the constitution. Article 6 of the constitution guarantees everyone freedom of religion and belief, individually and in community with others, notwithstanding everyone's responsibility under the law. It applies to groups and organizations as well.

Other fundamental rights are also important. Article 1, for example, guarantees equal treatment and nondiscrimination on the grounds of religion and belief. Article 23 guarantees respect for religion and belief in the public school system and lays the foundation for a dual school system of public (neutral) education and private (confessional) education, funded on equal footing by public funds.

The legal relationship between church and state is further shaped through ordinary legislation. This includes diverse fields of law such as the law on legal entities, mass media, tax law, labor law, privacy law, education law, or the law on ancient monuments.

The Civil Code gives churches as organizations a status as legal entity sui generis: Churches, their independent units, and structures in which they are united have legal personality, and they are "governed by their own statute, in so far as this does not conflict with the law." Religious organizations are, nevertheless, free to opt for a more regulated, predetermined structure, such as an association or a foundation.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are under the supreme command of the administration. Their task is the defense and protection of the interests of the kingdom, and of the maintenance and promotion of the international legal order. The armed forces are currently professional forces and may also consist of conscripts. Conscription and conscientious objection are regulated by an act of parliament.

A declaration of war or end of a war requires permission of the States General meeting in joint session. In declaring war, the requirement is waived if prior permission is impossible because of an actual state of war.

Prior informing of the States General is required to employ the armed forces for the maintenance and promotion of the international legal order. This includes humanitarian aid in case of armed conflict, unless urgent reasons make this impossible, in which case, the States General must be informed soon afterward.

Civil defense is regulated by an act of parliament. In such a case, Dutch residents without Dutch nationality can also be mobilized.

The constitution mandates parliament to define the exceptional circumstances in which, for the internal or external safety of the kingdom, a royal decree can declare a state of emergency. The relevant law may even depart from a number of explicit constitutional guarantees. Immediately after the declaration of an exceptional circumstance by royal decree and for its duration, the States General decides on its continuation in joint session.

AMENDMENTS TO THE CONSTITUTION

The Dutch constitution is a rigid constitution. This means that the procedure to change the constitution is more elaborate than that of an ordinary act of parliament. The purpose is to prevent lighthearted changes to the constitution.

The first stage follows the ordinary procedure for any bill. Then, the lower house is dissolved and new elections take place. The election is usually made to coincide with the ordinary end of the house's term. In the second stage, the proposal goes through the identical procedure as in the previous parliament, but without the right of amendment. This time both houses can adopt the proposal only with a majority of two-thirds of the votes cast.

Existing legal norms need to be adjusted by parliament to changes in the constitution. Until this is done, they remain in force. For adjusting the constitution itself to the Charter of the Kingdom, a less demanding procedure exists. Changes to the constitution can in effect also emerge through political events, through court interpretation, or through interpretative legislation.

A two-thirds majority of both houses is needed to approve a treaty that conflicts with the constitution.

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Sophie van Bijsterveld

NEW ZEALAND

At-a-Glance

OFFICIAL NAME
New Zealand

CAPITAL
Wellington

POPULATION
4,035,461 (July 2005 est.)

SIZE
103,738 sq. mi. (268,680 sq. km)

RELIGIONS
Anglican 14.9%, Roman Catholic 12.4%, Presbyterian 10.9%, Methodist 2.9%, Pentecostal 1.7%, Baptist 1.3%, other Christian 9.4%, unspecified 17.2%, none 26%, other 3.3%

LANGUAGES
English and New Zealand Maori

NATIONAL OR ETHNIC COMPOSITION
European 69.8%, Maori 7.9%, Asian 5.7%, Pacific Islander 4.4%, mixed 7.8%, unspecified 3.8%, other 0.5%

DATE OF INDEPENDENCE OR CREATION
November 25, 1947

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
No single date

DATE OF LAST AMENDMENT
No single date

New Zealand is an island state made up of two main islands, the North Island and the South Island, and several smaller islands. It is an independent state of the Commonwealth. It has inherited the English Westminster system of government and has no single written constitutional document. New Zealand's constitution can be found in a number of written and unwritten materials such as legislation, decisions of the courts, and constitutional practices.

The system of government is that of a democratic constitutional monarchy within a unitary state. The government has three branches, following the principle of the separation of powers: the parliament, which has full power to make law; the executive, which is responsible for the administration of the country; and the judiciary, which has power to interpret and to enforce the law. Although the branches have different roles, they are not totally separate. For example, ministers of government are also members of parliament.

The head of state is the sovereign of New Zealand. The sovereign is currently Queen Elizabeth II, who is also the sovereign of the United Kingdom. She is represented in day-to-day matters in New Zealand by a governor-general. Although the monarch remains symbolically and legally important, all political powers are exercised by the ministers of government. The governor-general as a matter of general practice follows the advice of the ministers.

New Zealand is a secular state, with a free enterprise economy.

CONSTITUTIONAL HISTORY

New Zealand was first inhabited by the Maori people of Polynesia about 1,000 years ago. It was discovered by Europeans in 1642, when the Dutch navigator Abel Tasman saw the West Coast of New Zealand but did not land. In 1769, New Zealand was rediscovered, by the British naval captain

James Cook. He was the first European to lay claim to New Zealand and did so on behalf of the British Crown.

Cook's claim did not have the effect of annexing New Zealand to the British Empire because the territory was not officially settled. However, some Europeans had in fact settled in the islands and tensions between them and the Maori were frequent. Britain was reluctant to intervene in these affairs for a long time, but in 1832 a British resident was appointed. This was the first signal of British willingness to become involved with New Zealand affairs.

In 1839, however, New Zealand was annexed to the Colony of New South Wales in Australia. Britain considered it necessary to reach an agreement with the Maori inhabitants, and Captain William Hobson was commissioned to sign a treaty with the Maori by which they would cede sovereignty to the British.

On February 6, 1840, a formal agreement, the Treaty of Waitangi, was signed between the Maori chiefs present at the meeting and the British Crown. The treaty was then circulated around New Zealand for further signatures, and in all 500 chiefs signed it. As a consequence, Hobson issued proclamations of British sovereignty on May 21, 1840. The proclamation asserted sovereignty over the North Island by way of cession pursuant to the treaty and over the South Island by way of discovery.

The British then set up a colonial system of government. A legislative council was created, but its lawmaking power was restricted and subordinate to that of the British Parliament. Hobson was officially declared governor. In 1846, the United Kingdom Parliament passed the New Zealand Constitution Act, an attempt to introduce elections and to give New Zealand self-governance. However, the country was not ready and the act was never implemented.

The New Zealand Constitution Act 1852 can be described as the first effective constitutional act. It established a provincial system of government consisting of six provinces, each having its own elected Provincial Council and superintendent. The provincial system was abolished in 1875, but the 1852 act also provided for a more lasting bicameral General Assembly that included the governor, an appointed Legislative Council, and an elected House of Representatives. The General Assembly was clearly subordinate to the Parliament of the United Kingdom until 1947, when New Zealand acquired full power to make its own laws. That meant formal legal autonomy from England. Since 1950, the New Zealand parliament has been unicameral and consists of an elected House of Representatives plus the head of state.

By the 1980s, many constitutional laws, particularly the New Zealand Constitution Act 1852, had lost significance. A far-reaching amendment was necessary to reflect the needs of the modern government. The Constitution Act 1986 was passed by the New Zealand parliament to effect the necessary reforms.

The act does not purport to be a written constitution or a supreme law. It is an ordinary act and can be amended as any other act. Despite its name, it does not deal with many matters of constitutional significance such as the role of the cabinet.

The majority voting system was inherited from England, but it was amended to account for New Zealand's special circumstances, and it was finally replaced in 1993 by a system of proportional representation. In 1867, Maori were given guaranteed representation in parliament by the creation of Maori seats. In 1893, women were granted the right to vote, and New Zealand became the first country to recognize this right for women.

FORM AND IMPACT OF THE CONSTITUTION

New Zealand's constitution can be found in a number of primary sources:

1. Acts of parliament. These are ordinary statutes and not supreme law in any sense.
2. Common law. The common law can be defined as "judge-made law." The decisions of courts play an important role in the development of constitutional principle. Many of the most fundamental rules of New Zealand constitutional law are found in the classic decisions of the English courts of centuries ago. The New Zealand courts have in recent times been particularly active in relation to the rights of individuals and local matters of importance, such as the Treaty of Waitangi of 1840.
3. Letters patent. These are orders issued by the monarch to regulate the office of the governor-general. They spell out the relation of the sovereign as the head of state to the government and, in particular, establish the Executive Council, which consists of the ministers of government and the governor-general. This is the senior administrative organ of government and the source of regulations that are the main type of delegated legislation.
4. Constitutional conventions. These are unwritten rules that are regularly followed and reflect widely held expectations about constitutional behavior. They are not legal rules and cannot be directly enforced through the courts. Constitutional conventions arise from precedent or agreement. They represent practices that are respected because their breach would cause adverse consequences for the system. Important constitutional conventions are those related to the operation of the cabinet and to the appointment of ministers. A key convention is that the governor-general will always act on the advice of ministers. The appointment of ministers is by the governor-general on the recommendation of the prime minister.
5. The Treaty of Waitangi. The status of the Treaty of Waitangi within the domestic law and its validity as an international treaty are still issues of debate. The treaty has not been incorporated into domestic law, but its principles are referred to in many enactments.

The courts have recognized the treaty as having a quasi-constitutional status.

The government has recognized the following treaty principles:

Principle of government (Kawanatanga)—this principle emphasizes the right of the government to govern and make law.
The principle of self-management (Rangatiratanga)—the right of Maori to control and enjoy their resources.
The principle of equality—partnership of government and the Maori.
The principle of reasonable cooperation—consultation and cooperation to share understandings and objectives.
The principle of redress—commitment of the government to redress grievances.

In 1975, the Tribunal of Waitangi was created to investigate grievances of Maori caused by government breaches of the treaty. The tribunal can recommend that the Crown compensate Maori or take other remedial action. Although the tribunal's recommendations have only political and moral force and in theory the Crown could ignore them, in practice they have formed the basis for negotiations between Maori petitioners and the government for the settlement of the grievances.

BASIC ORGANIZATIONAL STRUCTURE

New Zealand is a unitary state with a strongly centralized system of government. It is one state and the most important one in what is known as the Realm of New Zealand. The Realm of New Zealand, described in the letters patent of the governor-general, comprises the state of New Zealand, the associated state of the Cook Islands, the associated state of Niue, the territory of Tokelau, and the Ross Dependency. The link among the countries in the realm is allegiance to a common sovereign and common nationality.

The Cook Islands is a small nation in the South Pacific with a number of islands spread over a large ocean expanse. The current population is about 15,000. The Cook Islands is, as New Zealand, a constitutional monarchy governed by a unicameral parliament elected by universal suffrage.

Niue is a single island state in the South Pacific. It has a population of 1,500. It is a constitutional democracy with a cabinet system of government and a legislative assembly elected by universal suffrage.

Tokelau has a population of 1,500 people spread over three atolls just south of the equator in the Pacific. It is listed as a New Zealand colony by the United Nations. It has a high level of internal autonomy based on traditional government structures at the village level. Tokelau is being prepared to exercise its right to self-determination.

The Ross Dependency is a small section of Antarctica under New Zealand authority. A base for extensive scientific investigation, it has no resident population and no internal government structure.

LEADING CONSTITUTIONAL PRINCIPLES

New Zealand is a constitutional monarchy, whose monarch must, except under very special circumstances, follow the advice of the responsible ministers. It is also a democracy with an elected House of Representatives and ministers and systems that provide for transparency and governmental accountability.

Leading constitutional principles are the rule of law, the separation of powers, and parliamentary sovereignty. The rule of law entails that no individual should be beyond the control of the law, that all individuals should be treated equally by the law, and that all should have equal access to the law.

The separation of powers principle derives from the thinking of Montesquieu: Freedom is best protected when the powers to make law, administer the law, and make judgments on the law are exercised by different bodies—the legislature, the executive, and the judiciary. In New Zealand the principle is respected, but in practice there is a high level of interaction among the three areas of government. For instance, it is in the nature of the cabinet system of government that the members of the executive usually control the legislature by virtue of a government majority in the parliament. It is also the case that formally, at least, the governor-general (the head of state) appoints the ministers and the judiciary.

The parliamentary sovereignty doctrine is part of the ordinary law inherited from England. In New Zealand, there is no supreme law in the sense of a constitution that overrides inconsistent legislation or enables the judiciary to declare invalid laws made by parliament. Therefore, there is no judicial supremacy. The New Zealand parliament is the sovereign lawmaking body and, as such, alone has the power to make or unmake any law. Thus, if a new law is inconsistent with an earlier law, the latter is by implication repealed. A supreme constitutional law that could not be repealed by future law would amount to a restriction on the sovereign power of a future parliament.

CONSTITUTIONAL BODIES

The main constitutional bodies are the governor-general, the cabinet, the prime minister, the parliament, and the judiciary.

The Governor-General

The sovereign of New Zealand is the head of state, and the governor-general appointed by the sovereign on the advice of the prime minister is the representative of the sovereign. The sovereign has, in practice, no political power but a significant ceremonial role. The prime importance of the office is that it represents the unity of the nation.

The Cabinet

The cabinet is the main decision-making body of government. Its members are members of parliament who are appointed as ministers by the governor-general on recommendation of the prime minister. The ministers belong to the political party that has the majority in the House of Representatives. The prime minister is the leader of that majority. In cabinet, the ministers formulate government policies and legislative programs and are collectively responsible for the decisions taken.

The Prime Minister

The prime minister is the head of government. Although the office has great political powers, the duties of the prime minister are not described in any law.

The prime minister's key function is to lead the government. This is done by chairing cabinet meetings, allocating cabinet portfolios, and exercising some discipline over the government. Another important function of the prime minister is to be the public face of the government. This entails representing the government at political functions in New Zealand and abroad.

The prime minister has the power to instruct the governor-general to dissolve parliament and to hold an early election. The prime minister also advises the sovereign to appoint or remove the governor-general.

The Parliament

Parliament, the House of Representatives plus the head of state, is the supreme lawmaking body and its laws cannot be challenged or declared invalid by any court or government institution. The ordinary laws of parliament are the highest source of law. Parliament can delegate its lawmaking powers to other bodies. The delegated legislation has the same effect as ordinary legislation as long as it does not exceed the powers listed in the delegation.

Parliament raises government money and approves the expenditure of money; it checks on the operations of government by questioning ministers or conducting investigations. It provides a forum for the discussion of grievances. Petitions can be made to parliament by members of the public for redress of grievances on any matter of public importance.

The Lawmaking Process

A bill is generally debated in the House of Representatives three times. After the first reading it is sent to a select committee for examination. The bill is reported back to the House of Representatives with any recommended changes from the Select Committee. It then receives its second reading, at which stage the house decides whether it wishes the bill to proceed. The Committee of the Whole House stage then follows, when the bill is debated in detail, clause by clause. Finally the bill receives its third reading. If the House of Representatives votes to pass the bill, it receives the royal assent from the governor-general and becomes an act.

The Judiciary

The judiciary interprets and applies parliament's law and creates its own case law. It is a body independent of the political branches of government. Its function is to resolve disputes of facts and law between individuals and between the state and individuals.

In New Zealand, the system of courts is, in descending order, the Supreme Court, the Court of Appeal, the High Court, and the District Courts. There are also specialist courts, such as the Youth and Family Court, which are branches of the District Court.

There are two other judicial bodies, the Waitangi Tribunal and the Maori Land Court, which were created by statute. Although they are part of the judiciary, they do not settle claims. They follow an inquisitorial process aimed at determining whether a claim is well founded, and they make nonbinding recommendations to the government. Claims are eventually settled by negotiation with the government.

THE ELECTION PROCESS

Any New Zealand citizen over the age of 18 who is qualified to be on the electoral roll or any person who has resided in New Zealand for at least a year is entitled to vote in elections to the House of Representatives. There is a three-year electoral term.

All New Zealand citizens who are registered electors and are not public servants have the right to stand for elections.

Parliamentary Elections

Members of parliament are elected under the mixed member proportional (MMP) system, which was introduced into New Zealand in 1993 to replace the "first-past-the-post" (FPP) electoral system. The MMP system was adopted to increase the number of political parties represented in parliament and to make the executive less dominant. Under the FPP system the House of Representatives was dominated by two major parties, and political power was concentrated in the governing party. Under a pure proportional system, the number of parliamentary seats is proportionate to the number of votes. In New Zealand there is a threshold requirement:

A party must win 5 percent of the national votes in order to be allocated any seats.

The 1993 system, by giving every voter two votes, added a proportional feature to the FPP system. The country remained divided into geographical constituencies of approximate equal population. A voter casts one vote for his or her preferred candidate in the area, and another for one of the political parties. There are 120 seats in the House of Representatives, seven of which are reserved for Maori.

Political Participation

Democracy at a local level is exercised through elections to local government bodies. New Zealand local government consists of 12 regional councils. Each region is divided into territorial authorities, which can be districts or cities, each of which has a council of its own. There are 74 territorial authorities within the 12 regional districts.

Regional councils are responsible for functions such as resource management, biosecurity, civil defense, and land transport. City and district councils are responsible for community well-being and development, infrastructure (roads, sewers), recreation, and culture.

Local governments are subordinate to central government and controlled by legislation passed by parliament. Local governments have power to make their own laws, called by-laws, but only in matters that are strictly defined by parliament. A by-law cannot contradict a law passed by parliament.

POLITICAL PARTIES

Political parties in New Zealand have evolved as part of the political process. The first party to have an extraparliamentary support structure was the Labour Party, founded in 1916. The example was followed by liberal parties that officially organized themselves as the National Party in 1936. The Labour Party and the National Party are the two main political parties in New Zealand.

The Labour Party follows traditional socialist policies, while the National Party supports individualism in the economic, social, and political spheres. Other smaller parties have been formed from time to time and have had representation in parliament. Some of these parties have been the Alliance Party, New Zealand First, the Greens, United Future, Social Credit, and the Act Party. Political parties are generally unincorporated societies that regulate their own procedures and structure. They are subject to very little regulation.

Until 1993, the two main parties dominated New Zealand's political scene. The party in power exercised a virtual monopoly within parliament. The MMP system introduced in 1993 helped to change the political situation. Elections under MMP have resulted in the representation in parliament of a number of other parties, leading to coalition governments. For example, after the 2002 election, the Labour Party entered into a coalition with the Progressive Coalition and had a confidence vote agreement with the United Future Party.

CITIZENSHIP

Every person born in New Zealand is a New Zealand citizen by birth. A child acquires New Zealand citizenship if at least one parent is a New Zealand citizen. Permanent residents can, under certain circumstances, acquire citizenship. Grant of citizenship may be made in special cases and for humanitarian reasons.

FUNDAMENTAL RIGHTS

In 1978, the New Zealand government ratified the International Covenant on Civil and Political Rights. As a belated sequel, parliament passed the New Zealand Bill of Rights Act 1990, which is concerned with the protection of individual human rights against abuses by the state. The act is not supreme law and can be amended by ordinary means.

The 1990 act protects four sets of rights: rights pertaining to life and security of the person, democratic and civil rights, nondiscrimination and minority rights, and rights pertaining to search, arrest, and detention. The list of rights is not exhaustive, and rights and freedoms not enumerated but within the ambit of the act are preserved.

The act applies to the relationship between the state and individuals. Therefore, individuals can invoke the act only for breaches committed by one of the three branches of government—executive, legislative, and judiciary.

The act makes it clear that the courts have no authority to declare any statute invalid or refuse to apply any statute on the grounds that it is inconsistent with the rights and freedoms protected in the act. When interpreting an enactment, courts are required only to prefer a meaning consistent with these rights and freedoms, if such an interpretation is possible. If no consistent meaning is possible, courts must apply the statute in question anyway. Furthermore, the rights and freedoms protected in the act "are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

All the same, courts have interpreted the act broadly, so as to give full effective protection to individual fundamental rights. For example, though the act does not have a remedy provision, courts have ruled that damages and other effective remedies should be available for its breaches. This expansive interpretation has conferred on the act a quasi-constitutional status.

The Human Rights Act 1993 extends the protection of human rights by prohibiting discrimination by private persons. The act applies to discrimination on many grounds, such as sex, religion, race, disability, and political opinion in the ambit of education, employment, pro-

vision of goods and services, access to public places, and provision of accommodation.

Other laws affecting human rights are the Official Information Act 1982 and the Privacy Act 1993. These laws provide individuals access to official information (information held by the government) relating to them. Such information must be made available unless there is good reason for withholding it; the preservation of personal privacy is a good reason and is protected to the extent consistent with the public interest. The Privacy Act established principles for the protection of privacy to be applied in the collection, use, and disclosure of information held by the government and by private agencies.

New Zealand was one of the first countries outside Scandinavia to adopt the idea of the ombudsperson. The first ombudsperson was appointed in 1962. The office has the important constitutional role of investigating complaints from citizens related to government action affecting them.

ECONOMY

The modern New Zealand economy operates on free market principles. There are sizable manufacturing and service sectors complementing a highly efficient agricultural sector. Exports of wool, meat, and dairy products are very important in the economy, as is tourism, which contributes almost 10 percent of the gross domestic product (GDP).

The economy is strongly trade-oriented, with exports of goods and services accounting for around 33 percent of total output. New Zealand is the world's largest exporter of dairy products and second only to Australia in wool exports. Trade is mainly with Europe, the United States of America, Australia, and Japan.

RELIGIOUS COMMUNITIES

New Zealand is predominantly Christian, including the Anglican (14.9 percent), Roman Catholic (12.4 percent), and Presbyterian (10.9 percent) Churches. Nonreligious people account for 21 percent, and other minorities, including Jews, Buddhists, Muslims, and members of other Christian denominations, account for the rest.

Churches are common all over the country; mosques, temples, and synagogues are also found.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military is organized on traditional British patterns. It has in recent years participated actively in the United Nations and other international peacekeeping endeavors, both regionally (for example, in East Timor and the Solomon Islands) and internationally (for example, in Bosnia and Herzegovina, Afghanistan, and Iraq). New Zealand also has a formal civil defense system to deal with natural disasters such as floods and earthquakes.

AMENDMENTS TO THE CONSTITUTION

Since there is no one written constitution, changes to the political system can be made at liberty by way of ordinary legislative process.

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Anthony Angelo

NICARAGUA

At-a-Glance

OFFICIAL NAME
Republic of Nicaragua

CAPITAL
Managua

POPULATION
5,465,100 (July 2005 est.)

SIZE
49,998 sq. mi. (129,494 sq. km)

LANGUAGES
Spanish (official), English and indigenous languages on Caribbean coast

RELIGIONS
Catholic 73%, Evangelical 15%, Moravian Church 1.5%, unaffiliated or other 10.5%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (mixed Amerindian and white) 69%, white 17%, black 9%, Amerindian 5%

DATE OF INDEPENDENCE OR CREATION
September 15, 1821

TYPE OF GOVERNMENT
Mixed presidential-parliamentary government system

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 9, 1987

DATE OF LAST AMENDMENT
October 20, 2005

Nicaragua is a democratic republic with a government system that is a mixture of presidentialism and parliamentarism. The 1987 constitution, from the social-revolutionary Sandinista era, gave excessive power to the president; it was amended in 1995 to provide for a more even distribution of power among the four branches of government. The predominant constitutional bodies are the president (executive), the National Assembly (legislative), the Supreme Court of Justice (judicial), and the Supreme Electoral Council (electoral). Another constitutional reform in 2000 increased the number of justices of the Supreme Court and made changes to the electoral laws. Further constitutional reforms adopted by the National Assembly in January 2005, which intended to limit many presidential powers, have been postponed until January 2007.

The constitution provides for individual rights, political rights, social rights, family rights, and labor rights. It also gives standing to several international and regional human rights treaties. Every citizen may present writs of unconstitutionality (*amparo*) or writs of habeas corpus. Nicaraguan citizenship may be acquired either by birth or by naturalization; in the latter case, nationals of other Central American states face fewer obstacles.

CONSTITUTIONAL HISTORY

The name *Nicaragua* is derived from *Nicarao,* the chief of the indigenous tribe who lived near present-day Lake Nicaragua around 1500. In 1524, Hernandez de Cordoba founded the first Spanish permanent settlements in the region. Nicaragua gained independence from Spain in 1821, briefly becoming a part of the Mexican Empire and then a member of the Central American Federation. When this federation was dissolved in 1838, Nicaragua became a fully independent republic.

Between 1838 and 1974, Nicaragua had 10 constitutions. The U.S. adventurer William Walker and his "fili-

busters" seized the presidency in 1856, but they were overthrown a year later. From 1893, General Jose Santos Zelaya established a dictatorship until he was driven from office after a United States–backed coup in 1909. After the coup, Nicaragua allowed the United States to run its customs and excise, the national bank, and the railway. Guerrillas led by Augusto Cesar Sandino campaigned against the U.S. military presence, which had been established in 1912. Sandino was assassinated in 1934 by National Guard officers; three years later, Anastasio Somoza Garcia took over the presidency.

The Somoza dynasty ended in 1979 with a massive uprising led by the social-revolutionary Sandinista National Liberation Front (FSLN). The United States broke off diplomatic links with Nicaragua in 1981 and subsequently supported the rebel contra forces. Nicaragua instituted international proceedings concerning responsibility for military and paramilitary activities against the United States. In 1986, the International Court of Justice (ICJ) in The Hague found that the United States had violated a number of principles of customary international law and ordered reparations.

A new Nicaraguan constitution was promulgated in 1987. The opposition presidential candidate, Violeta Chamorro, won the presidential election in February 1990. Chamorro refused to sign a revised constitution in February 1995. The conflict was resolved by the "Political Pact" of June 15, 1995, which stipulated that the constitution would be enacted together with a law concerning its interpretation and reforms. A package of amendments, including a reduction in the presidential term, was eventually agreed. The new Supreme Electoral Council prepared for parliamentary and presidential elections, which were held in October 1996. The first transfer of power in recent Nicaraguan history from one democratically elected president to another took place in January 1997, when the administration of Arnoldo Aleman was inaugurated. However, Aleman became the first Central American former president to be imprisoned for crimes in office after a trial on charges of corruption and money laundering. The constitution was amended again in 2000 to increase the powers of the Supreme Court of Justice and to make changes to the electoral laws.

Additional constitutional reforms, which seek to limit many of the presidential powers and increase those of the legislature, were ratified by the opposition-dominated National Assembly in January 2005, sparking a political crisis in the country. In March 2005, the Central American Court of Justice (CCJ), a regional court based in Managua, declared the constitutional reforms to be "inapplicable," arguing that they violated Central American treaties and Nicaragua's constitution. However, the opposition parties FSLN and PLC have rejected that ruling, and they are supported by the Supreme Court, which held that the CCJ acted beyond its powers. This essentially left Nicaragua with two constitutional frameworks: the unamended constitution accepted by the executive and the amended text promoted by the majority of the legislature. In October 2005, however, the parties agreed to postpone the constitutional reforms until the next president's term begins in January 2007.

FORM AND IMPACT OF THE CONSTITUTION

Nicaragua has a written constitution, codified in a single document, Constitución Política de la Republica de Nicaragua. The Electoral Law, the Emergency Law, and the Law of *Amparo* are considered constitutional laws.

All persons in Nicaragua enjoy state protection and recognition of their inherent rights as human beings. The constitution gives explicit standing to the Universal Declaration of Human Rights (1948), the American Declaration of the Rights and Duties of Man (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and the American Convention on Human Rights (1969). In the Nicaraguan constitutional reforms of 1995, the Convention on the Rights of the Child (1990) was raised to constitutional status.

BASIC ORGANIZATIONAL STRUCTURE

Nicaragua is divided into 15 departments and two autonomous regions on the Atlantic coast. The 1995 constitutional reform guaranteed the integrity of those regions' several unique cultures and gave the inhabitants a say in the use of the area's natural resources.

LEADING CONSTITUTIONAL PRINCIPLES

Nicaragua is a constitutional democracy with executive, legislative, judicial, and electoral branches of government. The leading constitutional principles are liberty; justice; respect for human dignity; political, social, and ethnic pluralism; acknowledgment of different forms of property; free international cooperation; and respect for the free self-determination of peoples. According to Article 9 of the constitution, Nicaragua advocates Central American unity and supports political and economic integration and cooperation as well as establishment and preservation of peace in the region.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the National Assembly, the Supreme Electoral Council, and the judiciary. The president and

the members of the National Assembly are elected to concurrent terms of five years.

The President

The president is chief of state, head of government, and commander in chief of the army. The president and vice president are elected on the same ticket by popular vote for a five-year term. The constitutional reforms of January 2000 provide outgoing presidents and vice presidents with a lifelong seat in the legislature. Under the contested 2005 constitutional amendments, the government would submit the appointment of ministers, vice ministers, and top diplomats to ratification by the National Assembly.

The National Assembly

The unicameral National Assembly consists of 90 deputies. In addition, former presidents and vice presidents hold a seat for life and occupied three seats after the 2001 elections. Members of the National Assembly are elected by proportional representation and party lists to serve five-year terms. In 1995, the executive and legislative branches negotiated a reform of the 1987 Sandinista constitution that gave important new powers and independence to the legislature. As a result, the National Assembly is able to override a presidential veto with a simple majority vote.

The Supreme Electoral Council

The Supreme Electoral Council is responsible for organizing and conducting elections, plebiscites, and referenda. It is led by a council of seven magistrates, who are elected to five-year terms by the National Assembly. Constitutional changes in 2000 gave the two leading political parties, the Liberal Constitutional Party (PLC) and the Sandinista National Liberation Front (FSLN) more power to name party activists to the council. These changes prompted allegations that both parties were politicizing electoral institutions and processes and excluding smaller parties.

The Lawmaking Process

The initiative to propose laws can be taken by members of the National Assembly or by the president. In addition, the Supreme Electoral Council, the Supreme Court of Justice, and the autonomous regional and municipal councils may initiate laws concerning subject matters within their authority. Finally, citizens may petition for a referendum on a proposed law, excluding certain subject areas such as taxes, amnesty, or international affairs. Once the bill has been approved by the National Assembly, it is sent to the president for approval, promulgation, and publication. The president may veto the bill as a whole or in part, but the National Assembly can reject the presidential veto. The 2005 constitutional reforms, however, seek to outlaw partial and total presidential vetoes.

The Judiciary

The Supreme Court supervises the functioning of the judicial system and appoints all appellate and lower court judges. Organization and judicial career of the courts of appeal, district, and local judges are regulated by law. In Nicaragua, justice is free of court costs according to the constitution.

The Supreme Court is divided into specialized administrative, criminal, constitutional, and civil chambers. Supreme Court justices are elected to five-year terms by the National Assembly. As part of the 2000 constitutional reforms, the number of justices was increased to 16 justices. According to the constitution, the judiciary must receive no less than 4 percent of Nicaragua's general budget.

THE ELECTION PROCESS

The minimal voting age is 16 years. The president is directly elected by universal suffrage. Under the 2000 constitutional reforms, a presidential candidate needs to win only 35 percent of the vote to preclude a second-round runoff. He or she may not serve two consecutive terms but may stand for reelection in a later election. Close relatives of the incumbent president may not stand for presidential elections.

POLITICAL PARTIES

Some 35 political parties participated in the 1996 elections. However, more restrictive electoral laws were passed in 2000, and only three parties participated in the 2001 national elections: the Liberal Alliance (including the PLC), the Sandinista National Liberation Front (FSLN), and the Conservative Party of Nicaragua (PCN).

CITIZENSHIP

Nicaraguan citizenship may be acquired either by birth or by naturalization. Nationals of other Central American states who reside in Nicaragua may opt for dual citizenship. In turn, a Nicaraguan national does not lose citizenship when he or she is naturalized in another Central American state. Other foreigners, however, must give up their previous nationality upon naturalization in Nicaragua.

FUNDAMENTAL RIGHTS

The constitution provides for individual, political, social, family, and labor rights. It prohibits discrimination based on birth, nationality, political belief, race, gender, language, religion, opinion, national origin, and economic or social condition. Nicaraguans have the right to be pro-

tected against hunger as well as the right to decent, comfortable, and safe housing that guarantees familial privacy. All public and private sector workers, except the military and the police, are entitled to form and join unions of their own choosing. Nearly half of Nicaragua's workforce, including agricultural workers, is unionized.

Impact and Functions of Fundamental Rights

Citizens whose constitutional rights have been violated or are in danger of violation have the right to present writs of habeas corpus or *amparo* (writ of unconstitutionality).

Limitations to Fundamental Rights

The rights of each person are limited by the rights of others, collective security, and the just requirements of the common good. According to Article 24 of the constitution, all persons also have duties to their family, the community, the homeland, and humanity.

ECONOMY

Nicaragua remains the second-poorest nation in the Western Hemisphere and faces economic problems such as low per capita income, massive unemployment, and huge external debt. Also, thousands of property confiscation cases from the Sandinista era must be resolved. In the 2001 judgment of *Mayagna Awas Tingni v. Nicaragua,* the Inter-American Court of Human Rights (IACHR) upheld the rights of an indigenous community to its traditional lands and resource tenure; the IACHR further ordered Nicaragua to establish an adequate mechanism to secure the land rights of all indigenous communities of the country.

RELIGIOUS COMMUNITIES

The constitution provides for freedom of religion and prohibits discrimination on the basis of religion. It also states that no one shall be obligated by coercive measures to declare his or her ideology or beliefs. However, nobody may disobey the law or prevent others from exercising their rights and fulfilling their duties by invoking religious beliefs.

The requirements for legal recognition of a religious group are similar to those for other nongovernmental organizations. After approval of the National Assembly, a religious group must register with the Ministry of Government as an association or a foundation. A recognized church may be granted tax-exempt status; this exemption is a contentious issue because of perceived unequal treatment of different religious groups. However, missionaries do not face special entry requirements other than obtaining religious worker visas.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president and the Council of Ministers may order the intervention of the army only in exceptional circumstances when national stability is threatened by internal disorder, calamity, or natural disaster. The establishment of foreign military bases on national territory is prohibited by the constitution.

AMENDMENTS TO THE CONSTITUTION

The National Assembly may partially or totally reform the constitution. Upon the initiative of one-third of its members or of the president, a partial constitutional reform is transmitted to a special commission and must be discussed in two congressional terms. A general reform of the constitution requires the election of a National Constituent Assembly, two-thirds of whose members must approve the draft.

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Michael Wiener

NIGER

At-a-Glance

OFFICIAL NAME
Republic of Niger

CAPITAL
Niamey

POPULATION
11,360,000 (2005 est.)

SIZE
490,000 sq. mi. (1,267,000 sq. km)

LANGUAGES
French (official), Hausa, Zarma, Fulfulde, Tamajak, Kanuri, Toubou, Gurmance, Arabic

RELIGIONS
Sunni Muslim 95%, other (Christian, pagan) 5%

NATIONAL OR ETHNIC COMPOSITION
Hausa 56%, Zarma 22%, Fulani 8.5%, Tuareg 8%, Kanuri 4.3%, other (Arab, Toubou, Gurma) 1.2%

DATE OF INDEPENDENCE OR CREATION
August 3, 1960

TYPE OF GOVERNMENT
Semipresidential

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 18, 1999

DATE OF LAST AMENDMENT
July 9, 2004

Niger is a democracy based on the rule of law, with a clear division of executive, legislative, and judicial powers. It is a unitary state comprising eight administrative regions. The constitution provides for guarantees of human rights. There are remedies for violation of the constitution, enforceable by an independent judiciary including a constitutional court. The constitution has been modified several times in recent years in response to political turmoil that occurred in the country.

The president is the head of state and has extensive power according to the constitution. Appointed by the president, the prime minister is the head of the administration. The administration determines and conducts the policy of the nation. As representatives of the nation, the members of parliament are elected by popular vote. A multiparty system of government allows safe competition for power.

Religious freedom is guaranteed, and state and religious communities are officially separated. However, the main religion, namely, Islam, has an important impact on social and political life. The economic system can be described as a developing market economy. By law, the military is subject to the civil government; in practice, the military has several times taken a dominant role in the political scene.

CONSTITUTIONAL HISTORY

Niger emerged as an administrative and political entity under French colonial rule at the end of the 19th century. The Cercle du Moyen-Niger, created in 1898, was initially a simple administrative structure. It became the Military Territory of Niger in 1904, and then the Territory of Niger in 1922, with the status of a French colony, part of French West Africa.

In 1946, the constitution of the Fourth Republic in France officially put an end to the French colonial empire. The Territory of Niger became an overseas territory and member of the French Union. From this period, multiple

institutional changes that encouraged the development of political life took place in Niger.

After the French referendum of September 28, 1958, the territory of Niger gained membership in the French Community. The Republic of Niger was proclaimed on December 18, when its first administration and assembly took office.

A constitution, based on a model common to the member states of the community, was adopted on February 25, 1959. The new state acceded to independence on August 3, 1960. The first constitution of the newly independent republic of Niger was adopted on November 8, 1960. It provides for a presidential system of government.

In 1974, a military coup overthrew the civil government. The military junta, known as the Supreme Military Council, immediately suspended the constitution and political party activities and dissolved the assembly.

The constitution of September 24, 1989, which inaugurated the Second Republic, had the main objectives of restoring democracy and preserving public order. In 1991, vigorous popular claims for democracy from civil society organizations led to the organization of a National Conference. The popular forum abolished the institutionalized single-party regime and paved the way for a more liberal regime in the country. A new constitution, adopted in 1992, inaugurated the Third Republic.

After serious institutional gridlock stemming from rivalries at the top of the administration, the military once again took over the political scene. The constitution of the Fourth Republic was adopted in 1996. Repeated social and political unrest and contested elections led to a new military coup in 1999. The adoption of a new constitution the same year and the handover of power to a civil government marked the beginning of the Fifth Republic.

Niger is a member of the African Union, the former Organization of African Unity.

FORM AND IMPACT OF THE CONSTITUTION

Niger has a written constitution, codified in a single document that takes precedence over all other national laws. Duly ratified international treaties and conventions have precedence over national laws, but compliance with the constitution is required. The Constitutional Court controls the conformity of national laws to the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Niger comprises eight regions, which have relative autonomy from the central government. A wide decentralization program is currently under way, with the objective of giving more self-governing powers to local communities.

LEADING CONSTITUTIONAL PRINCIPLES

Niger's system of government is a pluralistic democracy, with a clear division of the executive, legislative, and judicial powers, based on checks and balances. By constitutional law, the judiciary is independent of the executive and the legislative, but in practice this independence is not effective.

A number of essential principles characterize the Nigerian constitutional system: Niger is an independent, sovereign, united, democratic, and social republic and is governed by the rule of law. Political participation is guaranteed through a mixture of direct and indirect representation. The constitutional system shows a strong commitment to democracy and rule of law. The separation of state and religion is explicitly affirmed in the constitution.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the president; the administration, which includes the prime minister and the cabinet ministers; the National Assembly; and the Constitutional Court. Other constitutional organs include the High Court of Justice and the Economic, Social, and Cultural Council.

The President of the Republic

The president of the republic is the head of state. The president appoints the prime minister from a list of three prominent figures proposed by the party or coalition of parties holding a majority in the National Assembly. The president appoints and dismisses the cabinet ministers upon the advice of the prime minister and dismisses the prime minister when the administration resigns.

The president of the republic is elected by universal suffrage for a five-year term and can be reelected once.

The Administration

Directed and coordinated by the prime minister, the administration determines and conducts the policy of the nation. Under the authority of the president, the administration exercises some power over the civil service, the police forces, and the armed forces. During the Third Republic (1993–96), a lack of clear delimitation of powers between the president and the prime minister led to institutional gridlock that led to a military coup.

The National Assembly

A unicameral parliament, the National Assembly, exercises the legislative power. Its members are elected for five-year terms by universal suffrage. The constitution prescribes free, direct, equal, and secret election of the members of the National Assembly.

The Lawmaking Process

The National Assembly has the task of passing legislation. In exercising this power, cooperation with the executive is required. The constitution defines clearly and explicitly the fields in which the National Assembly has lawmaking power. Other fields are left to the competence of the executive. The National Assembly and the administration have concurrent roles in drafting bills. Bills become law only if the National Assembly assents. The president promulgates the law. However, the president can send back a law for a second deliberation. In cases in which the National Assembly insists on the law with an absolute majority, it goes into force without the president's approval.

The Judiciary

As a matter of principle, the judiciary is independent of the legislative and the executive. The Constitutional Court, formerly one of the chambers of the Supreme Court, is now an autonomous institution with general and exclusive competence on constitutional and electoral matters. It comprises seven members.

THE ELECTION PROCESS

All Nigerians who either are over the age of 18 or have attained majority have the right to vote in elections.

POLITICAL PARTIES

Niger has a pluralistic system of political parties. Adopted recently, the multiparty system is now an essential element of the constitutional order. All recognized political parties have the right to compete through elections. However, political parties constituted on ethnic, regionalist, or religious grounds are banned.

CITIZENSHIP

Nigerian citizenship is acquired by birth, by descent, or by naturalization.

FUNDAMENTAL RIGHTS

Fundamental rights have an important place in the legal order in Niger. These rights are defined in the second title of the constitution.

The constitution first proclaims the sanctity of the human being and then enumerates numerous specific fundamental rights that are guaranteed. Basic rights are binding upon public authorities, whether executive, legislative, or judiciary. The exercise of rights and liberties must be in accordance with the law.

Article 8 of the constitution provides for equal treatment of all persons, without any distinction based on gender or social, racial, ethnic, political, or religious origin. Apart from the recognition of rights, the constitution sets out a number of duties for citizens, among them the duty to respect the constitution and the legal order of the republic.

Impact and Functions of Fundamental Rights

In Niger, the full recognition of fundamental rights is closely linked to the advent of democracy and the rule of law. There is an increasing awareness among citizens that basic rights are integrated into the legal order of the state and that they are binding upon public authorities.

Limitations to Fundamental Rights

According to the constitution, the exercise of fundamental rights and liberties should be in accordance with laws and executive orders in force.

ECONOMY

The constitution of Niger does not provide for a specific economic system. However, there are a number of prescriptions contained in the fundamental law that can be regarded as the foundation of the economic system. Among them are the recognition and protection of property right, the recognition of the right to work and the duty imposed on the state to set the conditions that will make that right effective, and freedom of association. In general, the Nigerian economic system can be described as a market economy, with the features of a developing economy.

RELIGIOUS COMMUNITIES

As a human right, freedom of religion or belief is guaranteed. Certain rights are afforded to religious communities, namely, freedom of association and assembly. As a matter of principle, all religions and religious communities must be treated on an equal basis.

The constitution affirms the separation of religion and state. However, this separation is not absolute since some interactions exist between them. In Niger, Muslims constitute the most important religious community. Despite the separation set forth in the constitution, Islam has a great impact on political and social life.

MILITARY DEFENSE AND STATE OF EMERGENCY

According to the constitution, the president of the republic is the supreme chief of the armies. The armed forces

are at the disposal of the administration under conditions determined by law.

The president can take exceptional measures in certain circumstances specified in the constitution, namely, when the institutions of the republic, the independence of the nation, the integrity of the national territory, or the implementation of international commitments is threatened in a grave and immediate manner and the functioning of the constitutional power is interrupted. However, strict conditions limit the exercise of this power by the president.

The president also has the power to declare a state of emergency within certain conditions determined by law.

AMENDMENTS TO THE CONSTITUTION

The president and the members of the parliament have concurrent powers to initiative amendments to the constitution. A favorable vote of three-quarters of the members of the National Assembly is required for the change to be considered. A four-fifths vote is required to pass the measure. If it fails, the amendment is submitted to popular vote, by means of a referendum.

In any case, the constitution cannot be revised to violate the integrity of the national territory. Certain fundamental provisions are excluded from revision, namely, the republican form of the state, the pluralistic system of parties, the principle of the separation of state and religion, and some special provisions specified in Articles 36 and 141 of the constitution.

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Boubacar Hassane

NIGERIA

At-a-Glance

OFFICIAL NAME
Federal Republic of Nigeria

CAPITAL
Abuja

POPULATION
137,253,133 (July 2004 est.)

SIZE
356,669 sq. mi. (923,768 sq. km)

LANGUAGES
English (official), Yoruba, Hausa, Igbo (Ibo), Fulani, Efik

RELIGIONS
Muslim 50%, Christian 40%, indigenous beliefs 10%

NATIONAL OR ETHNIC COMPOSITION
Over 250 ethnic groups identified; largest and most politically influential: Hausa and Fulani 29%, Yoruba 21%, Igbo (Ibo) 18%, Ijaw 10%, Kanuri 4%, Ibihio 3.5%, Tiv 2.5%, other 12%

DATE OF INDEPENDENCE OR CREATION
Colonial protectorates amalgamated in 1914; independence on October 1, 1960

TYPE OF GOVERNMENT
Democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral legislature

DATE OF CONSTITUTION
May 1, 1999

DATE OF LAST AMENDMENT
No amendment

Nigeria operates a three-tier federal system made up of federal, state, and local governments. The national president has far-reaching executive powers, controlled to a degree by parliament. Fundamental rights are guaranteed by the constitution. Muslim Sharia law has widespread influence in some parts of the country. The constitution prohibits the introduction of a state religion.

CONSTITUTIONAL HISTORY

Nigeria's constitutional history dates back to the encounter of the different sections and peoples of the territory with British colonial rule. British rule began with the ceding of Lagos as a colony to the Crown in 1861 and the establishment of a Legislative Council for the Colony of Lagos in 1862. In 1885, Britain proclaimed the Oil River Protectorate in Eastern Nigeria to protect its economic interests in the area. In 1886, it granted the charter to the Royal Niger Company (RNC) over the area. In 1893, the Niger Coast Protectorate was established. In 1900, Britain revoked the Charter of the Royal Niger Company and proclaimed a northern and a southern protectorate of Nigeria under the control of the British government. No constitution was specifically adopted for the colony and protectorates; there is evidence that the unwritten British constitution was applied, especially in the colony of Lagos.

Nigeria, as one country, was created in 1914 with the amalgamation of the Colony of Lagos and the northern and southern protectorates by Governor-General Lord Lugard (1900–21). The constitutional instruments created under the British constitution vested all executive powers in the governor; there were also an Executive Council and an Advisory Deliberative Council, which had the power to legislate for the whole country.

Both councils were dominated by British officials. The presence of six Africans in the Advisory Council did not impress the emerging Nigerian nationalists. Nationalism was mainly concentrated in the southern part of

the country, evidently influenced by the democratic principles and structures of the British state.

The first written constitution for the country emerged in 1922 as the Clifford Constitution. The name was derived from the incumbent governor-general, Sir Hugh Clifford. It abolished the two existing councils for the Colony of Lagos, created a single executive for the whole country, and introduced a Legislative Council made up of 10 Africans, four of whom were elected, and 36 Europeans, with powers to legislate for the southern portion of the country. It reserved the legislative power for the northern protectorate in the governor.

From 1922, political associations began to emerge with the formation of Nigeria National Democratic Party (NNDP) by Herbert Macaulay. In the elections of September 1923 carried out under the Clifford Constitution, the NNDP won three seats in the Legislative Council. The activists Vaughan, Ikoli, and Akinsanya formed the Lagos Youth Movement (LYM) in 1933, which became the National Youth Movement (NYM) in 1936. The *West African Pilot* newspaper was established in 1937. Under its founding editor, Nnamdi Azikwe, it provided a platform for nationalist resistance.

With increasing political awareness, pressures intensified on the colonial administration for constitutional reforms to allow for more participation of Nigerians in their governance. This movement led to the Richards Constitution of 1946 and the replacement of the Legislative Council for the south with the Central Legislative Council, composed of the governor, 16 officials (13 ex officio and three nominated), and 28 members who were either freely elected or selected through processes listed in the constitution. This council had authority to legislate for the whole country; in practice, laws were made by the governor with the consent of the council. The 1946 constitution also set up regional Houses of Assembly in the east, west, and north and a House of Chiefs in the north.

These constitutional reforms proved inadequate to satisfy the growing nationalism. In 1947, Nnamdi Azikwe led a delegation of seven representatives of the National Council of Nigeria and the Cameroons (NCNC), a political party formed in 1944, to demand constitutional reforms. At the 1950 Ibadan General Conference, nationalist political leaders agreed that only a federal system of government, which would allow each region to progress at its own pace, would be acceptable.

In 1951, the Macpherson Constitution went into effect. It provided for a lieutenant-governor and House of Assembly in each region and a federal House of Representatives with legislative powers, subject to the veto of the secretary of state for the colonies. The House of Representatives had veto power over the Regional Houses. The system's model was the British Westminster style, although the executive governor or lieutenant governor shared legislative power with the respective houses. Legislation in the areas of public revenue and public service was reserved to the executive.

The majority of the members of the houses were elected Nigerians, although the constitution continued to provide for ex officio members, as well as appointed members to represent interests and communities that had inadequate representation in the houses. The emerging political parties, including the National Council of Nigeria and the Cameroons (NCNC), Action Group (AG), and Northern People's Congress (NPC), participated in the elections to the houses. In the face of further agitation for independence and self-rule, the Macpherson Constitution was subjected to a number of revisions in the London Constitutional Conference of 1953 and the Lagos Conference of 1954.

In 1954, the Lyttleton Constitution went into effect. It divided Nigeria into five parts: the northern, western, and eastern regions; southern Cameroon; and the Federal Capital Territory of Lagos. Legislative powers were transferred to the regions with few exclusive powers reserved for the center. The constitution allocated areas of competence into three legislative lists: the Exclusive Legislative List, specifying the items on which the House of Representatives had the power to make laws; the Concurrent Legislative List, with items on which both the House of Representatives and the regional Houses of Assembly had the power to make laws; and the Residual Legislative List, with items on which only the Regional Houses had the power to make laws. This has become a constant feature in subsequent constitutions designed to foster the division of power between the federal and state tiers of government.

Under the Lyttleton Constitution, the House of Representatives had its own Speaker, a departure from the Macpherson Constitution, under which the governor presided over the house. Under the Lyttleton Constitution, the eastern and western regions achieved self-government in 1957 and the north on March 15, 1959. As agitation for self-rule intensified, further talks were held to fashion acceptable constitutional arrangements for the entire country. In May 1957, the London Constitutional Conference proposed independence for the country in 1959 but not later than April 2, 1960. The conference resumed in 1958 and chose October 1, 1960, as the date for the country's independence. Final constitutional talks were held in May 1960.

Human rights played a very important role in the early development of Nigeria's constitutional history. The agitation for decolonization and self-rule was largely premised on the right of all human beings to nondiscrimination and equality, regardless of race or color, and the right of individuals and people to participate in their own government either personally or through their elected representatives. The importance of constitutional safeguards of individual rights to secure citizens against state repression became apparent in light of the colonial government's resistance to the nationalists' call for independence. In 1958, the Willinks Commission was established to address the fears of minority groups in an independent Nigeria. It proposed the inclusion of a constitutional Bill of Rights, which was in fact adopted.

On October 1, 1960, Nigeria gained independence, and the 1960 Independence Constitution took force. The queen of England remained the country's head of state, represented by the governor-general, Sir Nnamdi Azikwe. The governor-general exercised power and authority on the advice of the Council of Ministers presided over by the prime minister, Sir Abubakar Tafawa Balewa. A bicameral legislature, the National Assembly, was made up of the upper house (the Senate) and the lower house (the House of Representatives). Nigeria remained a federal state made up of three regions—northern, western, and eastern—each led by a regional premier. Each region had its own constitution and its own House of Assembly. The new constitution was the culmination of the progressive introduction of the Westminster parliamentary system of government in Nigeria.

Nigeria's postindependence constitutional crisis commenced almost immediately. By May 29, 1962, a state of emergency had been declared over the western region. Between November 1962 and September 1963, prominent nationalist politicians from the western region stood trial for treason. The crisis in the western region also impacted the legal system and led to a constitutional amendment to remove the Privy Council as the highest court of appeal.

In 1963, Nigeria became a republic. The Republican Constitution of 1963 provided for a president as the head of state, a prime minister as head of the administration, and governors for the regions. The 1963 constitution collapsed as a result of a bloody coup d'état of January 15, 1966, which put in power General J. T. U. Aguiyi-Ironsi. The general tried to impose constitutional changes to put the country under unitary rule. General Aguiyi-Ironsi was killed in another military coup on July 29, 1966, and it is widely believed that opposition to a unitary form of government contributed greatly to the July 1966 coup. The July 1966 coup put in power Major-General Yakubu Gowon.

The Hausa and Fulani of the north saw ethnic overtones in the January 1966 coup, as they had lost a larger proportion of their leaders in the violence than had other groups. As the main leaders of the coup had been from among the Igbo, ethnic violence broke out against Igbo living in the north. As an act of self-preservation, the Igbo declared the secession of the eastern region, where they were the predominant ethnic group. They proclaimed the Republic of Biafra; a punishing civil war ensued from May 30, 1967, to January 12, 1970.

From 1966 to 1979 the military remained in power in Nigeria. By 1975 there were serious disenchantment with military rule and clamor for return to civil rule; it was widely believed that General Gowon's resistance to any transfer of power sparked the coup d'état of July 29, 1975, which ousted him in favor of General Murtala Mohammed. General Mohammed was killed in an unsuccessful coup of February 13, 1976; he was succeeded by his next in command, General Olusegun Obansanjo.

On October 18, 1975, the regime set up a Constitution Drafting Committee (CDC), comprising 50 people under the leadership of Chief F. R. A. Williams. However, Chief Awolowo Obafemi refused to serve as a member of that committee, reducing membership to 49. On September 14, 1976, the CDC submitted its report to General Obasanjo's government, which later established an elected Constituent Assembly led by Justice Udo Udoma. The assembly consisted of 230 members; it was mandated to consider the report and propose an acceptable constitution for Nigeria, to take effect with the return to civilian rule. On the basis of the report submitted to the federal military government by the Constituent Assembly on September 20, 1978, the military government promulgated the Constitution of the Federal Republic of Nigeria, to go into effect October 1, 1979.

The CDC's view was that the overarching objective of the Nigerian constitution should be to foster "an effective leadership that expresses aspirations for national unity without at the same time building up a Leviathan whose powers may be difficult to curb; . . . the need to balance the stakes of politics so that each section . . . will come to feel a sense of belonging to a great nation; the need to develop an approach of consensus to politics and finally the need to accentuate our national inclination towards a bargaining approach to decision-making rather than regarding politics as a game of winner-takes-all." The CDC considered that these goals could not be realized through the Westminster parliamentary system of government. It therefore recommended a departure in favor of the American presidential system of government, which provided for an executive president at the federal level and an executive governor at the state level. The 1979 constitution retained the federal arrangement of three levels of government, the bicameral legislature at the federal level, and the unicameral legislature at the state level. The constitution also retained other features, such as the Exclusive and Concurrent Legislative Lists, which facilitated the sharing of powers among the federal, state, and local governments.

Another military coup in December 1983 ended the democratic rule that had begun on October 1, 1979. The 1983 coup put in power General Muhammadu Buhari, who was himself ousted in August 1984 by another military coup, that of General Babangida. By 1987, General Babangida established the Constitution Review Committee (CRC) to examine the suitability of the 1979 constitution and propose other options. The CRC recommended the retention of the 1979 constitution with some slight modifications. The 1989 constitution entered into force in piecemeal fashion but was finally abandoned with the political crisis that resulted from the annulment of the June 12, 1993, presidential elections by General Babangida. General Sani Abacha succeeded General Babangida in August 1994 and in response to the popular clamor for an immediate return to civil rule inaugurated yet another Constitutional Conference.

The conference produced what is commonly referred to as the 1995 draft constitution. That constitution was, however, neither promulgated nor adopted before the

death of General Abacha in July 1998 and the emergence of the military administration of General Abdulsalami Abubakar that year. The latter, mindful of the widespread dissatisfaction with the 1995 draft constitution, considered it necessary to provide a new constitution for the new democratic dispensation and set up the Constitution Debate Coordinating Committee (CDCC), led by Justice Niki Tobi. The CDCC was tasked with organizing nationwide consultations and indigenous constitution-making efforts and making recommendations for a constitution to "enthrone a true constitutional and democratic system of government in Nigeria." The CDCC divided the country into zones, called for memoranda, organized debates, held special hearings, and traveled to selected sites to listen to views from a wide array of groups. The General Abubakar government, through Decree No. 24 of May 5, 1999, promulgated the Constitution of the Federal Republic of Nigeria in 1999.

The 1999 constitution is Nigeria's fifth since independence and the ninth since the creation of the country by the British colonial government in 1914. The multiplicity of constitutions that have emerged over time cannot be divorced from the fact that the creation of one country out of the many groups found in the territory known today as Nigeria was imposed from the outside. It reflects the challenge of working out acceptable arrangements to address the diversity, aspirations, and fears of the different peoples.

Each effort at constitution making since the 1951 Macpherson Constitution has been a response to the dissatisfactions expressed by the constituent groups and their fear of marginalization within the national polity. The failure to mediate the balance of power of the tiers of government, especially the federal and state levels, effectively has also been a constant source of concern and call for constitutional rearrangements. The penchant of each military government to leave the legacy of a new constitution for the successive democratic government also cannot be ignored. It was believed that the constitution-making process was generally nondemocratic, even when a small number of formal structures for participation were put in place. In more recent times, the failure of governments to realize the aspirations of the people for a country where all citizens are equal and where the welfare of the majority of citizens is adequately ensured has been critical.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Nigeria is contained in a single document known as the Constitution of the Federal Republic of Nigeria, 1999. It is not a transitional document, although there is clamor from some quarters for the convocation of a national conference to engage in constitutional talks. The 1999 constitution remains a stable document, despite its current review in two parallel initiatives of the executive and legislative arms of government in response to popularly expressed dissatisfaction. These reviews are, however, preliminary critiques and are not part of the constitutionally recognized process for constitutional amendment.

The 1999 constitution is the supreme law and establishes Nigeria as a country under constitutional supremacy. All branches of the government (the executive, legislature, and judiciary) as well as all tiers of government (federal, state, and local) derive their powers from the constitution, which delineates the scope of the powers of each branch and tier.

All laws, including international laws, derive their validity from the constitution, and any law that is inconsistent with the constitution is void to the extent of its inconsistency. No treaty between the federation and any other country has the force of law except to the extent that it has been enacted into law by the National Assembly. When, however, the National Assembly enacts the treaty into law in line with the constitutional prescription, the treaty becomes enforceable, and Nigerian courts must give effect to it in the same fashion as all other laws falling within the judicial powers of the courts. A good example is the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which enacts that document as part of Nigerian municipal law.

An international treaty that has been domesticated (enacted locally in line with the constitution) is not necessarily superior to other statutes, although the courts must be mindful of the international nature of obligations created under it. However, an international treaty cannot override the constitution even if it has been domesticated.

BASIC ORGANIZATIONAL STRUCTURE

The 1999 constitution establishes a federal state. Governmental powers are shared by the federal government, the 36 state governments, and 774 local governments. The National Assembly at the federal level is allotted exclusive power to legislate matters in the Exclusive Legislative List, such as defense, citizenship, foreign affairs, banking, currency, and the police. The federal and state legislatures share legislative power over matters contained in the Concurrent Legislative List, which includes collection of taxes; electoral laws relating to the local government; electric power supply; industrial, commercial, and agricultural development; and university, technological, and postprimary education. States have a constitutional duty to make laws to provide for the establishment, structure, composition, finance, and functions of local government councils to implement the local government system. The state legislatures are also deemed to retain the residual powers, that is, powers over matters not stated in either of the two legislative lists.

The functions of the local government as the third tier include participation in the planning and development of their area; collection of rates; establishment and maintenance of cemeteries; licensing of trucks; registration of births, deaths, and marriages; and provision and maintenance of health services.

The constitution provides, in broad terms, the basis of revenue sharing from the Consolidated Revenue Fund between the federal and state levels. It establishes a Revenue Allocation Mobilization and Fiscal Commission, which has the power to review, from time to time, the revenue allocation formulas and operations to ensure conformity with changing realities.

At the state level, each state is headed by an executive governor, who has the power to appoint commissioners, subject to the approval of the State House of Assembly, to assist in running the state. The tenure of the governor is four years, renewable once for another four years through reelection.

The local governments are headed by chairpersons.

LEADING CONSTITUTIONAL PRINCIPLES

The leading constitutional principles are democracy, republicanism, secularism, the rule of law, and separation of powers among three branches of government.

The constitution entrenches representative democracy through periodic elections to the executive and legislative arms of government at all tiers of the federal state. The president, vice president, governors, deputy governors, members of the National Assembly and State Houses of Assembly, local government chairs, and councilors are elected by a simple majority of voters.

Nigeria became a republic on October 1, 1963. This status has been retained in all constitutions to date. The 1999 constitution states that Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria and vests sovereignty in the people of Nigeria.

Section 10 of the constitution prohibits the adoption of any religion as the state religion. This applies to the government of the federation or of a state.

Principles of the rule of law such as the supremacy of the constitution, equality of all persons before the law, and equal access to justice are entrenched in the 1999 constitution. The Constitution of the Federal Republic of Nigeria, 1999, is the supreme law, and all its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria. All citizens are equal before the law, although the constitution grants the president, vice president, governors, and deputy governors immunity from criminal prosecutions while in office.

The powers of government are shared by the three arms of government, to wit, the executive, legislature, and judiciary. These arms check and balance one another's powers in line with the constitutional safeguards.

CONSTITUTIONAL BODIES

The predominant constitutional bodies are the president, the National Assembly, and the courts.

The President

At the federal level, the constitution makes the president the head of state, chief executive of the federation, and commander in chief of the armed forces of the federation. It is the responsibility of the president to execute and implement the policies and programs of the federal administration in line with legislation. The president appoints cabinet ministers and special advisers who assist with running the administration. The president also has the power to appoint the judges of the different courts, exercise the prerogative of mercy, or declare a state of emergency. The president can initiate bills or enter into a treaty on behalf of the country.

The 1999 constitution provides for a presidential system of government at the federal level. Under the constitution, the vast constitutional powers of the president are nonetheless subject to checks through the exercise of the oversight powers of the National Assembly and the judiciary. The tenure of the president is four years, renewable once for another four years through reelection.

A person is qualified for election to the office of the president if that person is a citizen of Nigeria by birth, has attained the age of 40 years, is a member of a political party and is sponsored by that political party, and has been educated up to at least school certificate level or its equivalent. A person is not qualified for election to the office of president if that person has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such other country. A person is also not qualified to be a candidate for president who has been elected to such office at any two previous elections under the law in any part of Nigeria or is adjudged to be of unsound mind. Several other disqualifications are stated in the constitution.

Federal Legislature

The highest lawmaking body in Nigeria is the National Assembly, made up of the Senate and the House of Representatives. There are 109 senators and 360 members of the House of Representatives. All states have an equal number of Senate seats and the federal capital territory has one seat. The number of seats a state has in the House of Representatives, however, varies. Other offices that have been established outside the constitution are the majority leader, minority leader, party whip, and sergeant-at-arms.

A person is qualified to run for the Senate if that person is a citizen of Nigeria and has attained the age of 35 years. A candidate for the House of Representatives must be a citizen of Nigeria and must have attained the age

of 30 years. In either case, the candidate must have been educated up to at least school certificate level or its equivalent, be a member of a political party, and be sponsored by that party.

The Lawmaking Process

There are four stages in the making of legislation. At the first stage, the law is prepared in a draft form called the bill. The bill is then forwarded to either the speaker of the House of Representatives, the Senate president, or the speaker of the state House of Assembly, depending on the house from which it originates. At the second stage, the bill is read to members of the house for the first time by the clerk. The bill is thereafter read to the house a second time and the bill becomes open to debate by members of the house. The bill is then passed to one of the standing committees of the house tasked with deliberating further on the interests and issues on the bill. The committee presents its report to the house and moves as to whether or not there should be a third reading of the bill. During the third reading, the bill is corrected, amended or modified, and then passed.

At the third stage, a printed copy of the passed bill is produced and signed by the clerk of the house. From there it is passed to the other house for assent and then to the president for assent, the fourth stage. The president has 30 days to sign the bill, which becomes law immediately after it is signed. If the president refuses or fails to sign the bill on the expiration of the 30 days, it is recalled by the National Assembly and a joint meeting of the National Assembly shall be convened. If the bill is passed by two-thirds majority of members of both houses at the joint meeting, it becomes law and the assent of the president is required.

The Senate or the House of Representatives at the federal level, and the House of Assembly at the state level, may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee and may by resolution, regulation, or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committee. The house, however, may not delegate to a committee the power to decide whether a bill shall be passed into law.

Courts

The 1999 constitution provides for the establishment of courts of different categories with varying degree of powers to hear and determine cases. The courts that are constitutionally provided for are the Supreme Court, the Court of Appeal, the Federal and States' High Courts, the Sharia Court of Appeal, and Election Tribunals. Although not constitutionally provided for, courts martial, magistrate courts, customary courts, and area courts created under other legislation are constitutionally recognized.

The Supreme Court is the highest court in Nigeria. It is composed of 20 justices presided over by the chief justice of the federation. There is only one Supreme Court in Nigeria, and it is located in the federal capital territory of Abuja. It is generally an appellate court, although it has original jurisdiction in disputes between the federal government and state governments and between state governments. The decisions of this court are final.

The Supreme Court is duly constituted when it consists of at least five judges. However, the court considers an appeal with seven justices in a number of cases, such as criminal proceedings in which any person has been sentenced to death and decisions on any question as to whether any person has been validly elected to the office of president or vice president, whether the term of office of president or vice president has ceased, and whether the office of president or vice president has become vacant.

Just below the Supreme Court is the Court of Appeal. The court has the power to hear appeals from the Federal and State High Courts, Sharia Court of Appeal, and Customary Court of Appeal. It can also hear fresh disputes relating to the election of a person to the office of the president or vice president. The Court of Appeal presently sits in 10 zones of the federation. The court may sit with either three or five judges, depending on the matter before it. The Court of Appeal is headed by the president of the Court of Appeal.

There is only one Federal High Court, although the court has different divisions in the states of the Federation; it is headed by the chief judge. The court is duly constituted when it sits with one judge. The court has original and exclusive jurisdiction only in matters relating to government revenue, banking and financial institutions, and taxation, among others.

Every state in Nigeria has a State High Court. The State High Court has very wide powers and has original as well as appellate powers to entertain both civil and criminal matters.

The Sharia Court of Appeal is more commonly found in the northern parts of Nigeria. It is headed by a person called a grand khadi. The court has jurisdiction to determine issues relating to Islamic personal law, for example, disputes relating to inheritance, succession, and marriage contracted under Islamic law. The Customary Court, as have the Sharia courts, has jurisdiction over personal law governed by customary law, such as dissolution of marriages contracted under customary law and intestate succession and inheritance under customary law. The head of the Customary Court is known as the president. Customary courts are more commonly found in the southern parts of the country.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

An eligible voter must be a Nigerian citizen who has attained the age of 18 years and whose name is in the voters' register made under the electoral laws. To run in

elections for any political post in Nigeria, the candidate must be a Nigerian citizen; he or she must have attained the age of 35 years, or in the case of the president or vice president, must have attained 40 years of age; he or she must be a member of a political party and be sponsored by that party; and he or she must be educated up to at least school leaving certificate level or its equivalent. The elections to the different posts are conducted by the Independent National Electoral Commission.

Election Tribunals

The National Assembly Election Tribunal has, to the exclusion of any other tribunal, original jurisdiction to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly, the term of office of any person under the constitution has ceased, or the seat of a member of the Senate or a member of the House of Representatives has become vacant. The constitution similarly provides for the establishment in each state of the federation one or more election tribunals to be known as the governorship and legislative house's election tribunals that have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of governor or deputy governor or as a member of any legislative house.

POLITICAL PARTIES

The constitution provides for a multiparty political system. At present, there are 30 political parties in Nigeria. The Supreme Court has ruled that it is unconstitutional to impose registration qualifications on political parties, thus ending a practice that was introduced by the national electoral bodies in 1979. Political parties are banned from retaining, organizing, training, or equipping any quasi-military group.

CITIZENSHIP

The constitution provides that every person born in Nigeria before the date of independence either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria and at least one of such parents or grandparents was born in Nigeria; every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and every person born outside Nigeria either of whose parents is a citizen of Nigeria is a citizen of Nigeria by birth. Persons who are not citizens by birth may acquire citizenship by registration or naturalization. Both male and female Nigerians can confer citizenship by birth on their children, but only female spouses of Nigerian citizens can acquire citizenship by registration. Nigerian citizens by birth may hold dual citizenship. A person can forfeit his or her Nigerian citizenship by either renouncing citizenship or in the case of a citizen by registration acquiring another citizenship.

The duties of a citizen include abiding by the constitution; respecting its ideals; helping to enhance the power, prestige, and good name of Nigeria; respecting the rights and dignity of other citizens; and helping to maintain law and order.

FUNDAMENTAL RIGHTS

The constitution distinguishes between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other hand. Economic, social, and cultural rights are included in Chapter 2 of the constitution as Fundamental Objectives and Directive Principles for State Policy. In other words, they are presented as state obligations that are not enforceable through the courts. Civil and political rights are provided in Chapter 4 of the constitution and include the following: right to life; right to the dignity of the human person; right to personal liberty; right to a fair hearing; right to private and family life; right to freedom of thought, conscience, and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination; and right to acquire and own immovable property anywhere in Nigeria.

Impact and Functions of Fundamental Rights

The constitution protects, guarantees, and preserves these human rights and makes all citizens aware of their existence. If any of these rights is violated, a person can seek redress in a court of law.

Limitations to Fundamental Rights

A number of fundamental rights provisions such as the freedom of expression have specific limitation clauses usually referring to limitations that are reasonably justifiable in a democratic society for certain legitimate purposes.

The enforcement of fundamental human rights is limited during the period of a state of emergency.

ECONOMY

The 1999 constitution prescribes economic objectives for the Nigerian state under the Fundamental Objectives and Directive Principles of State Policy. Section 16 prescribes that the state shall harness the resources of the nation and promote national prosperity and an efficient, dynamic, and self-reliant economy; control the national economy in such manner as to secure the maximal welfare, freedom, and happiness of every citizen on the basis of social justice, equality of status, and opportunity; manage and

operate the major sectors of the economy (and retain the right to participate in nonmajor areas); protect the right of every citizen to engage in any economic activities outside the major sectors of the economy (and participate in the major areas as well). In addition, the state is required to direct its policy to ensuring that planned and balanced economic development is promoted, that material resources of the nation are harnessed and distributed as optimally as possible to serve the common good, that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or of a group, and that suitable and adequate shelter, suitable and adequate food, a reasonable national minimal living wage, old age care and pensions, unemployment and sick benefits, and welfare for the disabled are provided for all citizens.

RELIGIOUS COMMUNITIES

The constitution prohibits the adoption of a state religion and allows citizens the freedom of belief and the freedom to choose and practice any religion of their choice. This extends to the right not to be subject to religious education, ceremony, or observance of a religion other than one's own, or, in the case of a child, a religion not approved by one's parent or guardian. It also includes the right not to choose a belief. Religious communities can be established and exist in exercise of religious freedom.

There is, however, no requirement of separation of the state and religion. The constitution itself facilitates the exercise of religious freedom, for example, by the Muslim population. It recognizes Islamic personal law and provides for its enforcement, including the establishment of relevant institutions under the legal system up to the Supreme Court level. Official support for religion is evidenced by the introduction of religious education in public schools and state sponsorship of religious pilgrimages.

While no state has directly adopted any religion as an official or compulsory state religion, a number of states in the northern part of the country have expanded the scope of applicable Islamic law beyond the personal sphere with the adoption of Sharia criminal codes and the introduction of Sharia public law since October 1999. With the pervasive influence of Sharia in the public sphere, including the administration of government, Islam, though not proclaimed as such, becomes effectively a de facto state religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military in Nigeria consists of the army, the navy, and the air force, all under the president as the commander in chief of the armed forces. The functions of the military are to defend the country from external aggression; maintain its territorial integrity and secure its borders from violation on land, sea, or air; and suppress insurrection and act in aid of civil authorities to restore order when called upon to do so by the president. The military has no constitutional power to take over government in a state of emergency or war and remains subject to the president at all times. However, in spite of identical provisions in previous constitutions, the military has taken over on a number of occasions and has, in fact, ruled the country for 31 of its 44 postindependence years. Their usual approach has been to suspend, by means of decrees, aspects of the constitution that prohibit the military takeover of government.

The constitution itself does not mandate compulsory military service but allows for such compulsory service in the armed forces of the federation to be prescribed by an act of the National Assembly.

The president may declare a state of emergency in the federation or any part of it when the country is at war; the federation is in imminent danger of invasion or involvement in a state of war; there is actual breakdown of public order and public safety in the federation or any part thereof to such extent as to require extraordinary measures to restore peace and security; there is a clear and present danger of an actual breakdown of public order and public safety in the federation or any part thereof requiring extraordinary measures to avert such danger; there is an occurrence of imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the federation; there is any other public danger that clearly constitutes a threat to the existence of the federation; or the president receives a request from the governor of a state, with the sanction of a resolution supported by a two-thirds majority of the House of Assembly, to issue a proclamation of a state of emergency in the state when there is in existence within the state any of the situations specified earlier and such situation does not extend beyond the boundaries of the state.

During such a state of emergency, the governor and the legislators are suspended and the president appoints an administrator for the area. In May 2004, President Obasanjo exercised, for the first time, the power under Section 305 of the 1999 constitution when he declared a state of emergency in Plateau State and appointed a sole administrator.

AMENDMENTS TO THE CONSTITUTION

The constitution can be amended by the National Assembly, although the prescribed process is difficult. The constitution prescribes, generally, that before an act of the National Assembly for the alteration of the constitution is passed in either house of the National Assembly, the proposal for such amendment must be supported by the votes of not less than a two-thirds majority of all

members of that house and approved by resolution of the Houses of Assembly of not less than two-thirds of all the states. However, when the proposal attempts to alter the provisions relating to amending the constitution or the fundamental rights provisions, it shall not be passed by either house of the National Assembly unless the proposal is approved by the votes of not less than a four-fifths majority of all the members of each house, and approved by resolution of the Houses of Assembly of not less than two-thirds of all the states.

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Ayodele Atsenuwa

NORWAY

At-a-Glance

OFFICIAL NAME
Kingdom of Norway

CAPITAL
Oslo

POPULATION
4,525,000 (2005 est.)

SIZE
149,405 sq. mi. (386,958 sq. km)

LANGUAGES
Norwegian (two written forms: Bokmål and Nynorsk). Sámi also official language in some districts in the north

RELIGIONS
Protestant 85%, other Christians 3.5%, Muslim 1.7%, secular humanist 1.5%, other 2.3%, unaffiliated 6%

NATIONAL OR ETHNIC COMPOSITION
Norwegian, immigrants (Swedes, Danes, Iraqi, British, Somali, Bosnian, German, Vietnamese, American, Pakistani 4.5%) 7.6%, Sami population and national minorities (Roma, Kvens, Skogfinns, and others, all Norwegian citizens) 1%

DATE OF INDEPENDENCE OR CREATION
May 17, 1814

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Modified unicameral parliament

DATE OF CONSTITUTION
May 17, 1814

DATE OF LAST AMENDMENT
June 27, 2003

Norway is a constitutional monarchy with a parliamentary system of governance, based on the constitution of 1814 as amended and reinterpreted several times since. The principle of division of powers is not explicitly proclaimed in the constitution, although the text is structured into chapters referring to the Executive Power, the Legislative Power, and the Judicial Power.

According to the written constitution, the administration derives its authority from the executive power vested in the monarch. The political power and competence of the monarch in person have decreased gradually since 1814, leading to a different reading of the basic constitutional paragraphs on the monarch's role. Today, the office has a mainly symbolic and unifying function, although some formal powers remain.

Parliamentarianism was introduced in practice from 1884 onward, when it was made clear that the administration, the executive power, cannot govern if it loses the confidence of parliament (called Storting), the legislative power. Today, the administration gains its democratic legitimacy from the Parliament, although this relationship does not follow from the written constitution.

The role of the judiciary has also changed since 1814, to a large extent thanks to new interpretations of the constitution. For example, it is now widely accepted that the Supreme Court has the formal power to invalidate laws that are not in compliance with the constitution, and it has done so on some occasions.

The 1814 constitution cited certain principles of human rights and the rule of law, but freedom of religion was not included until 1964. The original provisions giving the state church system a constitutional basis remain in force, although the interpretation of these provisions has changed. In 1994, a new paragraph stating that the basic human rights are to be respected was included.

CONSTITUTIONAL HISTORY

Norway as a political entity emerged after the struggle of the Norwegian kings (especially Harald I and Olav II) from the ninth and 10 century C.E. to unify the country, which until then had been divided among several chiefs. During the union with Denmark (1381–1814 C.E.), Norway was under the rule of the Danish king and seemed little more than a Danish province. However, it was agreed from the beginning that Norway should be respected as its own legal and political entity.

It is a common understanding in Norwegian constitutional law and legal history that the country upheld its status as a separate state or kingdom despite its actual dependence on Denmark. This self-understanding grew stronger during the 18th century and the Napoleonic wars that followed (1807–14). When the Danish king agreed, at the Treaty of Kiel in 1814, to give Norway to the Swedish king in compensation for his sacrifices, the deal was not accepted by the leading Norwegian public officials. They decided first to devise a constitution for the Kingdom of Norway and then to decide—as an independent country—on the relationship with Sweden.

The constitution was drafted by a committee headed by Christian Magnus Falsen at Eidsvoll. Some of the drafters had been strongly influenced by Enlightenment ideas during their studies at the University of Copenhagen at the end of the 18th century. The elements of human rights, the principle of separation of powers, and the democratic ideals that are to be found in the original 1814 constitution can be understood against this background. The French, English, and American constitutions all influenced the makers of the constitution, which is today the oldest written European constitution still in use.

Although the monarchy was retained, the constitution established a national assembly (Storting) directly elected by the citizens. The national assembly was given legislative power and the authority to decide on taxation and the state budget. The establishment of the Storting was the clearest break with absolute monarchy, which had been introduced in Denmark and Norway in 1661. This new body was inspired by the idea of the sovereignty of the people, which spurred the very process of drafting a constitution.

During the union with Sweden, from 1814–1905, the power balance of the different constitutional bodies changed, thanks to continuous political tension between Swedish rulers and Norwegian politicians and public officials. The personal power and legal competence of the king were largely reduced, while more power accrued to the prime minister and the administration. The introduction of parliamentarianism during the last decades of the 19th century reduced the powers of the administration, making it dependent for legitimacy on the elected Storting instead of the king.

In 1905, the Norwegian parliament prime minister, and government broke with the Swedish king, refusing to accept his decision not to promulgate an important law passed by the Storting. This "quiet revolution," which effectively ended the union with Sweden, was supported by the Norwegian citizens in a referendum by an overwhelming vote of 370,000 to 187. In another referendum the same year, the Norwegian people decided (260,000 to 70,000) to welcome the Danish Prince Carl (who later took the name Haakon VII) as king of the independent Kingdom of Norway, instead of changing to a republican system.

Parliament remained the most powerful political and constitutional body throughout the 20th century, although this situation has not been reflected by changes in the written constitution. The role of the judiciary has also departed from the explicit wording of the constitution, to a large extent because of new interpretations of the constitution and the division of power. For example, it has been widely accepted since the late 19th century that the Supreme Court has the formal power to set aside laws that are not in compliance with the constitution. In practice, Supreme Court has been reluctant to use its powers of judicial review, preferring to harmonize questionable laws with the constitution by means of interpretation.

FORM AND IMPACT OF THE CONSTITUTION

Norway has a written constitution. It is codified in one single document, the Constitution of 1814. The 1814 constitution has been changed by amendments, by new interpretation of existing provisions, and by the development of customary constitutional law and other unwritten conventions and norms. All changes in the written constitution are made in a language resembling that of the original text of 1814, making it difficult for the public to distinguish between the original and new articles.

In addition to the written text, there exists a set of unwritten rules of constitutional order, so-called customary constitutional law. Many fundamental rights guarantees derive from this unwritten tradition, including the principle of legality (the rule of law) and freedom of association of political parties. Parliamentarism, the obligation of the administration to leave office if it loses the confidence of the parliament, is also found as a rule of customary constitutional law.

The unwillingness to make major revision in the written constitution or to make a new constitution might, on the one hand, have contributed to the strong position of the constitution in the legal and political fields, as well as in the mind of the citizens, as a national symbol. On the other hand, the increasing gap between the written constitution and the material constitution (taking all established conventions and customs into consideration) might in the long run also threaten the legitimacy of the written constitution. For example, the role of the monarch has changed in the same period to such an extent

that several of the paragraphs in the constitution are quite misleading. Many references to "the king" are now taken to refer to the administration.

The Norwegian legal system is dualistic. This means that the national legal system and the system of international law have been seen as separate systems, so that international law has no direct impact on national law. International law has to be implemented explicitly into national law to have a more direct impact.

The international treaty with the most extensive direct legal impact on Norway was the 1992 agreement signed, together with other members of the European Free Trade Association (EFTA), with the European Union (EU) to create the European Economic Area (EEA). Under the treaty, as it has been interpreted and implemented, much of EU legislation has entered into Norwegian national legislation, even though Norway is not an EU member state and hence has little influence in shaping the many new laws and directives that are to be implemented as a consequence of the EEA treaty. Norway is a member of the North Atlantic Treaty Organization (NATO).

BASIC ORGANIZATIONAL STRUCTURE

The Norwegian state is centralistic, but with a rather developed system of local and regional self-governance. As of 2004, there were 434 municipalities in Norway, each with an elected municipal council and a local administration. The ideal stated in the Municipality Act is that the municipalities should enjoy a large degree of independence from the state administration, limited only by their law-given duties. The practical freedom of action of the municipalities is also manifested by their budgets, which are decided by the state. In addition to the municipalities, there are 19 regional counties with their own administration. The powers of the county and municipal councils for self-government have been delegated from the state and are set out in legislation, not in the constitution. The principle of local self-governance has been, however, deeply rooted in the political tradition, since the Municipality Act was first introduced in 1837.

LEADING CONSTITUTIONAL PRINCIPLES

According to the constitution (Article 112), no changes to the constitution can be made if they conflict with its "spirit and principles." This provision has been interpreted to refer, for example, to Article 1, which states that Norway is a free, independent, indivisible state, with a hereditary monarchy. Although the constitution normally speaks of the "king," it also provides that the monarch can be a queen.

However, even if monarchy is a principle, there are many other leading principles of the (written or unwritten) constitution that have undermined the power of the monarch. The very character of the monarchy has changed. Today, the monarch has mainly symbolic functions.

Norway is a democratic constitutional monarchy with a parliamentarian system of governance; the source of legitimacy for both law and governance is the will of the people, expressed mainly in parliamentary elections. The constitutional system, as expressed in the written constitution and by customary constitutional law, is also built upon the principle of division of power among the legislative, the executive, and the judiciary.

The state is also generally bound by the principles of the rule of law. This concept is partly expressed in the constitution and underlined by other legislation, for example, concerning the practices of the different levels of state administration.

In addition to these democratic values and principles, some argue that the constitutional provisions on the status of the Evangelical-Lutheran religion as the "official religion of the state" (Article 2, 2) gives the constitution—and hence the state—a foundation in Christian values. This may be true at a historical or symbolic level, but the Supreme Court has underlined that the religious foundation of the state does not put any legal boundaries on the freedom of the Parliament or other constitutional bodies in their general decision making. It is only in decisions concerning the activities of the state church itself ("the church of Norway") that the norms of this church must be taken into account.

CONSTITUTIONAL BODIES

The main constitutional bodies are the Parliament (Storting); the Council of State, which is the administration including the prime minister; the king; and the judiciary.

The Parliament (Storting)

The Norwegian national assembly has served as the highest political body in Norway since the introduction of parliamentarianism in 1884. Elections to the Storting are held every four years, and mandates are distributed according to a system of proportional representation. The Storting comprises 165 elected deputies, all representing a party. It is a modified unicameral parliament: When it is exercising legislative functions, it is divided into two chambers, the Odelsting (three-fourths) and the Lagting (one-fourth), with relatively equal powers. The Storting nominates the members of the Odelsting and the Lagting at its first session after general elections.

The Administration and the King

According to the constitution, the king has the executive power, but in practice the prime minister on behalf

of the Council of State, the administration, serves as the executive power. The administration's most important functions are to submit bills and budget proposals to the Storting and to implement decisions through the ministries. The administration has its democratic basis in the Storting and is headed by the prime minister. Formally speaking, it is the monarch who asks the head of the party that can get majority support in Parliament to form the administration. Decisions of the administration are formally made by the monarch in council (that is, jointly approved by the monarch and the Council of State, which is the administration) every Friday. All royal decrees must be signed by the monarch and countersigned by the prime minister.

The Lawmaking Process

Bills introduced by the administration are submitted first to the Odelsting and thereafter to the Lagting. Members of Parliament can also present suggestions for new laws or legal revision. State budgets and amendments to the constitution are dealt with in the plenary assembly. Amendments to the constitution require a two-thirds majority vote, but otherwise a simple majority is sufficient.

The Judiciary

The ordinary courts of law in Norway consist of the Supreme Court of Justice (Høyesterett), the Interlocutory Appeals Committee of the Supreme Court (Høyesteretts kjöremålsutvalg), the courts of appeal (lagmannsrettene), the district courts (tingrett), and the conciliation courts (forliksrådet), as well as several special courts.

Norway is divided into six territorial jurisdictions and 15 judicial districts. There is no constitutional court. However, the Supreme Court is able to declare void a statute passed by the Storting if it is found to be in contradiction of the constitution. The judiciary is an independent branch of government. This status is underlined by the way judges are appointed and by the tasks and competence of the judiciary. For example, the constitution was amended in 2003 to ensure the independence of the Supreme Court by prohibiting judges of this court to serve simultaneously as elected members of Parliament. All judges are public servants who cannot be fired, a provision that also helps secure their independence.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The participation of the people in the political sphere takes place both through direct elections and through their membership in organizations. Election turnout is usually in the vicinity of 80 percent. General suffrage for men was introduced in 1898 and for women in 1913. The age of majority to be entitled to vote was originally 25 but has been reduced step by step and is currently 18.

POLITICAL PARTIES

Norway has a multiparty system with more than 30 registered parties, of which about one-third are currently represented in the Parliament. Only the Supreme Court can ban a political party, according to certain established criteria.

CITIZENSHIP

Citizenship can be acquired by birth or upon application. A child whose mother is a Norwegian citizen has the right to Norwegian citizenship. Foreigners can apply for Norwegian citizenship according to rules given by law. Citizenship can also be lost according to rules given by law.

FUNDAMENTAL RIGHTS

Among the few basic human rights that were referred to in the original 1814 constitution were freedom of expression, property rights, freedom from torture, and the principle of rule of law in criminal matters. The right to religious freedom was included in 1964, at the 150th anniversary of the constitution. Later, the right to work and the rights of the Sami people were included in a new Article 110.

Since Norway's accession in 1956 to the 1950 European Convention on Human Rights and Fundamental Freedoms, international law in general, and human rights case law from the European Court of Human Rights in particular, has gained an increasingly important role both in constitutional law and in other fields of national law. Norway has ratified all the major United Nations (UN) Human Rights Conventions; in 1994, a new provision that calls on the state to respect and ensure human rights was added to the constitution (in new paragraph 110 c). That article requires that the main human rights treaties be implemented into national legislation by a new law. Such a "human rights law" went into force in 1999. By this law, the 1950 European Human Rights Convention (ECHR) and the two major UN Human Rights conventions of 1966 were incorporated into national legislation. This Human Rights Act did not officially give these conventions a constitutional status. It did, however, state that the conventions should prevail over other legislation if conflicts arise.

Some argue that the human rights conventions have a status between the constitution and other national legislation. Other legal experts have claimed that it is neither possible—nor desirable—to give human rights laws superior status to other legislation without making them part of the constitution. The fact that the Human Rights Act can be changed by Parliament with a regular majority vote (and not a two-thirds majority, as for constitutional changes) clearly shows that it does not have constitutional status.

Impact and Functions of Fundamental Rights

Despite the lack of constitutional status of the human rights conventions, the Supreme Court has in several decisions referred to international human rights provisions, in particular those of the ECHR. In some recent decisions, Norwegian legal provisions have been interpreted so that they are in compliance with the relevant articles of the ECHR. In several Supreme Court decisions, especially after 1999 when the new Human Rights Act came into force, the court referred also to the case law of the European Court of Human Rights, stating that this was a legal source that the court had to take into account.

Limitations to Fundamental Rights

Limitations to fundamental rights in Norway are themselves based on the provisions of the international human rights conventions that Norway has ratified and incorporated in national legislation. Any limitations are based on the need to protect other people's fundamental rights or to protect public morals, order, or health. They must be in accord with the practices of any democratic society. The principle of proportionality must be taken into consideration.

National legislation includes specific limitation provisions. For example, parents' rights are limited in certain areas by provisions that aim to protect the child. This can be relevant if parents refuse to accept medical treatment for a child who is seriously ill. Legislation and court rulings have also dealt with conflicts of rights, for example, in relation to women's rights, on the one hand, and the right to freedom of religion or belief, on the other.

ECONOMY

Apart from stating the budgetary and taxation powers of the parliament, as well as the right to property and the right to work for citizens, the constitution does not give any guidelines for the economic system of Norway. The comprehensive welfare state system that has been developed in Norway, in particular since World War II (1939–45), has no clear constitutional basis, but rather depends on the political will of the majority in each new Parliament. Numerous state regulations and an active welfare policy through legislation and other political decisions, combined with a market economy, make it reasonable to describe the actual Norwegian economic system as a social market economy.

RELIGIOUS COMMUNITIES

According to the constitution, the king is the formal head of the state church, the Church of Norway, and is bound to protect and support this church. The monarch must ensure that the religious leaders of the church are teaching according to the Evangelical-Lutheran religion. The monarch, as well as (at least) half of the cabinet ministers, is obliged to "confess" the Evangelical-Lutheran religion. This is interpreted as a duty to be a member of the Church of Norway (the state church). The monarch, together with those cabinet ministers who are members of the church, makes decisions in certain important matters of church doctrine. One might say that this function is performed by the monarch and ministers as head of the church, and not as head of state.

Legal and political developments in recent decades have increased the independence of the elected church bodies of the Church of Norway at national, regional, and local levels, granting the state church a certain degree of autonomy in practice. On the national level, the church still does not have the status of an independent legal person, although the Church Act of 1996 gave that status to the local parishes. Much of the power that lies formally with the monarch as head of the church has been delegated to the elected church bodies. However, it is still "the king" (the monarch together with the church-member ministers) who appoints bishops and deans in the state church. Appointments are based on nominations from the church bodies, but the politicians are not bound to appoint the person who receives the most votes in the church nomination process. Controversial appointments of bishops who did not receive the most church votes have helped intensify the debate on the changed relations between church and state.

Although Norway still has a constitutionally based state church system, the constitution and other legislation clearly state that freedom of religion for all shall be respected. This right is interpreted to include the right both to have and not to have a religious belief, and the right both for individuals and for faith communities to practice according to their belief as long as the rights of others and the laws applying to all are respected.

Despite the priority given to the Church of Norway in the constitution and in certain fields of practice, the Norwegian religiopolitical system is also based on the principle of equal treatment. For example, the Faith Communities Act of 1969 states that all religious communities have the right to receive the same financial support per member per year as the state church receives from the state and municipal budget per member per year. From 1981, this right has also been applied by law to nonreligious "life stance" communities, in practice mainly the Secular Humanist Association.

While the state church is seen as a public law institution, all other faith and life stance communities have a nonpublic status. They can choose whether they want to be registered or not.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution declares that the king is the head of the Norwegian military and hence makes decisions concerning

the defense forces. The minister of defense, rather than the prime minister, countersigns the monarch's decisions in matters concerning the military.

In states of emergency such as war or similar situations, constitutional provisions can be set aside. The constitutional emergency provisions were further developed in the Emergency Act of 1950.

AMENDMENTS TO THE CONSTITUTION

According to Article 112 of the constitution, the constitution itself can be changed only by a qualified majority vote of two-thirds of Parliament. It also declares that constitutional changes never must undermine the "spirit and principles" of the constitution. This provision has been interpreted to refer, for example, to Article 1 of the constitution, which states that Norway is a free, independent, indivisible state.

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Ingvill Thorson Plesner

OMAN

At-a-Glance

OFFICIAL NAME
Sultanate of Oman

CAPITAL
Muscat

POPULATION
3,001,583 (2005 est.)

SIZE
82,031 sq. mi. (212,460 sq. km)

LANGUAGES
Arabic (official)

RELIGIONS
Ibadhi Muslim 75%, Sunni Muslim and Shia Muslim 12.5%, Hindu 5.6%, Christian 4.9%, Buddhist 0.8%, other 1.2% (2000 est.)

NATIONAL OR ETHNIC COMPOSITION
Arab 48.1%, South Asian (Bangladeshi 4.4%, Pakistani [mostly Baluchi] 15%, Tamil 2.5%) 31.7%, other Arab 7.2%, Persian 2.8%, Zanzibari 2.5%, other 7.7% (2000)

DATE OF INDEPENDENCE OR CREATION
1650 (expulsion of the Portuguese)

TYPE OF GOVERNMENT
Monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral advisory body

DATE OF CONSTITUTION
November 6, 1996

DATE OF LAST AMENDMENT
No amendment

Oman is a hereditary monarchy. Parliament does little more than advise the sultan. The judiciary is declared by the constitution to be independent. The constitution guarantees fundamental rights. Islam is the state religion.

CONSTITUTIONAL HISTORY

Islam was introduced in the seventh century C.E. along with the political rule of the early caliphs. One hundred years later, the Ibadite strain of the new religion arrived, and the preexisting tribal society was politically unified by the Ibadite imams. The Ibadite state was headed by an elected imam who served as the political and religious leader of the country.

Hereditary dynasties competed with the imams for centuries. The Nabhanid dynasty controlled the interior of Oman from the mid-12th century until 1406. The Portuguese sacked the city of Muscat in 1507 and established their rule in the area, but in 1650 the Ya'rubid dynasty recaptured Muscat; the sultans established a maritime empire that stretched south to the east African coast. The Persian ruler Nadir Shah invaded the country in 1737.

Sultan Said Ibn Taymor succeeded to the sultanate in 1932; by then it was a British protectorate. The sultan kept Oman isolated from most of the world, maintaining diplomatic relations only with the United States, the United Kingdom, and India. The sultan did little to develop the country and was overthrown by his son, Quaboos bin Said, in 1970. The new sultan opened the country to the outside world and liberalized the government. He issued the basic law of Oman on November 6, 1996.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Oman is contained in a single written document, called the Basic Law of the State. Laws and

procedures that have the force of law must conform to the provisions of the basic law. No one in the state may issue regulations, decisions, or instructions that contravene the existing laws and decrees or international treaties and agreements that constitute part of the law of the country.

BASIC ORGANIZATIONAL STRUCTURE

Oman is a unitary state subdivided into five regions and three governorates.

LEADING CONSTITUTIONAL PRINCIPLES

The Sultanate of Oman is a fully sovereign Arab Islamic state. The religion of the state is Islam and the Islamic sharia is the basis of legislation. The system of government is a hereditary sultanate. Rule in the sultanate must be based on justice, equality, and consultation with the Shura Council. The constitution sets out further principles concerning the political, economic, social, cultural, and security policies of the state.

CONSTITUTIONAL BODIES

The main constitutional bodies are the sultan, the Council of Ministers, the Oman Council, and the judiciary.

The Sultan

The sultan is the head of state and the supreme commander of the armed forces. His person is inviolable and must be respected, and his orders must be obeyed. The sultan is the symbol of the national unity as well as its guardian and defender. Succession to the sultan passes to a male descendent of Sayyid Turki bin Said bin Sultan. The male who is chosen to rule should be an adult Muslim of sound mind and a legitimate son of Omani Muslim parents.

The sultan guides the general policy of the state, represents the state both internally and externally in all international relations, and presides over the Council of Ministers or appoints a person to serve in that position. The sultan appoints and dismisses high-ranking officials such as cabinet ministers and senior judges. The sultan declares the state of emergency or war, issues and ratifies laws, and signs international treaties and agreements.

The sultan is assisted in drafting and implementing the general policy of the state by the Council of Ministers and specialized councils.

The Council of Ministers

The Council of Ministers is the body entrusted with implementing general state policies. It submits recommendations to the sultan on economic, political, and social as well as executive and administrative matters. It proposes draft laws and decrees and discharges any other competencies vested in it by the sultan or conferred upon it by the provisions of the law.

The sultan can appoint a prime minister and define his or her functions and powers. Prime ministers, deputy prime ministers, and cabinet ministers must be of Omani nationality by birth and at least 30 years old. The sultan himself can fulfill the functions of prime minister.

Specialized councils can be established in accordance with royal decrees that also define their powers and members.

The Oman Council

The Oman parliament consists of the Shura Council (Majilis ash-Shura) and the Council of State (Majilis ad-Dawls). The law specifies the powers of each of these councils, the length of their terms, the frequency of their sessions, and their rules of procedure.

The Shura Council consists of 83 members. They are elected by universal suffrage for four-year terms. They represent the regions of the country and discuss legislative measures. Women can serve on the council.

The Council of State comprises 58 members appointed by the sultan. It acts as an upper house of the Oman Council and discusses policy issues.

The Lawmaking Process

It is the sultan only who decides on the laws. The chambers of the Oman Council have mostly advisory functions. The Shura Council does have a limited right to propose legislation.

The Judiciary

The judicial power is independent and vested in the courts of law. There is no power over the judges in their rulings except the law. Judges can only be dismissed in cases specified by the law. The jurisdiction of military courts is restricted to military crimes committed by members of the armed forces and the security forces. A special Administrative Causes Court adjudicates administrative disputes. Islamic courts decide personal status cases.

THE ELECTION PROCESS

The constitution does not refer to any election procedures. Ordinary law provides for universal suffrage for the Shura Council.

POLITICAL PARTIES

The constitution does not expressly discuss political parties. In practice there are none.

CITIZENSHIP

Nationality is regulated by the law. It may not be forfeited or withdrawn except within the limits of the law.

FUNDAMENTAL RIGHTS

The constitution guarantees a number of fundamental rights such as personal freedom and protection against arbitrary imprisonment. No person may be subjected to torture or humiliating treatment. It is not permitted to perform any medical or scientific experiment on any person without his or her freely given consent. Dwellings are inviolable. Freedom of opinion and expression is guaranteed within the limits of the law. Freedom of press is guaranteed in accordance with the conditions and circumstances defined by the law.

There are also basic duties expressed in the constitution, such as respect for the law and the observance of public order and public morals.

Impact and Functions of Fundamental Rights

The constitution guarantees classic rights such as freedom of opinion and protection against unfair arrest. Fundamental principles obligate the state to provide social and cultural services such as education and public health. Family is declared the basis of society.

Limitations to Fundamental Rights

Many of the fundamental rights are guaranteed only within the limits of the law. For some rights further limitations are specifically established. This applies, for example, to the freedom of the press: It is prohibited to print or publish material that leads to public discord, violates the security of the state, or abuses a person's dignity and his or her rights.

ECONOMY

The constitution sets out certain basic economic principles: The national economy must be based on justice, and its chief pillar is constructive and fruitful cooperation of the public and private sectors. The constitution establishes a free economy within the limits of the law and the public interest. Public property is inviolable; private property is protected.

RELIGIOUS COMMUNITIES

The religion of the state is Islam. The freedom to practice religious rites is protected in accordance with recognized customs provided that it does not disrupt public order or conflict with accepted standards of behavior.

MILITARY DEFENSE AND STATE OF EMERGENCY

The sultan is supreme commander of the armed forces. It is the sultan who declares a state of war or emergency. In the case of martial law the jurisdiction of military courts can be extended to others than members of the armed forces and security forces. In the case of martial law, the provisions of the basic law can be suspended.

AMENDMENTS TO THE CONSTITUTION

The basic law can only be amended in the same manner in which it was promulgated. This means that only the sultan can, by decree, amend the constitution.

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PAKISTAN

At-a-Glance

OFFICIAL NAME
Islamic Republic of Pakistan

CAPITAL
Islamabad

POPULATION
150,694,740 (2005 est.)

SIZE
310,401 sq. mi. (803,940 sq. km)

LANGUAGES
Urdu (national), English (official), Punjabi, Sindhi, Pushto, Baluchi (local)

RELIGIONS
Muslim (Sunni 77%, Shia 20%) 97%, Christian, Hindu, other 3%

NATIONAL OR ETHNIC COMPOSITION
Punjabi, Sindhi, Pashtun (Pathan), Baluch, Muhajir (immigrants from India and their descendants)

DATE OF INDEPENDENCE OR CREATION
August 14, 1947

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament at the center, unicameral legislature in the provinces

DATE OF CONSTITUTION
August 14, 1973

DATE OF LAST AMENDMENT
January 20, 2004

Pakistan is a parliamentary democracy with separation of executive, legislative, and judicial powers. It is a federation of four provinces with a strong federal government at the center. The constitution provides for a number of fundamental rights, which include various human rights and civil liberties recognized internationally. These fundamental rights are enforceable through the courts.

The president is the head of state and enjoys substantial powers in relation to certain executive and legislative functions. The prime minister is the chief executive of the federal government and is elected by the members of the National Assembly, the lower house of the Parliament. The members of the National Assembly and the provincial assemblies are elected through direct elections. A number of political parties participate in the elections.

The constitution declares Islam a state religion but allows freedom of religion to the members of other faiths. The economic system is based on a market economy. The people of Pakistan are diverse, consisting of various ethnic groups speaking different languages and with different cultures. The constitution stipulates that Pakistan should live in peace with all countries in the world and provides for a special relationship with other Muslim countries.

CONSTITUTIONAL HISTORY

Pakistan emerged as a separate independent state on August 14, 1947, after the departure of British rulers from India. Prior to independence, the areas that would become Pakistan formed part of British India. On independence, British India was divided into the Dominions of India and Pakistan under the 1947 Indian Independence Act.

Muslims arrived in India with the invasion of Sindh, a Pakistani province, in 712 C.E. Waves of Muslim conquerors followed until Delhi fell to the Muslims under Muhammad Ghori in 1192. The Delhi Sultanate was founded by Qutubuddin Aibak in 1206, and Muslim power con-

tinued to expand until it reigned supreme over the entire Indian subcontinent. Sultans of five Turkish and Afghan dynasties ruled Delhi until 1526.

Mughal rule began in 1526, when the empire's founder, Babur, conquered Delhi. The great Mughal emperors (1526–1707) are known for laying the foundation of modern administration and introducing a system of agricultural revenue administration that still prevails in India and Pakistan. The Mughals ruled by decrees, each emperor concentrating all executive, legislative, and judicial powers in himself. No written constitutions are known to have existed during the Muslim rule of India from 1206 to 1857. The governments during this period followed a pattern of hereditary monarchy.

The Mughal Empire fell into decline after 1707. The British, who had entered India as traders, gradually extended their control over India at the expense of the Mughals. British expansionism continued unabated, and in 1857 the last of the Mughal emperors, Bahadur Shah Zafar, was defeated by the forces of the British East India Company. The Mughal emperor was exiled to Rangoon in Burma and the British government took direct administrative control of India under the 1858 Government of India Act.

From 1858 onward, the British government in India faced an increasingly strong local opposition movement, first favoring self-government and later complete independence. The British government allowed the people of India some degree of self-government from time to time, until the British Parliament passed the 1935 Government of India Act, giving India a constitutional framework. The act allowed autonomy to the provinces and enlarged the participation of Indians at the center of the government. The act made Sindh a separate province.

General elections were held under the 1935 act. In the provincial elections, the Congress Party (mainly representing Hindus in India) won a majority of seats in eight provinces and consequently formed governments in those provinces. The victory at the polls was regarded by the Congress Party as a mandate to deal with the British on behalf of all Indians. Muslims felt they were not treated equitably in Congress-controlled provinces and became convinced they should seek a separate homeland for themselves. The All India Muslim League, which represented most of the Muslims in India, passed a resolution in Lahore on March 23, 1940, now known as the Pakistan Resolution, in which they demanded that areas in which Muslims were numerically the majority, particularly in the northwestern and eastern zones of India, should be assembled to constitute an independent and sovereign state. This resolution constituted a formal demand for an independent state for Muslims in India and was the starting point of the Pakistan movement.

British Prime Minister Attlee announced on February 20, 1947, that full self-government would be granted to India by June 1948 at the latest. On June 3, 1947, the British government accepted the proposed partition of India and undertook to extend dominion status to the successor governments of India and Pakistan by August 15, 1947.

In the Muslim majority provinces of Bengal, Punjab, and Sindh, the choice of whether to join Pakistan or India was left to the members of the provincial legislative assemblies. However, in Bengal (with a Muslim majority of 55 percent) and Punjab (with a Muslim majority of 57 percent), the assemblies were themselves in effect partitioned. Representatives of districts with a Muslim majority voted as one part, while representatives of Hindu or non-Muslim majority districts voted as another. If either part voted in favor of provincial partition, the province would be provisionally divided on the basis of Muslim majority and non-Muslim majority districts. Thereafter, a boundary commission would divide each province on the basis of contiguous majority areas of Muslims and non-Muslims.

It was on the basis of this constitutional scheme that Bengal and the Punjab were partitioned by the boundary commission; as a result the eastern part of Bengal and the western portion of the Punjab, with Muslim majority districts, formed part of Pakistan. The legislative assembly of Sindh voted in favor of joining Pakistan. In the North-West Frontier, the result of a referendum favored joining Pakistan. Thus Pakistan came into existence on August 14, 1947, as an independent sovereign state.

Under the provisions of the 1947 Indian Independence Act, the 1935 Government of India Act became, with certain necessary adaptations, the working constitution of Pakistan. The 1947 Pakistan (Provisional Constitution) Order established the federation of Pakistan with the provinces of East Bengal, West Punjab, Sindh, North West Frontier Province (NWFP), and Baluchistan. Karachi became the capital of the federation. The Constituent Assembly of India, elected in 1946 before partition, was split in two; the members elected from the areas forming part of Pakistan formed the Constituent Assembly of Pakistan. This Constituent Assembly was assigned the task of framing a permanent constitution for Pakistan.

One of the first constitutional acts of the Constituent Assembly was to pass the Objectives Resolution in March 1949. It emphasized the democratic character of the state by pronouncing that the state would exercise its powers and authority through the chosen representatives of the people of Pakistan. It provided for a guarantee of fundamental rights and aimed to safeguard the legitimate interests of the minorities and backward classes, secure the independence of the judiciary, and provide autonomy for the provinces. This resolution was intended to establish guidelines for the future constitution of Pakistan.

The Constituent Assembly of Pakistan took a long time to draft the constitution. Pakistan was divided into two parts, or wings: East Pakistan with 55 percent of the population on 15 percent of the land area, and West Pakistan with 45 percent of the population on 85 percent of the land area. The two wings of the country were separated by more than 1,000 miles of Indian territory, or approximately 3,000 miles by sea. Four issues remained subjects of contention: national language, proportion of representation of the regions in Parliament, provincial autonomy, and the form of the electorate.

After more than seven years of debate and deliberation, these issues were resolved. Both Urdu and Bengali were declared national languages. Representation in the lower house of Parliament would be determined on the basis of population, and representation in the upper house would be equal for each province or federating unit. The question of whether the electorate would be joint or separate was left open. The federation was allocated authority over a number of important subjects, such as defense, foreign policy, currency, and communications; the remaining subjects were left to the provinces. With these provisions, the draft of the constitution was finalized by the Constituent Assembly in October 1954. Its adoption was postponed to a future session.

On October 24, 1954, Ghulam Muhammad, governor-general of Pakistan, who had been offended by certain provisions passed by the Constituent Assembly curtailing his powers, ordered dissolution of the Constituent Assembly on the pretext that it had taken too long to frame the constitution, and that its members had lost their representative character. This act led to a series of legal battles. In a decision by the Federal Court, the governor-general was advised to hold an election for a successor Constituent Assembly that could then frame and adopt a constitution for Pakistan.

The second Constituent Assembly was elected in June 1955 and adopted the draft constitution on February 29, 1956. The constitution went into force on March 23, 1956. The second Constituent Assembly adopted most of the provisions of the draft constitution finalized by the first Constituent Assembly in October 1954. The provinces of West Pakistan were merged into a single province called West Pakistan and the province of East Bengal was renamed East Pakistan.

The 1956 constitution could have established democracy in Pakistan had it been enforced properly and with sincerity of purpose. Most of its provisions were identical to the provisions of the constitution of India, implemented in January 1950, which has been instrumental in establishing sustainable democracy in India. However, no elections were held under the 1956 constitution. General elections were announced for February 1959, but while the political parties were busy with the campaign, President Sikandar Mirza proclaimed martial law throughout the country on October 7, 1958, and abrogated the constitution. He appointed General Ayub Khan, commander in chief of the Pakistan army, as chief martial law administrator. Ayub Khan soon overthrew President Mirza. After exiling Mirza, he assumed the office of president.

The 1962 constitution drafted under Ayub's control provided for a highly centralized system with a presidential form of government. All the powers of the state were concentrated in the hands of the president, who could even legislate in times of emergency by issuing ordinances, without any approval from the Parliament.

This 1962 constitution did not last long. It was seen by the people of Pakistan as an instrument to allow a military ruler to preserve his position of power. Countrywide political agitation forced Ayub to resign in March 1969. He was succeeded by General Yahya Khan, commander in chief of the Pakistan army. Yahya proclaimed martial law throughout the country and abrogated the 1962 constitution. He promised to hold free and fair general elections on the basis of adult franchise.

General elections for the national and provincial assemblies were held in December 1970. The results were very lopsided. The Awami League, led by Sheikh Mujib, won 167 of the 169 seats allocated to East Pakistan. In West Pakistan, the Peoples' Party, led by Zulfiqar Ali Bhutto, won 60 percent of the 144 seats. This led to a confrontation between the two regions. Yahya, in this complex political situation, refused to transfer power to the Awami League, which had the absolute majority in the National Assembly. When he postponed the meeting of the National Assembly after having summoned it, a revolt broke out in East Pakistan. When negotiations for a political settlement failed, Yahya made the fateful decision to suppress the political uprising through military action, and on March 25, 1971, Mujib was arrested and taken to West Pakistan. The resulting military insurrection in East Pakistan was supported by the Indian government. Ultimately, Indian armed forces invaded East Pakistan, and the Pakistan army surrendered at Dhaka on December 16, 1971. East Pakistan seceded from the Union of Pakistan and became Bangladesh, an independent sovereign country.

After deliberations lasting more than a year, the National Assembly, acting as the Constituent Assembly, adopted a new permanent constitution. The new constitution went into force on August 14, 1973.

As many as seven amendments to the constitution were passed within four years of implementation, effectively diluting the guarantees of fundamental rights and curtailing the jurisdiction and powers of the judiciary. In general elections to the national and provincial assemblies held in March 1977, the opposition made serious allegations of vote rigging and electoral fraud by Bhutto and his Peoples' Party. Political agitation led to the overthrow of the Bhutto government on July 5, 1977, by a military junta headed by General Zia, the army's chief of staff. He imposed martial law and suspended the constitution. Bhutto was arrested, tried for the murder of a political opponent, sentenced to death, and executed in April 1979. General elections were not held until February 1985; the constitution was restored the following month after extensive amendments under Zia's direction.

On October 12, 1999, the federal government, then headed by Prime Minister Nawaz Sharif, was sacked by military generals headed by General Parvez Musharraf, the army's chief of staff. Musharraf did not impose martial law but assumed the powers as chief executive of the federal government and appointed military governors in the provinces. He suspended the constitution and introduced a provisional constitution order. Musharraf also suspended Parliament and the provincial assemblies. Once again, the Supreme Court upheld the military takeover on

the basis of the doctrine of state necessity and conferred on Musharraf the power to amend the constitution.

Musharraf later removed President Rafiq Tarar in June 2001 and assumed the office himself. He held a referendum on April 30, 2002, that backed his continuation as president whatever the outcome of general elections scheduled for October. As a further guarantee, he made extensive changes to the constitution on August 21, 2002, giving primacy to the office of the president. As before, the president has the power to dissolve national and provincial assemblies at his or her discretion and to dismiss the federal and provincial governments. He or she may also appoint important constitutional officeholders such as the chiefs of the armed forces, the chief election commissioner, and provincial governors. The amendments were validated by the new Parliament with only minor modifications in December 2003.

FORM AND IMPACT OF THE CONSTITUTION

The 1973 constitution, a written constitution codified in a single document, has been repeatedly and comprehensively amended to meet the interests of the military rulers and preserve their positions of power. Thus, it has been altered beyond recognition. Its basic structure of parliamentary democracy has been changed. It is dominated instead by presidential powers, and other constitutional institutions matter very little. The prime minister and the cabinet are weak and subordinate to the will of the president. The Parliament has been undermined and most legislation is implemented through presidential ordinances, which Parliament then rubber-stamps. Parliamentary traditions and conventions have not developed because of the extended periods of military rule during which legislatures were nonexistent.

The credibility of other important constitutional institutions, such as the judiciary and the election commission, has been seriously impaired. The constitution has lost its sanctity and importance as the basic law of the country as a result of its repeated abrogation, suspension, and alteration.

BASIC ORGANIZATIONAL STRUCTURE

Pakistan is a federation of four provinces. Punjab is the most populous province with more than 55 percent of the total population of the country. Baluchistan has the largest land area with more than 40 percent of the entire territory of Pakistan, but it has less than 5 percent of the total population. Sindh and NWFP, the remaining provinces, both have substantial populations. Karachi is Pakistan's largest city with a population of more than 10 million people.

The constitution created provincial legislatures and executives as replicas of the institutions at the national level. The federal structure has shown a marked tendency toward centralized control and authority, in part through exploitation of the constitutional duty of the federal government to protect each province against external aggression and internal disturbance. Provincial governments are obliged to exercise their executive authority in such a way as to ensure compliance with federal laws.

The subjects under the legislative and executive authority of the federation include foreign affairs, defense, currency, citizenship, foreign and interprovincial trade and commerce, census, taxes, excise duties and customs, the central bank, postal and all forms of telecommunication, and minerals, including oil and gas. The provincial authority controls subjects such as land revenue, taxes on agricultural income, urban property tax, health, education, and local government. There is a concurrent list of subjects on which both Parliament and provincial assemblies can legislate. In these realms, if there is any inconsistency between the federal and provincial laws on the same subject, the federal law prevails to the extent of inconsistency. The concurrent list includes civil and criminal law, family law, bankruptcy, arbitration, trusts, transfer of property, population planning, drugs, terrorism, and trade unions.

LEADING CONSTITUTIONAL PRINCIPLES

In principle, Pakistan is a federal parliamentary democracy with a division of executive, legislative, and judicial powers. The constitution provides for a unified system of courts: the provincial courts, high courts, and subordinate courts, and the federal court—the Supreme Court of Pakistan—all exercising jurisdiction under all laws, federal, provincial, and local. The judiciary is supposed to be an independent organ of the state, separate from the legislature and the executive.

The constitution enumerates "directive principles of policy" that both the federal and the provincial legislatures and governments must follow. These include preservation of Islamic values among the Muslims in Pakistan; prevention of concentration of wealth in the hands of a few; promotion of social justice by ending illiteracy, by providing free secondary education, and by ensuring inexpensive and expeditious justice; protection of legitimate rights of non-Muslim minorities; participation of women in all spheres of life; strengthening of the bonds of unity among Muslim countries; and advancing of peace and goodwill toward the peoples of the world.

CONSTITUTIONAL BODIES

The predominant executive bodies provided for in the constitution include the president, the prime minister,

and the cabinet, consisting of federal ministers and ministers of state. The legislature consists of two houses, the upper house referred to as the Senate, headed by a chair, and the lower house, the National Assembly, headed by a speaker. At the provincial level the governor, the chief minister, and the cabinet, consisting of provincial ministers, are the principal executive bodies. Each province has a provincial assembly headed by a speaker. The judiciary consists of the Supreme Court of Pakistan and the high courts, one for each province. Other important constitutional officeholders include the chief election commissioner, the comptroller and the auditor general, the attorney general, and the advocates general.

The Federal President

The president is the head of state of the Islamic Republic of Pakistan. The office of president under the original 1973 constitution was a ceremonial office with very little power. Today, after several amendments, the office of the president is the most powerful under the constitution. The president has the power to dissolve the National Assembly at his or her discretion and can instruct a governor to dissolve the provincial assembly of a province. The president can thus dismiss the federal administration and have the provincial administration dismissed. The president also appoints the chief election commissioner and the chiefs of armed forces at his or her discretion. The president can appoint governors in nonbinding consultation with the prime minister. The president appoints the judges of the Supreme Court and the high courts on the advice of the prime minister and in consultation with the chief justices. The president appoints all executive officers, such as ambassadors and civil servants, on the advice of the prime minister.

The president is elected for a period of five years and can be reelected. The electoral college that elects the president consists of both houses of Parliament and the four provincial assemblies. The president must be a Muslim, a citizen of Pakistan, and at least 45 years of age. The president must be qualified to be elected as a member of the National Assembly. The office of president is part of the Parliament, as the president must assent to any bill passed by Parliament in order for it to become law. The president can return a bill with comments for reconsideration. If it is again passed with or without amendment the president cannot withhold assent. The president has the power to legislate through ordinances when Parliament is either dissolved or not in session. However, such presidential ordinances are temporary laws, which expire after four months unless approved by the Parliament within such time.

The Federal Cabinet

Under the constitution, the federal cabinet dominates the government in Pakistan. It is headed by the prime minister, the chief executive of the government. The prime minister runs the federal administration through the cabinet, which consists of the federal ministers and ministers of state. The prime minister selects the cabinet members.

In the first meeting of the National Assembly after general elections, the prime minister is elected by a majority of the total members of the National Assembly. The prime minister can only be removed by a vote of no confidence by a majority of the total members of the National Assembly. The prime minister and the cabinet can be removed by the president after dissolution of the National Assembly, at the president's discretion.

Under the original constitution, the prime minister was to be the dominant figure of Pakistani politics. From 1973 to July 1977, Prime Minister Zulfiqar Ali Bhutto was indeed the dominant political figure in the country. Once again, from the death of Zia in August 1988 to the military takeover by Musharraf in October 1999, Benazir Bhutto and Nawaz Sharif, each serving two terms as prime ministers, were the dominant political figures in the politics of Pakistan. However, when the office of the president is held by a military ruler, the prime ministers have been politically eclipsed.

The Parliament

The Parliament consists of the president and two houses, the Senate and the National Assembly. The members of the National Assembly are elected on the basis of population from territorial constituencies carved by the election commission. The candidate who secures the most votes in that constituency is elected. The National Assembly is elected for a period of five years, but it can be dissolved earlier by the president for one of three reasons: if the president is so advised by the prime minister; if it appears that no member of the National Assembly can command the confidence of the majority of its members; or if it appears that the federal government cannot be carried on in accordance with the provisions of the constitution and an appeal to the electorate has become necessary. This provision has been abused repeatedly by various presidents.

The members of the Senate are elected for a term of six years by the provincial assemblies. Every three years, half of the members of the Senate retire and elections are held for their seats. All provinces, regardless of their size or population, have an equal number of representatives in the Senate. The Senate is a permanent house and cannot be dissolved. Its chairperson, who is elected for a three-year term, succeeds as acting president in case the office of president is vacated as a result of death or resignation.

The Lawmaking Process

The main function of the Parliament is legislation. Bills are generally introduced by the federal cabinet through the prime minister or the relevant committee. Even individual members of Parliament can introduce legislation through what is called a private member's bill.

Any legislation can originate in either of the houses of Parliament except the finance bill (the federal budget),

which originates in the National Assembly. In case of differences between the two houses on any legislation, a joint sitting is called by the president and the legislation is passed in the joint sitting by a majority of those present and voting.

The Judiciary

The constitution requires the judiciary in Pakistan to be independent of the executive and the legislature. The Supreme Court is the highest court in the country. It exercises jurisdiction over all disputes—constitutional, civil, criminal, administrative, and others. The decisions of the Supreme Court are binding on all courts and administrative authorities in Pakistan. All executive and judicial authorities throughout the country are required to act in aid of the Supreme Court to ensure execution and implementation of its decisions, decrees, orders, directives, or writs.

The Supreme Court is the chief interpreter of the constitution. It hears appeals from the provincial high courts and has original jurisdiction in disputes between the federation and a province or among the provinces. It has special original jurisdiction in cases of public importance to issue writs against any violation of fundamental rights.

A high court is the highest court of appeal in a province. It exercises all kinds of jurisdictions under federal as well as provincial laws except in matters of the civil service. It has constitutional jurisdiction to issue writs to the judicial and administrative authorities throughout the province.

The Supreme Court and the high courts have authority to declare any law, federal or provincial, unconstitutional if it is repugnant to the fundamental rights under the constitution or inconsistent with any other provision of the constitution. A judge of a high court or of the Supreme Court cannot be removed before the age of retirement unless recommended by the Supreme Judicial Council, consisting of five senior judges.

The record of the Supreme Court in exercise of its constitutional jurisdiction is mixed and controversial. It has handed down some positive judgments relating to the enforcement of fundamental rights. In contrast, it also has a record of upholding and legitimizing military regimes relying on the doctrine of state necessity. Such judgments have eroded its credibility among the people of Pakistan.

THE ELECTION PROCESS

All citizens of at least 18 years of age are entitled to cast their votes in the elections. Every citizen above 25 years can contest an election to a seat in the National Assembly or a provincial assembly. The minimal age for a candidate to the Senate is 30 years. The elections of the president, houses of Parliament, and provincial assembly are conducted by the Election Commission of Pakistan.

POLITICAL PARTIES

Every citizen of at least 18 years of age has a fundamental right to form or join a political party. Pakistan has a number of political parties that participate in elections. The law requires every political party to have a democratic internal structure and to submit its accounts periodically to the Election Commission.

The federal cabinet may ban a political party if it is of the opinion that the party is working against the sovereignty or integrity of Pakistan. The federal cabinet is obliged to send a reference of any such order to the Supreme Court, and the matter is then subject to the court's judgment. In only one instance has the Supreme Court upheld such an order.

Political parties in Pakistan are weak. In contradiction to the legal requirements, they lack democratic internal structures. Repeated military takeovers have caused immense harm to the development of political parties and the political process in the country. The military regimes have destabilized the political parties in order to perpetuate their own rule.

CITIZENSHIP

Citizenship in Pakistan is acquired either by birth or through nationalization. All persons who entered Pakistan on or before 1951 became citizens of Pakistan by operation of law.

FUNDAMENTAL RIGHTS

The chapter of the constitution on fundamental rights includes a number of human rights and civil liberties. The principal fundamental rights guaranteed by the constitution are as follows: All citizens are equal before the law and are entitled to equal protection of law, no person can be deprived of life or liberty except in accordance with the law, no person can be punished for an act that was not punishable when committed, and there should be no discrimination on the basis of race, religion, caste, sex, or place of birth. All forms of slavery and forced labor have been banned; all torture and cruel or inhuman treatment or punishment are illegal. Every person has a right to acquire, hold, and dispose of property in any part of Pakistan, subject to reasonable restrictions under the law. The dignity of human beings and the privacy of the home have been declared inviolate. Protection is provided against double jeopardy and self-incrimination. All citizens are guaranteed freedom of speech, expression, and press; freedom to assemble peacefully; freedom of association; and freedom to move throughout Pakistan and to reside in any part of the country. Freedom of conscience and the right to profess, practice, and propagate any religion and establish, manage, and maintain religious institutions are also guaranteed. Every citizen has the right to enter into

any lawful profession or professions or to conduct any lawful trade or business.

Impact and Functions of Fundamental Right

Pakistan has a history of very inconsistent enforcement of fundamental rights. Since the first constitution of 1956, fundamental rights have been suspended for a total of about 30 years. Since the constitution of 1973, fundamental rights have been enforceable through the courts for a total of about 15 years. The military regimes have been hostile to fundamental rights, and even the civilian governments have displayed a tendency to suspend or discourage the enforcement of fundamental rights.

Nevertheless, the superior courts have made progressive and liberal judgments regarding the enforcement of fundamental rights, particularly relating to preventive detention, human dignity, forced labor, freedom of association, freedom of movement, and equality before law. In addition, civil society organizations are becoming increasingly aware of fundamental rights and are spreading their awareness to the larger population. It will nevertheless take some time before the general citizens of Pakistan will have faith and place credibility in the process of enforcement of fundamental rights.

Limitations on Fundamental Rights

Fundamental rights are subject to limitations and reasonable restrictions under the law. Such limitations can be imposed in the interest of public order or morality. For example, freedom of speech is subject to restrictions relating to public order and morality, contempt of court, the glory of Islam, or defamation. Similarly, the freedoms of profession, occupation, trade, or business are subject to professional regulations, laws against monopolies, and the licensing of trades or professions. The right to equality and equal protection of the laws has been held to be subject to reasonable classification.

The purpose of such limitations is to ensure that rights are not abused. However, a fundamental right cannot be curtailed or denied on the pretext of regulation, because a fundamental right is not subordinate to an ordinary law. It should be regulated in such a manner that the legitimate enjoyment of the right is not in any way curtailed.

ECONOMY

The constitution does not specify any particular economic system. However, Article 3 provides for the elimination of all forms of exploitation and promotes equitable distribution of economic resources in keeping with individual ability and work performed. The directive principles of policy include securing the economic well-being of the people; preventing the concentration of wealth and the means of production in the hands of a few; providing the basic necessities of life; providing food, clothing, housing, education, and medical relief for citizens incapable of earning their livelihood because of unemployment, sickness, or similar reasons. The right of property has been made subject to a number of constitutional restrictions. Thus, no law that provides for the acquisition of property for providing housing, education, and the maintenance of sick, old, and infirm people is regarded as unconstitutional.

Despite the initial socialist bias of the constitution, the economy has been managed so that the constitutional objectives stated have not been achieved. There is an acute concentration of wealth and resources in the hands of a few individuals. The economy of Pakistan can be described as a market economy.

RELIGIOUS COMMUNITIES

Article 2 of the constitution declares Islam as the state religion of Pakistan. Muslims form 97 percent of the total population. Among the religious minorities, Christians make up the largest percentage. They include both Catholics and Protestants. There are freedom of religion and freedom to maintain religious institutions in Pakistan. The relationship between Muslims and other religious communities has generally been peaceful.

MILITARY DEFENSE AND STATE OF EMERGENCY

It is the duty of the state to maintain armed forces to protect Pakistan against external aggression and internal disorder. The military can also be called in aid of civil authorities in cases of civil commotion or disturbances threatening public peace.

Pakistan maintains a large military machine because of threats from India and instability in Afghanistan, its two chief neighbors. More than one-third of the total budget is allocated for military spending. The military budget cannot be discussed in Parliament. All this makes the presence of the military overwhelming in the affairs of Pakistan.

There are a number of provisions in the constitution relating to proclaiming a state of emergency. The president can declare an emergency if the country is threatened by war or external aggression or by internal disturbances beyond the power of provincial governments to control. Emergency can also be proclaimed in case of a breakdown of the constitutional machinery in a province. The president is also empowered to proclaim a financial emergency when there is a serious threat to the financial stability or credit of Pakistan. During the period of emergency, the operation of certain fundamental rights, such as the free-

doms of movement, assembly, trade and business, speech and the press, and property rights, are suspended.

The history of Pakistan is replete with proclamations of emergency. Time and again, it appears, emergencies were declared not primarily for the stated reasons, but with the aim of depriving the people of their political rights and civil liberties.

AMENDMENTS TO THE CONSTITUTION

The constitution, or any of its provisions, can be amended by an act of Parliament; it needs the votes of not less than two-thirds of the total number of members of the National Assembly and the Senate, voting separately as two houses. No amendment of a constitutional provision affecting the borders of a province can be made unless such an amendment has been approved by a resolution of the provincial assembly of that province by not less than two-thirds of the total members of that assembly.

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Hamid Khan

PALAU

At-a-Glance

OFFICIAL NAME
The Republic of Palau

CAPITAL
Koror

POPULATION
20,016 (July 2004 est.)

SIZE
177 sq. mi. (458 sq. km) Nine principal islands and more than 300 smaller islands lying about 850 km southeast of the Philippines

LANGUAGES
English, Palauan, Sonsoralese, Tobi, Angaur, and Japanese

RELIGIONS
Christian (Roman Catholic, Seventh-Day Adventist, Jehovah's Witnesses, Assembly of God, Latter-day Saints) 65%, Modekngei 25%, other 10%

NATIONAL OR ETHNIC COMPOSITION
Palauan 70%, Asian (Filipinos, Chinese, Taiwanese, Vietnamese) 28%, White 2%

DATE OF INDEPENDENCE OR CREATION
October 1, 1994

TYPE OF GOVERNMENT
Constitutional republic in free association with the United States

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral congress (Olbiil Era Kelulau)

DATE OF CONSTITUTION
January 1, 1981

DATE OF LAST AMENDMENT
Four amendments to the constitution approved November 2, 2004

Palau is a constitutional republic based on the rule of law. The constitution creates a clear division of powers among the executive, legislative, and judicial branches. The constitution also adopts a modified federal system of government. Under the constitution, government responsibilities are shared by the national government and 16 state governments. All powers that are not expressly delegated to the states or denied to the national government are powers of the national government. The national government also may delegate powers to the state governments by legislation.

CONSTITUTIONAL HISTORY

The islands of Palau first were settled by immigrants from Southeast Asia about 2500 B.C.E. Regular contact with Europeans began in the 18th century. In 1886, Pope Leo XIII awarded Spain sovereignty over the islands. After its defeat in the Spanish-American War in 1899, Spain sold Palau to Germany, which administered the islands until 1914, when Japan took control. After the end of World War II (1939–45), the United Nations authorized the United States to administer Palau, along with the other Micronesian islands, as part of the Trust Territory of the Pacific Islands. Palau achieved limited self-government in 1981 with the adoption of the Constitution of the Republic of Palau. In 1985, Palau and the United States signed a Compact of Free Association. However, because of internal debate over provisions of the compact, it was not approved by a constitutionally required referendum until 1993. In 1994, Palau became an independent republic in free association with the United States.

FORM AND IMPACT OF THE CONSTITUTION

Palau has a written constitution that entered into force on January 1, 1981. Article 2 of the constitution makes

the document "the supreme law of the land." No law, act of the government, or agreement to which the government is a party may conflict with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Palau is a federal republic consisting of a national government and 16 states. In addition, each state has its own constitution, governor, and legislature.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution provides that Palau is a republic with a democratically elected government. Under the constitution, government responsibilities are shared by the national government and the states. The rule of law is essential to the Palaun constitution, and there is an extensive list of human rights.

CONSTITUTIONAL BODIES

The main constitutional organs are the president, the National Congress, the judiciary, and the Council of Chiefs.

The President

Palau has a presidential form of government. Under Article 8 of the constitution, the executive branch is headed by the president and the vice president, who are elected for four-year terms. The president and vice president must be at least 35 years old and have been a resident of Palau for the five years preceding the election. A 2004 amendment to the constitution requires that candidates for the offices of president and vice president be elected jointly. The president may not serve for more than two consecutive terms. The president and vice president may be impeached for treason, bribery, or other serious crimes by a vote of at least two-thirds of the members of each house of the Olbiil Era Kelulau. The president and vice president may be removed from office by a recall referendum.

National Congress

Article 9 of the constitution places the legislative power of the national government in the bicameral Olbiil Era Kelulau, which consists of the House of Delegates and the Senate. Among the powers given to the National Congress under the constitution are those to enact laws, impose taxes, regulate commerce, and ratify treaties. Although both houses are equal under the constitution, the Senate has the power to advise and consent to presidential appointments.

The House of Delegates consists of one delegate from each of Palau's 16 states. The number of senators is determined by the Congressional Reapportionment Commission. Currently, there are nine senators. Members of both houses are elected by the people for a four-year term. However, a 2004 amendment to the constitution provides that no person may serve more than three terms as a member of the Olbiil Era Kelulau.

The Lawmaking Process

To adopt a law, both chambers of the Olbiil Era Kelulau must consent.

The Judiciary

Article 10 of the constitution places the judicial power of Palau in a judiciary consisting of a Supreme Court, a National Court, and inferior courts of limited jurisdiction that are established by law. At present, these consist of the Court of Common Pleas and the Land Court. All judges hold office on condition of their good behavior. The Supreme Court consists of a Trial Division and an Appellate Division. It is composed of a chief justice and three to six associate justices. A justice of the Supreme Court may be impeached for cause (i.e., treason, bribery, high crimes, or inability to carry out the functions of the office) by a two-thirds vote of the members of each house of the Olbiil Era Kelulau. Judges of the National Court and the inferior courts may be impeached for cause by a majority vote of the members of each house of the Olbiil Era Kelulau.

The judicial power extends to all matters and to all persons physically within Palau. There are no state courts.

Council of Chiefs

Traditional Palaun culture has undergone change as a result of years of control by Spain, Germany, Japan, and the United States. Although the clan and the system of chiefs still are important, these traditional sources of authority have been superseded by that of elected officials. Article 5 of the constitution attempts to preserve traditional culture by prohibiting the government from interfering with those customary functions of traditional leaders that are not inconsistent with the constitution. It also establishes a Council of Chiefs consisting of the highest traditional chiefs from each of Palau's 16 states. The council advises the president on matters of traditional law and custom. A number of the state constitutions also provide for a council of traditional chiefs to promote traditional ways of life.

The States

Article 11 of the constitution provides that the "structure and organization of the state governments must follow democratic principles, traditions of Palau, and shall not be inconsistent with the constitution." Although the population of Palau's states varies from a few hundred to

more than 11,000, each of the 16 states elects a governor and state legislature.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Article 7 of the constitution provides that all Palauans over the age of 18 have the right to vote in national and state elections. The Olbiil Era Kelulau establishes the residency requirements for national elections while the state sets the requirements for state elections.

POLITICAL PARTIES

Although there have been political parties in the past in Palau, none currently is active in the republic.

CITIZENSHIP

Palaun citizenship is governed by Article 3 of the constitution and the Citizenship Act. Anyone who was a citizen of the Trust Territory immediately prior to January 1, 1981, and had at least one parent of "recognized Palaun ancestry" is a citizen of Palau. A person born of parents one or both of whom are citizens of Palau is also a Palaun citizen. A 2004 amendment to the constitution permits Palauan citizens to become citizens of the United States and other nations without renouncing their Palauan citizenship. A citizen of another country may become a naturalized Palaun citizen only if one or both of the person's parents are of "recognized Palaun ancestry" and the person renounces citizenship in the other country.

FUNDAMENTAL RIGHTS

Article 4 of the constitution contains an extensive statement of fundamental rights. These are freedom of conscience and philosophical and religious belief; freedom of expression and the press; freedom of peaceful assembly, association, and the petition of the government for redress of grievances; and the right to be secure in person, house, papers, and effects against entry, search, and seizure. The constitution also guarantees equality under the law, equal protection, and freedom from discrimination based on sex, race, place of origin, language, religion or belief, social status or clan affiliation; freedom from the deprivation of life, liberty, or property without due process of law; protection against the taking of private property except for a "recognized public use" and for just compensation; and freedom from criminal liability for an act that was not a legally recognized crime at the time of its commission.

There are freedom from double jeopardy for the same offense; a prohibition on the impairment of contracts by legislation; no imprisonment for debt; a requirement that a warrant for search and seizure be issued only by a judge on a showing of probable cause; a presumption of innocence in criminal cases until proof of guilt is established beyond a reasonable doubt; and the right of an accused to be informed of the nature of the accusation, to have a speedy trial, to examine all witnesses, and to be protected against self-incrimination. Further fundamental rights concerning the judiciary are the right to counsel and to reasonable bail, a recognition of the writ of habeas corpus that cannot be suspended, the liability of the national government for damages for unlawful arrest or damage to private property, and the right of a victim of a criminal offense to compensation by the government, or at the discretion of a court.

The constitution prohibits torture; cruel, inhumane, or degrading treatment or punishment; excessive fines; and slavery and involuntary servitude. Citizens have the right to examine any government document and to observe the official deliberations of any government agency. Men and women are guaranteed equality in marital and related parental rights, privileges, and responsibilities.

Impact and Functions of Fundamental Rights

The fundamental rights guaranteed in the constitution generally are respected and remedies lie with the courts for violations. The U.S. Department of State Report on Human Rights Practices—2003 found that the government respected the human rights of its citizens. In particular, it found no reports of arbitrary or unlawful deprivation of life committed by the government or its agents, no political prisons and no reports of politically motivated disappearances, no torture or other cruel treatment of prisoners, no arbitrary arrest or detention and no forced exile, and respect for freedom of the press, assembly, association, and the Internet. A number of domestic and international human rights groups operate without government restraint and government officials are cooperative and responsive.

Limitations to Fundamental Rights

The provisions for fundamental rights in Article 4 of the constitution contain no words about limitations. Many of the sections begin, "The government shall take no action to...." The only limitations on fundamental rights could arise through Section 14 of Article 8, which concerns the state of emergency.

ECONOMY

Although the Palaun constitution does not create a specific economic system for the republic, Article 4 guaran-

tees that a person cannot be deprived of property without due process of law. It also prohibits the taking of private property except for a "recognized public use" and for just compensation.

The Palaun government employs about half of the republic's employed workers. The other principal economic activities are agriculture, fishing, and tourism. There are a large number of foreign workers in the country, principally Filipino.

Under the Compact of Free Association, Palau will receive more than U.S. $450 million over 15 years and be eligible to participate in more than 40 programs of the federal government in the United States.

RELIGIOUS COMMUNITIES

The Palaun constitution provides for freedom of religion, and the government respects the rights of people to practice their religion. About 40 percent of the population are Roman Catholic, 25 percent are Protestant (mainly Seventh-Day Adventists, Jehovah's Witnesses, the Assembly of God, the Liebenzell Mission, and Latter-day Saints), 25 percent belong to the Modekngei religion (indigenous to Palau), and the remaining 10 percent belong to other religions.

MILITARY DEFENSE AND STATE OF EMERGENCY

Palau has no military forces. Under the Compact of Free Association between Palau and the United States, defense is the responsibility of the United States and the United States military is granted access to the islands for 50 years.

Palau has a national police force under the supervision of the minister of justice. It also has a Marine Law Enforcement Division, which patrols the country's borders with the assistance of the Australian government.

Article 8 of the constitution provides that in the event that war, external aggression, civil rebellion, or natural catastrophe threatens the life or property of the people of Palau, the president may declare a state of emergency and temporarily assume legislative powers. However, the president first must be given approval by the Olbiil Era Kelulau for the state of emergency and may not assume emergency powers for more than 10 days without the further approval of the Olbiil Era Kelulau.

AMENDMENTS TO THE CONSTITUTION

Under Article 14 of the constitution, an amendment to the constitution may be proposed by a constitutional convention, by a popular initiative signed by 25 percent of the voters, or by a resolution adopted by at least three-fourths of the members of the Olbiil Era Kelulau. An amendment proposed by one of these methods is adopted if it obtains a majority of the votes cast in a general election.

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Bruce Ottley

PALESTINE

At-a-Glance

OFFICIAL NAME
Palestine

CAPITAL
East Jerusalem

POPULATION
3,512,062 (2005 est.)

SIZE
2,338 sq. mi. (6,055 sq. km)

LANGUAGES
Arabic

RELIGIONS
Muslim 97.8%, Christian 2.1%, other 0.01%

NATIONAL OR ETHNIC COMPOSITION
Arab

DATE OF INDEPENDENCE OR CREATION
Still under occupation; Palestinian Authority established May 4, 1994

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Central authority

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 29, 2002

DATE OF LAST AMENDMENT
March 19, 2003

The Palestinian Authority was created in the West Bank and Gaza Strip on May 4, 1994, as a result of the Oslo Accords for Peace between Israel and the Palestine Liberation Organization (PLO). On January 27, 1996, the legislative body of the Palestinian Authority, known as the Palestinian Legislative Counsel, was elected in the first general political elections, both presidential and legislative, in the West Bank and Gaza. The outcome of the elections was that Arafat was elected president of the Palestinian Authority and 88 members of parliament were elected. The Palestinian Authority has an institutional design permitting the existence of a mixed system of governance headed by the president and an appointed prime minister. The Palestinian political system is based on the principle of separation of powers as stated in the Declaration of Independence (1988), which calls for a parliamentary system of government and the independence of the judiciary.

The Palestinian Legislative Counsel adopted its first draft constitution (the Basic Law) in 1997; it was ratified, in its third draft form, by the president only on May 29, 2002. The Basic Law, as the interim constitution, was subject to several amendments in the process of its transformation into a state constitution.

The Palestinian constitution is still in its draft form, with the expectation that it is to be finalized prior to the long-awaited independence. The Palestinian state will eventually adopt a constitution not different from the current draft, possibly with small modifications reflecting domestic and international demands.

CONSTITUTIONAL HISTORY

Palestine, as have most other states, will adopt the constitution that reflects its particular history and its connectedness to the rest of the world.

Although formulating a constitution is a rare occurrence in the history of a state, Palestine has had a long experience with constitutions and constitutional reform because of its peculiar historical experience. The constitutional legacy starts with the colonial constitution of 1922 enacted by the British mandate authorities. This constitution was still in use in 1948 when the first of a series of Arab-Israeli wars took place. The war ended with the establishment of the state of Israel and Jordanian and Egyptian control over the West Bank, including East Je-

rusalem, and the Gaza Strip, respectively. After that war, the 1952 Jordanian constitution was introduced; it aimed at integrating the West Bank and East Jerusalem into the Hashemite Kingdom of Jordan. Meanwhile, Gaza was under Egyptian military control and in 1955 witnessed the adoption of the Basic Law to act as a precursor to the full constitution of the Palestinian state. Palestinians remained without their own state and constitution with the advent of Israeli occupation in 1967, which put the Palestinian territory under military occupation, a situation that still prevails.

FORM AND IMPACT OF THE CONSTITUTION

Palestine has a written draft constitution, codified in a single document, the Constitution of the State of Palestine. Currently, the constitution is in its revised third draft, ratified by the president. The constitution states that it will take precedence over all other laws in Palestine. In addition, the constitution states that Palestine abides by the charters of the United Nations and Arab League. The absence of effective sovereignty and the presence of Israeli settlements and military occupation forces in Palestine preclude the possibility of enforcing the rule of law under the Palestinian constitution on all residents of the Palestinian territory. As a guiding principle, the constitution will take precedence over all law within the Palestinian state.

BASIC ORGANIZATIONAL STRUCTURE

Palestine is a centralist state, with two disconnected territories: the West Bank, including East Jerusalem, and the Gaza Strip. Palestine comprises 16 districts, five in the Gaza Strip and 11 in the West Bank, East Jerusalem one of them.

LEADING CONSTITUTIONAL PRINCIPLES

Palestine's system of government is a constitutional parliamentary representative democracy, with mixed attributes of both the parliamentary and the presidential systems. There is no effective separation or division of powers, and the lines are more than blurred. The constitution stipulates that Palestine shall be a republic and a democracy with a clear separation of powers and have an independent judiciary, but the reality does not conform to this ideal. Many Palestinians believe that the rule of law is absent, and the Palestinian citizen has most of his or her rights denied by the Israeli military occupation. Islam is a main source of legislation, although the rights of other monotheistic religions are preserved by the constitution.

CONSTITUTIONAL BODIES

The main bodies provided for in the constitution are the president, the parliament, the administration, and the judiciary.

The President

The president of the state is the head of the republic, the defender of the constitution and the unity of the people. The president is responsible for the continuity of the state and its national independence and for maintenance of law and order in public life.

The Parliament

The parliament, which is called the House of Representatives, is the legislative branch. Its seat is Jerusalem. According to the constitution, the house shall be composed of 150 members.

The Lawmaking Process

The government or any member of the House of Representatives may propose a law, and laws approved are published in *The Palestinian Gazette*. They enter into force 30 days after their publication.

The Administration

The constitution also enumerates the administration as well as the cabinet ministers as the executive branch of the state. The cabinet is headed by the prime minister. The House of Representatives must approve the appointment of the cabinet ministers and the program of the administration.

The Judiciary

The Constitutional Court and the Supreme Council represent the judicial branch of the state. These two independent bodies monitor and hold accountable the executive. The Supreme Council by tradition is responsible for all the institutions of the judiciary. The office of the attorney general takes cases of public interest to court in the name of the people in accordance with the law.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

According to the Election Law of 1996, all Palestinian citizens age 18 or older who are formally registered in the electoral list have the right to vote. Palestinian citizens age 35 or older who are resident in Palestine are eligible to stand for presidential office. In all the electoral regulations, the right to vote and stand for office is universal for all Palestinians regardless of religion, ethnicity, or gender.

POLITICAL PARTIES

Palestine enjoys a pluralistic electoral system in which several recognized registered parties compete.

CITIZENSHIP

The legal definition of Palestinian citizenship states that a Palestinian citizen is one who is born within the border of Mandatory Palestine or had legal citizenship status during the same period or one whose ancestors or spouses have been Palestinian citizens. Palestinian citizenship is inalienable and is transmitted from ancestors to offspring.

FUNDAMENTAL RIGHTS

The state of Palestine abides by the Charter of the United Nations and the Universal Declaration of Human Rights. Citizens are equal before the law, and the state is committed to safeguarding their civil, political, social, and economic rights. The track record of Palestine leaves much to be desired in the protection of fundamental rights and liberties, and the Israeli occupation exacerbates conditions.

The constitution stipulates that all citizens enjoy fundamental rights and freedoms including the right to life safeguarded and protected by law without discrimination. All traditional human rights and fundamental freedoms, whether religious, civil, political, economic, social, or cultural, are guaranteed by the state.

Impact and Functions of Fundamental Rights

This adherence to human rights and fundamental freedoms in the constitution will be enforced once a Palestinian state is established. Currently, an intensive debate is taking place in the Palestinian civil society with the aim to ensure that no provision of the constitution will jeopardize the status of fundamental freedom, especially women's rights.

Limitations to Fundamental Rights

It is not permitted to impose any limitation on fundamental rights and freedoms except to the extent necessary to preserve public order and only in a case of emergency, threat of war, or natural disaster.

ECONOMY

The economic system in Palestine is based on the principles of a free market economy, and the state is charged with the task of providing the regulatory framework and the protection of private property. Public companies can be established without prejudice to the aforementioned principles.

RELIGIOUS COMMUNITIES

Palestine is a pluralistic society composed of Muslims, Christians, and Jews, and the constitution guarantees equality in rights and duties to all religious communities. However, the principle of equidistance between the state and the different religious communities is compromised by the fact that the constitution states that "the principles of Islamic sharia" are a major source of legislation. Nonetheless, the constitution reaffirms that Christianity and all other monotheistic religions are accorded sanctity and respect.

MILITARY DEFENSE AND STATE OF EMERGENCY

The state is responsible for the security of person and property. Defending the nation is the duty of the state as well. A state of emergency can be declared for a period of 30 days after consultations of the president, prime minister, and speaker of the House of Representatives Council. This state of emergency can be renewed only once.

AMENDMENTS TO THE CONSTITUTION

The Palestinian constitution is currently in its third draft, ratified by the president on May 4, 2003. The president of the state, the prime minister, or one-third of the members of the House of Representatives Council may request an amendment to the constitution.

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PANAMA

At-a-Glance

OFFICIAL NAME
Republic of Panama

CAPITAL
Panama City

POPULATION
3,000,463 (July 2004 est.)

SIZE
30,193 sq. mi. (78,200 sq. km)

LANGUAGES
Spanish (official)

RELIGIONS
Roman Catholic 85%, Protestant 15%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (mixed Amerindian and white) 70%, Amerindian and mixed (West Indian) 14%, white 10%, Amerindian 6%

DATE OF INDEPENDENCE OR CREATION
November 3, 1903

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral assembly

DATE OF CONSTITUTION
October 11, 1972

DATE OF LAST AMENDMENT
November 15, 2004

Panama is a unitary, republican, and democratic state built on the principle of separation of powers. The country is organized territorially into provinces and *comarcas* (indigenous reservations), most subdivided into districts and *corregimientos* (administrative divisions within districts). Fundamental rights are guaranteed. Judicial remedies exist for protecting those rights, including a special remedy for ensuring international human rights. The preamble calls for Central American regional integration and respect for human dignity. Private initiative in a free market is the cornerstone of the economy, but the state may regulate the economy for purposes of social justice. Panama banned armed forces in 1994. The Panama Canal is declared an inalienable national patrimony. The constitution is difficult to change but offers a so-called parallel constitutional assembly as an amendment method.

In practice, institutional trust has been at times undermined by apparently self-serving decisions of the authorities. Political parties are seen as dominated by elites. The inefficient state administration does not favor efficient market conditions or wealth distribution. Despite several reforms, the constitution of 1972 is still associated with dictatorship. Initiatives are still under way to promote a constitutional convention to adopt a new constitution that would promote the consolidation of a modern and citizen-oriented democracy.

CONSTITUTIONAL HISTORY

With the arrival of Rodrigo de Bastidas in 1501, the Spanish conquest and settlement of the Panamanian territory began, crushing the indigenous population. Since then, Panama has been seen mostly as a convenient path between the Atlantic and Pacific Oceans, perceived as a strategic area by global powers.

Panama separated from Spain on November 28, 1821. It joined the Gran Colombia, a union that comprised Ecuador, Venezuela, and Colombia and lasted until 1830.

On several occasions during the 19th century, Panama tried to separate from Colombia; it gained federal state status within Colombia in 1855. After the Colombian senate rejected a treaty with the United States for building the Panama Canal, Panamanian leaders, with the support of the Americans, declared Panama's independence in 1903.

The Panamanian state began under U.S. tutelage. The constitution of 1904, the first Panamanian constitution in the 20th century, gave the United States the right of intervention. The 1941 constitution removed that right; its sponsor, the authoritarian leader Arnulfo Arias, was later deposed. In 1946, a constitutional convention adopted a constitution that was considered democratic and forward-looking for its time. The democratic era ended in 1968 when the general Omar Torrijos seized power; he later issued the dictatorial 1972 constitution to legitimize his coup.

After the 1977 Panama Canal treaties modernized the colonial relationship between Panama and the United States, an integral constitutional reform took place in 1983. It was welcomed by many, because it eliminated the dictatorial aspects of the 1972 constitution. Nevertheless, the military continued to be influential. In 1987, a clash between the United States and Manuel Noriega's regime ended with the United States invading Panama in 1989. Guillermo Endara, who had won the elections annulled by Manuel Noriega earlier that year, took over the nation's struggling democratization process. Voices for a new constitution began to grow louder.

Despite its several reforms, the 1972 constitution is still associated with the past dictatorship. Panamanian political culture is moving toward more democracy and transparency, and a new constitution able to induce citizens' loyalty seems to many to be the necessary next step.

FORM AND IMPACT OF THE CONSTITUTION

Panama has a written codified constitution of more than 300 articles. Its length is the by-product of the mistrust of the legislature—citizens perceive that representatives sometimes act solely according to their narrow interests. The constitution prevails over all other laws, with the Supreme Court responsible for constitutional review. Yet inconsistent constitutional jurisprudence has weakened it. Finally, universal norms of international law form part of the domestic order.

BASIC ORGANIZATIONAL STRUCTURE

Panama is divided into nine provinces. Governors appointed by the president direct each. Provinces differ in geographical area, population size, and economic strength. Within provinces are municipalities, governed by locally elected mayors.

LEADING CONSTITUTIONAL PRINCIPLES

Panama is a unitary, republican, democratic, and representative state. According to the principle of separation of powers, there is a division of the executive, legislative, and judicial powers. The constitution guarantees fundamental rights.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president, the National Assembly, and the Supreme Court.

The President

The president is the head of state, elected in direct free elections for five years. The president cannot be reelected for two consecutive terms. The president coordinates all public administration, conducts foreign relations, ensures public order, and has regulatory powers. The National Assembly has the authority to impeach the president.

The president appoints and dismisses his or her state secretaries, called ministers. The president chairs the Cabinet Counsel, a consultative body composed of the vice president and the secretaries of state. Among other powers, the cabinet appoints the justices of the Supreme Court and decrees a state of emergency. The National Assembly can censure the state secretaries.

The National Assembly

The National Assembly is the representative body of the people. Its 71 members are elected for five years in direct elections and can be reelected. They enjoy immunity and procedural privileges, but the Supreme Court can investigate them for common crimes. The political parties and the electors can revoke their mandates.

The Lawmaking Process

Organic laws can be proposed by permanent committees of the National Assembly and by state secretaries, with authorization of the Cabinet Council. The Supreme Court, the attorney general, and the electoral court may also propose organic laws, in certain matters related to their roles. Ordinary laws can be proposed by any member of the legislature, a state secretary, or a provincial council president.

All laws must be discussed and approved in three debates. Organic laws must be approved by the absolute majority of the members of the assembly, ordinary laws,

by the majority of the representatives in attendance. The president may approve a bill or may veto it on policy or constitutional grounds. In that case, he or she sends the bill back to the assembly, which can approve it by two-thirds of all its members. If the president vetoes a bill as unconstitutional and the National Assembly insists on its approval, the president sends the bill to the Supreme Court, which makes the final decision.

The Judiciary

The Supreme Court is the highest judicial body. The Cabinet Council, with the ratification of the National Assembly, appoints the justices to a 10-year term. The Supreme Court is organized into four chambers according to the following jurisdictions: civil, criminal, administrative and labor, and general subject matter. Apart from dealing with issues in their respective chambers, all members of the Supreme Court decide constitutional review cases jointly.

THE ELECTION PROCESS

Panamanians over the age of 18 have both the right to stand for and the right to vote in elections. The vote is free, equal, universal, secret, and direct. An independent electoral court of three justices oversees the freedom and honesty of the elections. Each of the traditional state powers—executive, legislative, and judicial—appoints one electoral justice for 10 years.

POLITICAL PARTIES

Political parties are essential for forming the popular will and expressing political pluralism. Parties enjoy public financing and almost monopolize nominations for the National Assembly and the presidency. No political party based on gender, race, religion, or undemocratic doctrines can be organized.

CITIZENSHIP

Panamanian citizenship is acquired by birth to Panamanian parents or by birth on Panamanian territory, regardless of the nationality of the parents. A foreign child who is adopted before he or she is seven years old becomes Panamanian. Citizenship can also be acquired through naturalization by complying with residency requirements. Citizens by birth from Spain or other Latin American countries enjoy reciprocity for naturalization.

FUNDAMENTAL RIGHTS

The constitution guarantees fundamental rights. It ensures a traditional set of liberal human rights and civil liberties such as freedom of speech, freedom of religion, equality before the law, freedom of movement, and due process. In addition, it recognizes social rights concerning family, labor, culture, social assistance, public health, and environment. Other fundamental rights inferable from the constitution can be recognized and thus protected. Fundamental rights are binding on all authorities. Social rights, however, are not in general judiciable; instead, they are meant to guide state policymaking.

Impact and Functions of Fundamental Rights

Along with the judicial protection of fundamental rights, protection of fundamental rights in general is paramount. There is a specialized process for protecting fundamental rights. In addition, an ombudsperson oversees the protection of these rights. Nonetheless, Supreme Court decisions have shown inconsistencies that have promoted mistrust.

Limitations to Fundamental Rights

Fundamental rights may have constitutional limitations, and laws may regulate their exercise. The authorities are constitutionally required to protect the fundamental rights of the inhabitants within the Panamanian jurisdiction.

ECONOMY

Panama has a market economy balanced with principles of social justice. Economic initiative is protected for private persons, but the state can intervene to achieve social justice, for example, by establishing minimal wages. The constitution guarantees the classical liberal rights needed for a free market. The wide array of social rights speaks for a social state.

RELIGIOUS COMMUNITIES

The constitution guarantees religious freedom within no other limitation than respect of Christian morals and public order. It also protects the autonomy of religious associations. No official church exists, but the constitution acknowledges that most Panamanians are Catholic. The state must treat members of all religions equally; however, the Catholic Church's influence on public opinion is noticeable.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution bans all armed forces. A police force is charged with providing public security services. There is

no military service in Panama, but the constitution proclaims the duty of all Panamanians to defend the integrity of the national territory.

AMENDMENTS TO THE CONSTITUTION

The National Assembly, the Cabinet Council, and the Supreme Court have the power to propose constitutional amendments. The process takes place over a period of two successive terms of the National Assembly with an election in between. An absolute majority is needed in both assemblies, and the versions must be identical. In addition, one National Assembly can amend the constitution, after approving the change in two different legislative sessions by absolute majority and referring it to a national referendum for the citizens' approval. Finally, a "parallel constitutional convention" can be convened, either by the executive with the support of the National Assembly or by a citizens' initiative supported by 20 percent of voters. This convention cannot alter the terms of elective offices or take retroactive measures.

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Miguel González Marcos and Salvador Sánchez González

PAPUA NEW GUINEA

At-a-Glance

OFFICIAL NAME
Independent State of Papua New Guinea

CAPITAL
Port Moresby

POPULATION
5,190,786 (2005 est.)

SIZE
178,704 sq. mi. (462,840 sq. km)

LANGUAGES
English, Pidgin, Motu, over 820 other languages

RELIGIONS
Roman Catholic 22%, Lutheran 16%, Presbyterian/Methodist/London Missionary Society 8%, Anglican 5%, Evangelical Alliance 4%, Seventh-Day Adventist 1%, other Protestant 10%, indigenous beliefs 34%

NATIONAL OR ETHNIC COMPOSITION
Papua New Guinea is made of diverse cultures with Papuan 84%, Melanesian 15%, and other 1%

DATE OF INDEPENDENCE OR CREATION
September 16, 1975

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Quasi-federal state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 16, 1975

DATE OF LAST AMENDMENT
January 20, 2004

Papua New Guinea was formerly a colony of Great Britain and Germany, and later of Australia. It became an independent state in 1975. At independence, it became a parliamentary democracy based on the Westminster model of government. This system of government was adopted from the country's former colonial ruler, Australia. There are three arms of government—the legislature, the executive, and the judiciary, which are separate and independent of each other and, in principle, function in a coordinated manner. The country has a quasi-federal system of government.

Papua New Guinea is a constitutional monarchy. Its head of state is Queen Elizabeth II and her heirs. The queen is represented in the country by the governor-general, who is elected by the parliament and holds office for a six-year period. The executive arm of the government is made up of the head of state and the National Executive Council, which is headed and appointed by the prime minister.

The constitution of Papua New Guinea is the supreme law of the land. All legislative, judicial, and administrative acts are subject to the constitution. Any legislation or judicial decision or administrative action that is contrary to the constitution is deemed null and void. Papua New Guinea has entrenched in its constitution fundamental human rights and freedoms. The constitution provides very stringent procedures for amending fundamental rights and freedoms or any part of the constitution itself. Several human rights and freedoms can only be amended by a three-quarters majority of votes in parliament. The judiciary, perceived as the custodian of the constitution, is very independent, strong, and vibrant. The courts are accessible to victims of human rights abuses, who can easily obtain appropriate redress.

CONSTITUTIONAL HISTORY

Papua New Guineans sighted the first Europeans as early as the 15th century. Formal contact was not, however, established until 1884, with the colonization of the country by the British and the Germans. The southern half

of the country became British New Guinea; the northern part, German New Guinea. The British and Germans introduced their laws, which they imposed on the people. It is imperative to note, however, that both the Germans and the British enacted laws that protected the rights of indigenous people to their land and to the practice of their customs in local communities. This legal protection remained until independence in 1975. The diversity of cultures in Papua New Guinea and the prominent role of customary law in local communities today can be attributed to the strong protection given to traditional land, communities, and cultures by the Germans and the British, and later by the Australians.

German New Guinea was controlled through the German New Guinea Company until 1917. After Germany was defeated in World War I (1914–18), German New Guinea became a trust territory of the League of Nations and later the United Nations until independence in 1975. British New Guinea was controlled directly by the British until 1901, when it was transferred to Australia, when that country itself became independent. In 1905, the name of the territory was changed to Papua. Papua remained a colony of Australia until 1975.

In 1949, both territories began to have a single administration controlled by the Australians. The legal and political structure of the colonial administration was regulated under the Papua and New Guinea Act 1949–75, which was considered the constitution of the two territories. Under the colonial administration, political decisions and laws were made in Canberra and applied in Papua and New Guinea.

In 1964 the first elections were held in Papua New Guinea. Two subsequent elections were held (1968 and 1972) prior to independence in 1975. Each of these elections put more Papua New Guineans in the House of Assembly. After the 1972 elections, the first Papua New Guinean chief minister, Sir Michael Somare, was appointed to run the affairs of the two territories. Papua New Guinea became self-governing in 1973, and on September 16, 1975, it became an independent state.

In the period between 1964 and 1972, three parliamentary Constitutional Commissions were established to ascertain whether the country was ready for independence. The 1964 and 1968 Constitutional Commissions both concluded that the country was not yet ready. The 1972 Constitutional Commission, called the Constitutional Planning Committee, reached two significant conclusions: First, it reported to the House of Assembly that the country was ready for independence and that independence from Australia should be sought sooner rather than later. Second, it recommended to the legislature the adoption of a draft constitution that it had prepared. The constitution was adopted on August 15, 1975, a month before independence, and it took effect when the country became independent on September 16. In its first 30 years of independence, the constitution was amended 29 times, the latest amendment on January 20, 2004.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of Papua New Guinea is a written document and is supplemented by organic laws and acts of parliament. The constitution is an exhaustive blueprint, one of the longest written constitutions in the world. The Papua New Guinea constitution is also programmatic: It sets out in detail the development goals and aspirations of the people of Papua New Guinea. These development programs are described in the National Goals and Directive Principles.

The constitution is the supreme law of the land. All laws of the parliament, provincial governments, and local governments, as well as administrative and judicial decisions, must comply with the constitution. Moreover, international law must meet the criteria stipulated in Section 117 of the constitution to be applicable in Papua New Guinea.

BASIC ORGANIZATIONAL STRUCTURE

Papua New Guinea is a quasi-federal state. It has 19 provincial governments and 297 local governments. The provincial and local governments have very little administrative and financial autonomy. Their lawmaking power is also restricted.

The central government has control over the bureaucracy and finances.

Bougainville (an island province) rebelled in 1988, seeking to secede from Papua New Guinea. After a long and protracted struggle, peace was eventually restored on the island in the late 1990s. One of the key demands of the Bougainvilleans was greater political, legal, and financial autonomy. In 2002, the government agreed to this demand by amending the constitution. This preferential treatment has triggered a move by some of the other provincial governments also to seek more legislative, administrative, and financial powers.

LEADING CONSTITUTIONAL PRINCIPLES

The Papua New Guinea constitution is itself the basic legal principle. It is accepted by the people, state institutions, and judicial officials. The rule of law takes center stage. Section 37 of the constitution declares that no one is above the law and that everyone has the right to the protection of the law. The courts are mandated by the constitution to ensure that the rule of law is strengthened and promoted at all levels of government.

The constitution also promotes other principles such as democracy, with its two tenets of responsible gov-

ernment and representative government; separation of powers; principles of natural justice, equality, and participation; and political, social, and religious freedoms. These principles are firmly embedded in the constitution and are zealously guarded by a strong and independent judiciary. Public officials are required by law to ensure that these principles are taken into consideration in their deliberations. An aggrieved party can confidently raise these principles to obtain a remedy from the courts.

CONSTITUTIONAL BODIES

There are two categories of institutions established by the constitution. In the first category are the usual state institutions. These would include the legislature, the executive, and the judiciary and their various instrumentalities such as the head of state, the prime minister, the chief justice, provincial and local governments, and the government departments. The second category of constitutional bodies are what is called constitutional offices. These offices are creatures of the constitution and are independent; they are not subject to the direction and control of the government. These bodies include the ombudsperson commission, the office of the public prosecutor, the office of the public solicitor, the electoral commission, the auditor general, the electoral boundaries commission, the judicial and legal services commission, and the public service commission. Their primary function is to keep a check on the government to ensure that the constitutional principles, and particularly the rule of law, are applied fairly in the operations of government.

The persons who hold constitutional offices must have high integrity, strong character, and an unblemished personal record. These constitutional officeholders are appointed by a bipartisan committee of the parliament. There are stringent rules provided by the constitution for the appointment and removal of constitutional officeholders.

The Head of State

Queen Elizabeth II is the head of state of Papua New Guinea. She is represented in Papua New Guinea by the governor-general, who is elected by parliament in a secret ballot. Once elected, the governor-general holds office for a period of six years and is eligible for reappointment. The head of state may act only upon the instructions of the government. He or she has no legal capacity to act independently. This peculiar role of the head of state has been described by the courts as being a "rubber stamp."

The governor-general can be easily dismissed by a simple vote of the National Executive Council, after informing Her Majesty, Queen Elizabeth II. The dismissal of the head of state is then ratified by parliament.

The head of state appoints the prime minister after his or her election by the parliament and the members of the National Executive Council upon the advice of the prime minister. The head of state also appoints the constitutional officeholders and the heads of state departments and agencies, upon the advice of the appointing authority. It is also the function of the head of state to call for national elections on the advice of the electoral commissioner. After a national election, it is the duty of the head of state to open a new parliamentary term.

The National Administration

The head of state is a member of the national executive. The principal policymaking authority is the National Executive Council, chaired by the prime minister. The members of the National Executive Council hold office at the pleasure of the prime minister. The prime minister thus wields extensive political power. It is the prime minister who determines the number of cabinet posts as well as who should fill them. The prime minister also endorses the appointment of heads of government departments, statutory bodies, and public institutions.

The prime minister is elected into office at the first sitting of parliament after a national election. After the first 18 months in office, a prime minister can be removed through a vote of no confidence. When a prime minister is thus removed, the administration loses office and a new administration is installed. Since independence in 1975, this mechanism has been utilized several times successfully by the opposition parties to remove the incumbent. The no confidence provision of the constitution has been criticized over the years as a major cause of political instability in the country. Several attempts have been made, so far unsuccessful, to extend the 18-month grace period of a new government to 24 or 36 months. These attempts have been attacked as a ploy to keep a rogue government in office.

The National Parliament

The National Parliament is the pinnacle legislative body in Papua New Guinea. There are 109 elected members, who hold office for a period of five years.

From 1964, members of parliament were elected through the "first-past-the post" electoral system, meaning the candidate with a simple plurality of votes could win an election. However, since 2003, a new voting system has been introduced, limited preferential voting. Several by-elections using the new system have been conducted. The 2007 national election will be conducted by the limited preferential voting system.

The Lawmaking Process

The power to make laws is vested in the National Parliament. According to the constitution the parliament's lawmaking power can be transferred to another body or authority. Under the auspices of this provision, provincial and local governments have now been given legislative powers. Provincial and local government laws must be consistent with the constitution, organic laws, and acts of

parliament in order to be enforceable; they are also applicable only in the province or the local government area.

The parliament is empowered by the constitution to make laws for the peace and good order of the country. Laws originate in the form of a government bill or a private member's bill. The bill goes through three readings and, if passed by parliament, becomes law. The constitution makes it clear that a law cannot take force until it has either been certified by the speaker of parliament or complied with a caveat in the law that provides for the manner in which it will go into force.

The Judiciary

The judiciary is made up of the Supreme Court, the National court, district courts, local courts, and village courts. The Supreme Court is the highest court in Papua New Guinea. There are also three specialized courts: the land court, the family court, and the juvenile or children's court.

The judges of the National court and the Supreme Court are appointed by the judicial and legal services commission. The chief justice, on the other hand, is appointed by the National Executive Council. A judicial appointment is not permanent, but subject to review every 10 years. Magistrates of the district and local courts are also appointed and removed by the judicial and legal services commission. Magistrates of the district and local courts also sit as magistrates of land, family, and juvenile courts.

The national court and Supreme Court are the only courts that have the power to deal with human rights issues. All constitutional matters fall within the jurisdiction of the Supreme Court.

THE ELECTION PROCESS

Elections in Papua New Guinea are held every five years. Every Papua New Guinean has the right to vote at age 18 and to stand for public office at age 25.

Elections to the parliament and local governments are supervised by the National Electoral Commission. Since 2003, elections to parliament have been conducted through the limited preferential voting system.

POLITICAL PARTIES

Papua New Guinea is a thriving democracy. It has a pluralistic system of political parties. The constitution provides that every citizen has the right to form an association or political organization and to be a member of an association or a political party. This freedom under Section 47 has provided the impetus for the creation of political parties. In the 2002 national election, more than 40 political parties were registered with the office of the registrar of political parties.

Since independence in 1975, no one political party has enjoyed a majority in parliament. Administrations have been formed and dissolved by coalitions of parties. A political party can be deregistered if it does not meet certain conditions under the law. A politician who is a member of a political party that does not comply with the requirements of the law can be removed from parliament.

CITIZENSHIP

Papua New Guinean citizenship can be acquired in two ways: through birth in the country or through naturalization. All persons born in Papua New Guinea to a Papua New Guinean parent or resident are citizens of the country.

A foreign adult who wishes to become a naturalized citizen must have lived continuously in Papua New Guinea for more than eight years to be eligible for consideration for citizenship. Dual citizenship is prohibited. A naturalized citizen must renounce his or her former citizenship.

FUNDAMENTAL RIGHTS

There are three traditional layers of basic rights. The first layer relates to first-generation rights. These rights comprise civil and political rights. The second set of rights consists of economic, social, and cultural rights. These two sets of rights have close association with the United Nations Universal Declaration of Human Rights. The third layer of rights, these third-generation rights, is centered on collective or fraternity rights.

The constitution gives prominence to first-generation rights. Second- and third-generation rights have not been explicitly adopted by the constitution. The constitution does, however, provide for the creation of other rights, which may implicitly encompass second- and third-generation rights.

Among the classical political, social, and economic rights and freedoms guaranteed by the constitution are freedom from slavery and forced labor, freedom from inhumane treatment, and the right to the protection of property. Also protected are freedom of thought, conscience, and religion; freedom of speech; freedom of peaceful assembly and association; freedom of employment; and the right to privacy.

Functions and Impact of Fundamental Rights

All government agencies and officials and private persons are exhorted by the constitution to give effect to and protect these rights and freedoms. Section 57 of the constitution compels the judiciary and law officers to investigate violations of fundamental rights either on

their own initiative or through an application by a private person. Section 58 of the constitution provides for compensation when breaches of basic rights are proved in a court of law. Interestingly, the constitution also permits the courts and law officers to take preemptive action to prevent the infringement of basic rights if they perceive that an act or omission will result in breaches of such rights.

Limitations of Fundamental Rights

Several of the fundamental rights and freedoms can be limited in only one situation—a declared state of emergency such as a natural disaster, war, or civil strife. The limitation must be clearly spelled out in an act of parliament and can apply only during a state of emergency. At the end of the emergency, full rights and freedoms are restored. An important caveat included in the constitution is that during emergencies human rights and fundamental freedoms can only be restricted and not prohibited or repealed. Thus, the executive or the legislature cannot use the pretext of an emergency to abrogate the rights and freedoms of the people.

ECONOMY

Among the national goals of the country declared in the preamble of the constitution are that the country be politically and economically independent, and the country's economy be self-reliant. The strategy for achieving this objective is provided in Goal 3 of the constitution, which calls for the strict control of the economy by the state. State intervention in foreign investments and the economy was perceived as the means by which Papua New Guineans could achieve self-reliance. Papua New Guineans were called upon to use their profits in economic activities for national development.

The underpinning of the constitution is that Papua New Guinea is a social state. The state is required to provide the resources and facilities to enable the people to enhance their capacities to generate economic gains for themselves and the country.

Over the last 20 years, it has become apparent that the state did not have the capacity to provide the opportunities for Papua New Guineans to enhance their economic well-being. As a result of mismanagement of the economy, deteriorating infrastructure, and lack of government services in the rural areas, Papua New Guinea has been forced by multilateral financial organizations to adopt new economic models to resuscitate the economy. This new approach has meant the abandonment of the socialist principles of the constitution and the adoption of free market economic ideals. The introduction of this new economic model has meant that the 85 percent of the people who live in the rural areas now have to pay for goods and services that were in the past provided free by the state.

RELIGIOUS COMMUNITIES

Papua New Guinea is a predominantly Christian country; the preamble of the constitution declares it to be a Christian country. Respect for other religions including traditional pagan beliefs is, however, protected by the constitution. Freedom of thought, conscience, and religion is guaranteed. There is a clear demarcation between the church and the state. Public officials are free to exercise their faith but are required by the constitution to apply and promote fairness in the conduct of their official duties.

The Christian churches have historically played a pivotal role in the development of the country. They continue to be heavily involved in providing basic health and education and other services to the people, especially those in the remote areas of the country, where there is no government presence. Given the important role the churches play in the development process, the state considers the church as a strategic ally. In this regard, the state supports the efforts of the churches through financial assistance provided through the annual national budget.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military in Papua New Guinea is controlled by the civilian government. There is no commander in chief. Section 98 of the constitution expressly states that the military is directly responsible to the National Executive Council through the minister of defense. The National Executive Council has the power to appoint and remove the commander of the defense force. The Papua New Guinea military is a small force, and, thus, enlistment in the defense force is voluntary. There is no general conscription in the country.

The main function of the defense force is to protect the country against military attack. In peacetime, the military is actively involved in civic duties such as assisting civil servants in the conduct of national elections, in relief work in times of natural disasters, in building of roads and bridges, and in assisting the police in states of emergency.

A state of emergency can only be declared by the governor-general on the advice of the National Executive Council. Once a state of emergency is declared, the parliament is required to meet within 15 days either to approve or to revoke the declaration. The same provision in unequivocal terms transfers the power to supervise and control the emergency to the parliament. The parliament exercises this function through a bipartisan parliamentary committee. Two critical institutions are prohibited by the constitution from taking control of the emergency—the National Executive Council and the military. During a state of emergency, the parliament through the bipartisan committee and the police force are given the mandate to control and supervise the emergency. This provision is

meant to prevent the usurpation of power by the executive or the military.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be amended by the parliament. The constitution itself provides an elaborate set of rules for amending its provisions. Section 17 specifies three different categories of provisions that may be changed, and three corresponding sets of voting rules. The first relates to critical provisions of the constitution, which require a three-quarter majority of votes to effect an amendment. These include primarily the fundamental human rights and freedoms provisions. The second category of provisions require a two-third majority of votes to change. The third category of provisions require only an absolute majority of votes to change.

A proposal to amend the constitution, if approved at the first reading, must pass through a second vote two months after it was introduced in parliament. The two-month interval is designed to enable the members of parliament as individuals and through parliamentary committees to consider the proposed amendment in detail. When the proposed amendment bill is read the second time and passed by parliament, it goes into force and the relevant provision or provisions of the constitution are deemed amended. If the proposed amendment bill is rejected at the second reading, it cannot be reintroduced into parliament.

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Eric L. Kwa

PARAGUAY

At-a-Glance

OFFICIAL NAME
Republic of Paraguay

CAPITAL
Asunción

POPULATION
6,191,368 (2005 est.)

SIZE
157,047 sq. mi. (406,750 sq. km)

LANGUAGES
Spanish, Guaraní

RELIGIONS
Catholic 90%, Protestant 10%

NATIONAL OR ETHNIC COMPOSITION
Mestizo (mixed Spanish and Amerindian) 95%, Indian and European 5%

DATE OF INDEPENDENCE OR CREATION
May 14, 1811 (from Spain)

TYPE OF GOVERNMENT
Constitutional republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
June 20, 1992

DATE OF LAST AMENDMENT
No amendment

Paraguay is a representative, participatory, and pluralistic democracy founded on the recognition of human dignity, where the constitution is the supreme law. The state is unitary, but also decentralized. The national territory is divided into 17 departments and one capital city, Asunción. The departments have political, administrative, and regulatory autonomy.

The government is exercised through executive, legislative, and judicial authorities. These three branches are, according to the constitution, independent, balanced, and coordinated. A system of checks and balance is also established.

The constitution provides for far-reaching guarantees of human rights. Constitutional remedies are established and enforceable by the judicial power, which includes a Supreme Court of Justice that, through its constitutional chamber, is responsible for hearing and resolving cases of unconstitutionality of laws and decisions.

The federal president is both the head of state and the head of the administration. The people, by a simple majority of voters, directly elect the president and vice president. A pluralistic system of political parties has intense political impact.

Religious freedom is guaranteed, and state and religious communities are separated. The economic system can be described as a market economy with a large informal sector such as thousands of microenterprises and urban street vendors. The military force is subject to the state and must abide by the constitution and the law. By constitutional law, Paraguay is obliged to contribute to the search for peace.

CONSTITUTIONAL HISTORY

Paraguay as a political entity emerged in 1811, when its independence from Spain was declared. Internal political instability and the threat of a takeover by Argentina prevented the state from promulgating a constitution. A series of documents were drafted, but they were not constitutions in a formal sense: Their subject was merely the organization of the postrevolution government.

In 1813, a general congress was held, the first of its kind in Latin America. Over 1,000 representatives were elected by universal male suffrage. The congress proclaimed the Paraguayan Republic. José Gaspar Rodríguez de Francia (1766–1840), one of the most important figures in the history of Paraguay, was the first consul. Fulgencio Yegros was the second.

The 1814 general congress named Francia the supreme dictator of the republic; in 1816, he was named dictator for life. Despite the inherent violence of the dictatorship, Francia, almost on his own, succeeded in building a strong, prosperous, safe, and independent nation at a time when Paraguay's continued existence as an independent country seemed unlikely.

In 1840 Francia died without a successor, and in the following few years, many ruling juntas and consuls governed Paraguay. Nevertheless, it was a creative period. On November 25, 1842, independence was ratified by an extraordinary congress. Until then, there had not been a single document that registered the political and legal existence of Paraguay as an independent country. According to the 1842 Independence Act, the objective of the new country was a free and independent nation under the republican system, with a strong connection to the Catholic Church. An 1842 resolution prohibited the existence or tolerance of other religions or the freedom of belief and worship.

Carlos Antonio López (1787–1862) became first consul in 1841, and president of the republic in 1844. At his initiative the first effective constitution of Paraguay was promulgated that same year. This constitution established a basic outline of a division of powers dominated by the executive. Congress had the authority to elect the president of the republic. The 1844 constitution established equality before the law, even equality of rich and poor; the right to move about from place to place; and the right to be heard by the government. The slave trade was prohibited.

On November 11, 1864, under the government of Francisco Solano López (1826–70), son and successor of Carlos Antonio López, the war of the Triple Alliance began. Paraguay's attempt to become a third force between Brazil and Argentina had placed the country against the combined forces of Argentina, Brazil, and Uruguay. The war ruined Paraguay; it lost large territories to Brazil and Argentina, and modernization was dramatically stopped. In 1864, there had been 406,000 people in Paraguay; by the end of the war only 231,000 were left, mostly women, children, and the elderly.

On November 25, 1870, a new constitution was adopted. It guaranteed freedom of belief and worship, but Catholicism remained the official religion. Shipping on the rivers of Paraguay—one of the causes of the war—was opened to all countries. A good number of fundamental rights were established, such as the right to work, freedom of the press, and freedom of association. Slavery was completely abolished.

The 1870 constitution remained in force until 1940, when, after a revolution by soldiers of the Chaco War (1932–33), veterans, students, and workers, a new constitution was promulgated on July 10, 1940. This constitution had a clearly social orientation and was intended to address the social and economic problems of Paraguay. For example, the constitution clearly stated that private interests should never prevail over public interests. Health care and social assistance were established as fundamental duties of the state. The executive remained far more powerful than the other powers, providing a legitimate basis for an open dictatorship.

After further years of political and social unrest, Paraguay suffered a new coup d'état on August 15, 1954, as Alfredo Stroessner, a Chaco War hero, seized power. Continued instability ensued, even including guerrilla fighting. In August 1967, a new constitution was promulgated, giving Stroessner unlimited lifetime power.

After a 35-year dictatorship, another coup d'état in 1989 ended the regime of Alfredo Stroessner and started the process of redemocratization. On June 26, 1992, the current constitution was promulgated. It was the start of a new Paraguay, committed to democratic values and effective guarantees for human rights.

FORM AND IMPACT OF THE CONSTITUTION

Paraguay has a written constitution; codified in a single document, called the Constitution of the Republic of Paraguay (Constitución de la República del Paraguay), it takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Paraguay.

The constitution is the supreme law of Paraguay. The citizens have the right to resist usurpers' seizing public power contrary to the constitution by any means available to them. The hierarchy of norms is established by the constitution itself. Listed in descending order, the constitution; international treaties, conventions, and agreements that have been approved and ratified by congress; laws promulgated by congress; and other legal provisions of lesser rank make up the national legal system.

In addition to its normative function, the constitution represents values and objectives for rebuilding and maintaining government and society.

BASIC ORGANIZATIONAL STRUCTURE

Paraguay is a unitary, indivisible, and decentralized state. The national territory is divided into 17 departments (*departamentos*), municipalities, and the capital city of Asunción, which is a municipality independent of any department. The municipalities enjoy, within the limits of the constitution and the law, political, administrative, and regulatory autonomy regarding their own affairs. They exercise independence in collecting and investing their resources.

Each department is headed by a governor and by a departmental board. The governor represents the executive power and is responsible for implementing national policy. The departments are only administrative entities without any legislative and judicial authority, or even without much executive authority, of their own. Municipalities are local government organizations with legal status. The municipal government is managed by a mayor and by a council elected directly by legally qualified voters.

LEADING CONSTITUTIONAL PRINCIPLES

Paraguay's system of government is a presidential democracy. There is a strong division of the executive, legislative, and judicial powers, based on a system of checks and balances. The judiciary is independent and includes a constitutional court, the Supreme Court of Justice.

The Paraguayan constitutional system is defined by a number of leading principles: Paraguay is a representative, participatory, and pluralistic democracy. It is a unitary, indivisible, and decentralized state. It is a republic and a social state based on the rule of law. In Article 1 the constitution states: "The Republic of Paraguay is and always will be independent. It is constituted as a social state of law, which is unitary, indivisible, and decentralized as prescribed by this constitution and the laws." According to Article 1, the Republic of Paraguay is a democracy founded on the recognition of human dignity.

Suffrage is the main instrument of democracy and is based on universal, free, equal, and secret voting. Political participation is rather strictly shaped through an indirect, representative democracy. Direct democracy is very limited. According to Article 122, certain questions cannot be submitted to a referendum, such as international relations, expropriations, national defense, taxes, the national general budget, or the conduct of national, departmental, or municipal elections.

Human dignity is a leading principle of the constitution. The preamble affirms the principles of representative, participatory, pluralistic republican democracy; national sovereignty and independence; and participation in the international community.

Other principles are contained in the constitution implicitly, such as the value of life, environmental protection, religious neutrality, and equality. There is a strong concern for human rights, including the recognition of the Indian peoples and ethnic groups and of their right to preserve and develop their ethnic identity in their respective territories.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president and the Council of Ministers; the bicameral congress (*Congreso*), consisting of the Senate and the Chamber of Deputies; and the judiciary including the Constitutional Court. A number of other bodies complete this list such as the public defender, responsible for the defense of human rights.

The President

The president is the head of state and the head of the administration of the Republic of Paraguay, responsible for the general administration of the country internally and the foreign representation of the state, including the power to negotiate and sign international treaties. The president has the duty to observe and enforce the constitution and the law and can also issue decrees. The president participates in the lawmaking process by proposing draft legislation to congress and by promulgating laws, ordering their publication, regulating them, and ensuring their enforcement. The president has the right to pardon or alter sentences imposed by judges or courts of the republic.

Although the constitution establishes a division of powers, the president has great visibility and political power. He or she is the chief of the federal administration and of the armed forces. The president is assisted by the cabinet or Council of Ministers, a constitutional body subordinated to the president and responsible for the conduct and management of public business.

The president of the republic is directly elected by the people for a five-year term, by a simple majority of voters, and can be in no way reelected. The president must be a natural Paraguayan national at least 35 years of age.

The president can be removed from office in case of disability, leave of absence, or misdeeds. In the latter case, the president may be forced to undergo impeachment proceedings for malfeasance in office, crimes committed in office, or common crimes (Article 225). The Chamber of Deputies has the authority to press the charges by a two-thirds majority. The Senate then conducts a public trial and can declare the president guilty and remove him or her from office by a two-thirds absolute majority vote. In cases of common crimes, the records of these procedures are then sent to the appropriate regular court.

The Congress (Senate and Chamber of Deputies)

The legislative power is exercised by the Congress, consisting of the Senate and the Chamber of Deputies. Senators and deputies are jointly and directly elected for a term of five years. Reelection is allowed.

Congress has broad authority. With both chambers present, congress administers the oath of office to the president of the republic, the vice president, and the justices of the Supreme Court of Justice. It can also authorize the entry of foreign armed forces into the national territory. Congress has the authority to ensure the observation of the constitution and the laws, and to pass codes and other laws.

The chambers may create joint investigating committees on any matter of public interest or on the conduct of

their members, although the activities of such committees do not affect the exclusive powers of the judiciary nor violate the rights and guarantees granted by the constitution. Any conclusions they reach are not binding on the courts; and their findings are conveyed to an appropriate regular judge.

A member of either chamber may lose his or her seat when there is tangible evidence of improper use of office or a violation that would make the member ineligible for or incompatible with the office according to the constitution.

The Chamber of Deputies

The Chamber of Deputies represents the country's territorial departments. It consists of at least 80 members elected directly by the people in departmental electoral districts. The number of deputies is determined by the Supreme Electoral Court before each election, taking into consideration the number of voters in each department. To be elected as deputy, the candidate must be a Paraguayan natural citizen at least 25 years old.

The Chamber of Deputies has the exclusive power to initiate draft laws concerning departmental or municipal matters or to authorize state intervention in departmental or municipal governments.

The Senate

The Senate consists of at least 45 members elected directly by the people in each district. As the number of voters increases, the number of senators increases in the same proportion. To be elected as a senator, a candidate must be a Paraguayan natural citizen who is at least 35 years old.

Under the Paraguayan constitution, former presidents of the republic who were democratically elected and were not removed from office by impeachment enjoy lifetime membership in the national Senate. However, they do not count toward a quorum.

The Senate has the exclusive power to initiate draft laws concerning the approval of treaties and international agreements and to appoint or propose the appointment of magistrates and officials as provided in the constitution.

The Lawmaking Process

One of the main duties of the Congress is to pass legislation. The right to introduce a bill is possessed by every member of the Senate and the Chamber of Deputies, by the administration, by the people, and by the Supreme Court of Justice. In some cases, this power is restricted exclusively to one chamber or to the administration. For example, the administration introduces legislation on the national general budget.

When a bill has been approved by the chamber where it was proposed, it is immediately submitted to the consideration of the other chamber. If the other chamber approves it, and if the executive power subsequently approves it, the new law is promulgated and published within five days.

The president may veto the bill. In that case, the bill returns for further discussion to the originating chamber. The veto can be overridden by an absolute majority. If it is overridden, the bill is sent to the reviewing chamber, which must also consider the president's objections. If the reviewing chamber overrides the veto by an absolute majority, the original version of the law is approved.

The Judiciary

The judiciary is independent of the executive and legislative branches and is a powerful factor in legal life. The constitution declares that the judicial power is the guardian of the constitution. It interprets the constitution, complies with it, and orders its enforcement.

The judicial branch is responsible for administering justice. Administration is exercised by the Supreme Court of Justice, and by appellate and lower courts as established by the constitution and the laws. There are special courts for civil and criminal cases, courts for tax issues, and a court for external audit, which is part of the judicial power.

The highest court in Paraguay is the Supreme Court of Justice. It ranks above the other branches of the judiciary and has exclusive powers to resolve constitutional disputes. Although the authority to hear and decide cases of unconstitutionality is the most important responsibility of the Supreme Court of Justice, it also serves as a court of final appeals, supervises all branches of the judiciary, and resolves conflicts of jurisdiction and authority in accordance with the law. The Supreme Court of Justice consists of nine members and is divided into two chambers, one of which hears constitutional matters.

To become a member of the Supreme Court of Justice, one must be a natural Paraguayan national, 35 years old, hold a doctorate in law, and enjoy an honorable reputation. Additionally, one must have practiced law, held a court office, or held a teaching job at a law school for at least 10 years. The members of the Supreme Court of Justice are chosen by the Senate with the concurrence of the administration from a list of three candidates proposed by the Council of Magistrates.

The importance of the court arises from the fact that every exercise of state power must be in compliance with the constitution. The Supreme Court of Justice can declare acts of parliament void on grounds of unconstitutionality. Petitions of unconstitutionality may be filed directly before the chamber, or by way of a defense before any other court, and at any moment during a case. In such cases, the respective files are submitted to the Supreme Court.

THE ELECTION PROCESS

All Paraguayan citizens over the age of 18, residing in the national territory, have both the right to stand for election and the right to vote in the election. Foreigners who

have permanent residence papers have the same right in municipal elections.

The president and vice president of the republic are elected jointly and directly by the people, by a simple majority of votes, in general elections held 90 to 120 days before the expiration of the ongoing constitutional term. Senators and deputies and their respective alternates are chosen in elections held simultaneously with that of the president.

The departmental governors and departmental boards are elected directly by the citizens residing in the respective departments through elections held simultaneously with the national general elections.

POLITICAL PARTIES

Paraguay has a pluralistic political party system. The multiparty system is a basic structure of the constitutional order, defined as a pluralistic democracy.

The political parties constitute a fundamental element of public life in the Republic of Paraguay. According to the constitution, the parties must reflect pluralism; participate in nominating and preparing elective officials; provide guidance for national, departmental, and municipal policies; and participate in the civic training of citizens (Article 124). The parties are legal organizations subject to public law; their democratic nature is ensured by the law.

Other forms of political participation are the referendum and the initiative of the people.

CITIZENSHIP

Paraguayan nationality is primarily acquired by birth. A combination of the principles of *ius sanguinis* and *ius soli* is applied. A child acquires Paraguayan nationality if he or she is born in the territory of the republic, or if the child is born abroad, one or both of the child's parents is a Paraguayan national in the service of the republic, or one or both of the parents is a Paraguayan national, and the child decides to reside permanently in Paraguay. Naturalization is possible.

Every Paraguayan national over the age of 18 years is a citizen, as well as every naturalized Paraguayan national two years after obtaining his or her naturalization.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights at the very beginning of its second title. In doing so, the framers of the constitution have emphasized the fundamental importance of the rights of the individual.

The Paraguayan constitution guarantees the traditional, classic set of human rights and guarantees social human rights, such as the right to work, labor rights, the right to education, the right to health, and even the right to a healthy environment, which is an aspect of the third generation of fundamental rights. The Indian peoples have their fundamental rights guaranteed in the same section of the constitution. In sum, the constitution guarantees a large number of fundamental rights that have great importance in Paraguay.

The starting point for human rights in the constitution is the guarantee of the right to live. Article 4 states: "The right to live is inherent to the human being. Its protection is guaranteed, in general, after the time of conception. The death penalty remains abolished. Each individual's physical and psychological integrity as well as his or her honor and reputation will be protected by the State. The law will regulate the freedom to dispose of ones own body, but only for scientific or medical purposes."

Human dignity is not guaranteed as a fundamental right, but it is a principle that is expressly stated by the constitution. According to the preamble of the constitution, the Paraguayan people recognize human dignity for the purpose of ensuring freedom, equality, and justice. Article 1, Title 1 (about basic principles), also says: "The Republic of Paraguay adopts as its system of government a representative, participatory, and pluralistic democracy, which is founded on the recognition of human dignity." Establishing human dignity is thus one of the most important general principles in the constitution, which also specifically guarantees numerous rights. The basic rights set out in the constitution are binding on the legislature, the executive, and the judiciary, as directly applicable law. Thus they are binding for all public authorities in any circumstances in which they act.

Article 7 establishes the right to a healthy environment: "Everyone has the right to live in a healthy, ecologically balanced environment. The preservation, recovery, and improvement of the environment, as well as efforts to reconcile these goals with comprehensive human development, are priority objectives of social interest. The respective laws and government policies will seek to meet these objectives."

Chapter 2 deals with rights relating to personal freedoms. Article 9, regarding individual freedom and security, declares that "everyone has the right to have his or her freedom and security protected. No one may be forced to do anything that is not mandated by law, and no one may be prevented from doing something that is not prohibited by law." The general equal treatment clause is contained in Article 46, which guarantees that all residents of the republic are equal before the law. This fundamental right is stated as a catch-all provision and then expanded by a number of specific provisions such as a guarantee of equality of men and women and of equal access to justice. A special rule related to affirmative action is provided in Article 46 (2): "Guarantees aimed at preventing unfair inequalities will not be considered discriminatory, but egalitarian factors."

The constitution distinguishes between human rights, which apply to every human being, and those fundamen-

tal rights reserved for Paraguayans only. Examples of general human rights are the right to live and the right to freedom; examples of Paraguayans' rights are the freedom of movement, the freedom to reside where one chooses, and the right to equal treatment.

Impact and Functions of Fundamental Rights

The 1992 constitution was promulgated after a dictatorship that lasted 34 years. During this period, there were no limitations on the executive power, which dominated the legislative and the judiciary powers. The 1992 constitution represents a new, modern, and democratic Paraguay.

The provisions on fundamental rights were particularly meaningful to Paraguayans, immediately after a dictatorship, as a symbol of redemocratization. The new state would consider all the people—the Indian peoples were explicitly recognized—and the minimal rights that make possible a dignified existence. In addition to the classic fundamental rights, social and solidarity rights were guaranteed, in order to allow their effective exercise.

Fundamental rights have a strong impact in public life. The state shall respect and protect these rights in the lawmaking process, the application of the law, and its interpretation. The fundamental rights shall, however, also be respected by individuals because these rights represent a choice of values that is valid even in private life.

However, the rights and guarantees provided are more symbolic than effective. The Amnesty International Report 2003 states that during the year 2002 there were instances in which the security forces were guilty of excessive force, failure to investigate killings, torture, ill treatment of conscripts, and recruitment of minors.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not absolute, but have limitations established by the constitution itself. The limits relate to the specific needs of the public and the rights of others.

For example, Article 109 guarantees the right to private property. However, the constitution requires that private property have a socioeconomic function: Its use should contribute to the commonweal.

ECONOMY

The Paraguayan constitution establishes principles concerning the economic system (Articles 176–180), which must be respected by the state and its agencies. The fundamental goal of the state's economic policy must be the promotion of socioeconomic and cultural development.

The state is mandated to promote orderly, sustained economic growth through the rational use of available resources, in order to create new sources of jobs, to increase the national wealth, and to ensure the well-being of the people. Comprehensive programs are to be devised to coordinate and guide national economic activities.

Rights provisions protect the freedom to own property, the right to be fully employed without discrimination, and the right to form associations and trade unions. Additional economic rights, such as free competition, free circulation of goods, and intellectual property rights, are also protected.

Paraguay is defined by constitutional law as a social state, providing for minimal social standards. Taken as a whole, the Paraguayan economic system can be described as a social market economy, according to the constitution. However, in practical terms the economy is marked by a large informal sector with thousands of microenterprises and urban street vendors.

RELIGIOUS COMMUNITIES

Freedom of religion, ideology, worship, and belief, which is guaranteed as a fundamental right, also involves rights for the religious communities. According to the Paraguayan civil code, the churches are legal entities (Article 91).

There is no established official religion, and public authorities are required to be strictly neutral in their relations with religious communities. The independence of all religious denominations is limited only by the restrictions imposed by the constitution and the law.

The constitution guarantees that no one may be disturbed, questioned, or forced to give testimony by reason of his or her religion, beliefs, or ideology. The right to conscientious objection for ethical or religious reasons is recognized in those cases in which the constitution and the law permit it.

Freedom of religion is also guaranteed by the constitution for the Indian peoples, who have the right to pursue their customary religious practices freely. In its provisions on education and culture, the constitution guarantees the right to have a religious education.

Despite the essential separation of religion and the state, there are many areas in which they cooperate. For example, the churches receive subsidies from the state.

All past Paraguayan constitutions have stressed the connection between the state and the Catholic Church. The Catholic religion was, until the 1967 constitution, the official religion.

The 1992 constitution clearly states that relations between the state and the Catholic Church are based on independence, cooperation, and autonomy. Nevertheless, the influence of the Catholic Church in social and public life is very strong. The church strives to act as the representative and defender of the people against poverty, when the state fails to do so. It also intervenes in issues of public health and personal relationships, for example, protesting the adoption of the "morning-after" pill, a current issue of public debate in Paraguay.

MILITARY DEFENSE AND STATE OF EMERGENCY

The federal government is responsible for creating and maintaining the armed forces. The commander in chief of the armed forces is the president of the republic; this office may not be delegated.

The constitution calls the armed forces a national institution, organized as a permanent, professional, nondeliberative, and obedient force (Article 173), subordinated to the state, the constitution, and the law. Its mission is to safeguard the integrity of the national territory and to defend the legitimately constituted authorities. The constitution also provides for the existence of military courts with exclusive jurisdiction to hear crimes and disciplinary violations of a military nature, committed by military personnel on active duty. If there is doubt about the nature of the violation, it is considered a civilian violation.

According to Article 129, every Paraguayan must be prepared for, and must complete, service in the armed defense of the country, not to exceed 12 months in times of peace. This obligation is not mandatory for women, Indians, or conscientious objectors. Women may be required to serve, in an auxiliary capacity, only if necessary during an international armed conflict.

The law currently requires all men over the age of 18 to perform basic service. In addition, there are professional soldiers who serve for fixed periods or for life. Conscientious objectors can file a petition to be excluded from military service; they must then provide services to benefit the civilian population in aid centers designated by the law, under civilian jurisdiction. The constitution bans punitive treatment of conscientious objectors or heavier burdens than those imposed on conscripts. The constitution prohibits personal military service that is not determined by law or is set up for the benefit of private citizens or organizations.

The constitution outlines in detail the state of emergency (Article 288). It is said to exist in cases of international armed conflict, whether formally declared or not. A state of emergency also exists in cases of serious internal upheaval that poses an imminent threat to the constitution or to the regular functioning of the organizations created by it. The powers of the civil authorities remain essentially intact; there are no significant increase in the powers of the military and no martial law even in the exceptional case of a state of defense. Nor may fundamental rights be limited. The only exceptions are that the executive branch may order the detention of persons suspected of participating in these events and their transfer from one place to another within Paraguay. The suspect always has the option of leaving the country. The executive may also prohibit public meetings or demonstrations at these times.

AMENDMENTS TO THE CONSTITUTION

The constitution has been designed to be difficult to change. Amendments can be initiated by a quarter of the members of either of the two chambers of the Congress, by the president of the republic, or by any 30,000 voters through a signed petition. Approval by an absolute majority of both chambers is required. After that approval, the amendment is submitted to the Superior Electoral Court, which must call a referendum. If the referendum approves the amendment, it is considered approved, promulgated, and part of the constitution. If the amendment repeals any constitutional provision, no other amendment on the same subject may be proposed for three years.

Certain fundamental provisions are not subject to normal amendment, although they can be reformed by a National Constituent Assembly directly elected for this purpose (Article 289). Such provisions are those affecting the election, composition, term in office, or powers of any of the three branches of government. Also entrenched are provisions regarding life and the environment, freedom, equality, and family rights.

The Constituent Assembly can also draft, approve, and promulgate a new constitution. However, the difficulty of the amendment process protects the essential identity of the constitution from slow degradation or creeping subversion.

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Vivianne Geraldes Ferreira

PERU

At-a-Glance

OFFICIAL NAME
Republic of Peru

CAPITAL
Lima

POPULATION
27,544,305 (2005 est.)

SIZE
496,226 sq. mi. (1,285,220 sq. km)

LANGUAGES
Spanish, Quecha (official), Aymara, many minor Amazonian languages

RELIGIONS
Catholic 85%, Evangelical 7%, other (mainly native religions) 8%

NATIONAL OR ETHNIC COMPOSITION
Amerindian 45%, mestizo (mixed Amerindian and white) 37%, white 15%, black, Japanese, Chinese, and other 3%

DATE OF INDEPENDENCE OR CREATION
July 28, 1821

TYPE OF GOVERNMENT
Democratic republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 31, 1993

DATE OF LAST AMENDMENT
October 4. 2005

Peru is a democratic republic under the rule of law. There is a clear division of executive, judiciary, and legislative powers. The tough Peruvian geography has marked its government structure. The existence of huge desert areas, high mountain regions, and the endless Amazon jungle has encouraged a tendency toward centralist government, to protect against invasions of national territory. The most important duties that the constitution establishes for the state are to protect national autonomy, guarantee human rights, protect the safety of its people, and promote the general well-being in accordance with justice and an integral and balanced development of the nation.

The president is the chief of state and represents the country. He or she is elected by the people in direct elections every five years and can be reelected of the end of the term of office. The president is the head of the executive power and manages this power with the help of cabinet ministers he or she chooses. The cabinet ministers have the political responsibility for the administration. The parliament not only passes laws but also performs important control duties.

The constitution is the main law that directs and guarantees the development of Peru as a nation.

CONSTITUTIONAL HISTORY

The first constitution of Peru was made when its territory was still under Spanish rule. It was known as the Constitution of Cádiz and was issued on March 19, 1812, in the city of Cádiz, Spain. It was liberal for its time, and several English and French thinkers took part in its creation. It has been a model and a reference for subsequent constitutions.

The country has seen 21 different constitutions since 1812. A variety of cultural, geographical, and ethnic fac-

tors contributed to this large number, and to the resulting legal instability. The most important reason is a tradition of strong leadership. Democratic governments have often been usurped by powerful individuals, who then installed nominal governments. These individuals then sought legitimacy by summoning constitutional congresses.

The origins of Peru can be found in the great civilizations that inhabited its current territory for more than 7,000 years, such as the Chavin de Huantar, Chimz, Mochica, Paracas, and Nazca. At the beginning of the 14th century C.E. one of these civilizations, the Inca culture, dominated much of South America from its chief site at Cuzco; it created a great empire.

After 100 years, when the empire had entered a decadent period, a Spanish military force invaded and took over all its territory. This began a long difficult process of Europeanization of South America that lasted for over 400 years. This period ended as a consequence of liberal ideas that were introduced to America through the Spanish Constitution of Cádiz.

Peru declared its independence of Spain in Lima on July 28, 1821. The first task of the new independent government was to complete the war of liberation still taking place in some parts of the national territory. This warlike government was a direct precedent of the kind of leadership that has made democracy precarious in Peru.

The most difficult task, however, was to convince the people of Peru that independence did not mean betraying their most basic religious beliefs. During the 400-year-long Spanish supremacy, Spanish jurists had been successful in teaching that the Spanish king was the ruler God chose to govern America; to deny this meant teaching against the church. They had created a normative doctrinal framework known as Regio Vicariat, according to which to be Catholic in America it was necessary to be subject to the Spanish king, and to be a subject of the Spanish king it was necessary to be Catholic.

True national feeling began to emerge as a result of two important historical events: the final division of the country into two independent states of Peru and Bolivia (1837–39) and the Pacific War among Chile, Peru, and Bolivia (1879–82). Facing these two events, Peru started its long and yet unfinished process of obtaining its own national identity.

The beginning of this process is best visible in the 1856 constitution, soon replaced by the 1860 constitution. This 1856 constitution is a key reference for understanding the Peruvian constitutional system.

After the first century of independence, an important liberal movement prevailed. It had been launched by the former president Manuel Pardo y Lavalle (1834–78) and drew support from opposition to the military leadership that had devastated the country during its first 100 years of independence. Don Augusto B. Leguma, a civilian president, called a National Assembly to give Peru a new constitution on January 18, 1920. After President Leguma was overthrown by a military coup, a long series of constitutions were enacted before the current one, implemented in 1993.

FORM AND IMPACT OF THE CONSTITUTION

The Peruvian constitution is a written law enacted in a single document. It is the most important law of the country, and all other legal acts must conform to it. The constitution can be enacted only by an assembly specially summoned for this purpose, taking into account all the country. It aspires to consolidate the country as a nation and to organize it as a state, trying to build a bridge connecting its past, present, and future. It names the human being as the raison d'être of a legally organized society, whose principal duty is to protect the individual and facilitate his or her healthy development. The constitution states the basic rights of the human being and establishes mechanisms to respect and protect them. International treaties and agreements signed by Peru must be in accordance with the constitution's basic principles and rules.

In a culturally, ethnically, and geographically heterogeneous country such as Peru, the constitution works as a way to integrate society. However, this diversity means that different segments of the Peruvian people perceive the constitution in different ways. For Peruvians with a European background, the constitution fulfills the role that has been assigned to it, but for other parts of the population it remains little more than an indication that they are in some way a part of a society whose governmental workings remain unclear. Nevertheless, the document serves as a reference point that becomes more important every day in the effort to create a Peruvian identity.

BASIC ORGANIZATIONAL STRUCTURE

Peru has a centralized government, with its seat in the city of Lima. The government is structured in regions, departments, provinces, and districts, whose borders reflect the administrative structures created by the Spanish viceroyalty, which in turn followed the demarcation of ecclesiastical dioceses. Decentralizing power in Peru is an old dream not yet fulfilled. Although the authorities of regions, departments, provinces, and districts are chosen by direct popular election, the authorities are still struggling against the centralistic inertia left by the Spanish regime, and against bureaucratic obstruction.

Decentralization is more real in the economic than in the legal, social, or political arena. Peruvian society is characterized by a permanent struggle between the more liberal, somewhat Americanized urban population and the more conservative, closed rural population. Thus, decentralization must take on deeper challenges than a simple division of the national budget.

LEADING CONSTITUTIONAL PRINCIPLES

By its constitution, Peru is a democratic, social, independent, and sovereign republic. The power arises from the people and is exercised according to the constitution. The constitution clearly states that no one must obey a usurping government or anyone who publicly violates the constitution or the law. It is a recognized right of the civil population to revolt in order to protect the constitutional order when it is violated.

CONSTITUTIONAL BODIES

The constitution states as constitutional bodies the executive power under the leadership of the president, who works with the cabinet, the congress, and the judiciary.

The President and the Cabinet

The exercise of power is centralized in the president of the republic, who enforces the law established by Congress. This duty is controlled by the Congress. The president must act together with the cabinet, composed of the state ministers.

The cabinet's main duty is to coordinate the work of all of the cabinet ministers. It also serves as a link between the president and Congress. Within 30 days after assuming office, the president of the cabinet, along with all the cabinet ministers, must present their general policies to Congress, along with the most important measures for implementing them. The cabinet then needs a vote of confidence from Congress. The cabinet ministers are subject to the censure of Congress.

The Congress

Peru has a one-chamber Congress whose duty is to pass laws and to supervise the performance of the president. The Congress has 120 members, elected by direct popular election for a term of five years.

Although the Peruvian constitutional system centralizes the exercise of power in the president, it also creates a control system designed to prevent the personal or arbitrary use of the power. It has been broadly discussed whether Peru has a parliamentary or a presidential regime. The current constitution has created a mixture of both systems. However, the tendency of the people of Peru is to grant to the president all the tasks of the supreme state order. Therefore, there is a strong presidential power.

The Lawmaking Process

Legislation lies with the Congress, Organic laws, which are those laws that regulate certain key issues such as the structure and functioning of government organs, require a majority of more than one-half of the total members of Congress. Other laws are passed with a relative majority. Bills can be introduced by the president of the republic and by the members of Congress. A number of other bodies enumerated in the constitution, such as the governments of local communities, can introduce bills that relate to their own matters. The president can veto a law but he or she has to promulgate the law when the veto is overriden by parliament.

The Judiciary

The judiciary is headed by a Supreme Court, acting as the highest judicial body. Below the Supreme Court, superior courts sit in the major cities of the country. Below these rank the Courts of First Instance.

The lowest courts are very important because they administer justice in a local and direct way. They are elected by the people and demonstrate an effort to provide access to state justice for the most remote and almost forgotten settlements. The Peruvian constitution also recognizes special organs of customary jurisdiction in the peasant and native communities that enforce customary law, as long as the fundamental rights of human beings are not violated. Thus the Peruvian legal structure accommodates the legal systems of the indigenous cultures that have maintained rules and principles since ancient times, even in the face of 500 years of European cultural presence. It is a bold effort to counteract Peruvian cultural and social upheaval.

Two other important constitutional bodies are the Academy of Judges, which is in charge of the education and training of judges, and the National Council of Judges, which appoints and dismisses judges and determines their terms of office according to personal evaluations. There are seven members of this council. One is chosen by the Supreme Court, one by the Board of Supreme Public Prosecutors, one by the faculty of the law school, two by other professional schools, one by the presidents of national universities, and one by the presidents of private universities.

The Public Ministry is another important organ of the Peruvian constitution. It is an autonomous entity headed by the national prosecutor. It has a mandate to promote the law and the public interest, to protect the independence of state powers, and to represent the people in court.

Furthermore, there is an autonomous organ called the Defensoría del Pueblo (Council for the Defense of the People), headed by the ombudsperson, who is elected by a two-thirds majority of the Congress. It protects the constitutional and fundamental rights of human beings and of the community and supervises the actions of the state administration and the services it provides the citizens.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Any Peruvian citizen over the age of 18 has the right to vote in elections and to be elected. The suffrage is universal and compulsory until the age of 70. Members of the military may not vote.

POLITICAL PARTIES

Peru is a country of leaders and not of parties. Peruvian law has tried to encourage the development of democratic political parties, but a stable party system has not emerged.

CITIZENSHIP

Citizenship is acquired at the age of 18; it is a formal requirement to be registered in the national registry office.

FUNDAMENTAL RIGHTS

The constitution starts by guaranteeing the fundamental rights and freedoms of the human being. It does so in full accordance with the 1948 Universal Declaration of Human Rights, approved in Peru in 1959. It states that protection of human beings and respect for their dignity are the basic purposes of society and the state.

The constitution provides procedural guarantees for human rights, such as the action of unconstitutionality and popular action. All laws, decrees, and individual acts of government that are contrary to the constitution can be annulled. There is a Court of Constitutional Guarantees; the constitution also grants the right to turn to international courts or organizations of which Peru is a member.

Limitations of Fundamental Rights

Peruvian constitutional jurisprudence recognizes that rights and freedoms are limited by the rights of others and by the needs of public order, which is viewed as the fundamental condition for life in society.

ECONOMY

The constitution guarantees the free pursuit of private enterprise within a social market economy under a regime of economic pluralism. It explicitly guarantees the freedom to work and the freedom of enterprise, commerce, industry, and competition. Monopolies and the abuse of leading positions are banned. The right to free hiring is guaranteed. National and foreign investments are placed under the same conditions. Free possession and disposition of foreign currency are protected. The right to property is inviolable, and the state has a duty to protect this inviolability. However, this right can be abrogated as a result of national security or public necessity with a previous compensation payment in cash that includes damages.

RELIGIOUS COMMUNITIES

Until the 1920 constitution, Peruvian identity and Catholicism were synonymous. In accordance with the long history of the Spanish Regio Vicariate, the state considered religion part of its legal competence. The Catholic Church was a state structure, and the clerics were government employees.

The church in effect helped create the Peruvian nation. In the most remote locales, when a Catholic missionary arrived, the Peruvian identity arrived as well; where a church was established, a Peruvian flag was planted. Today, in the multicultural and multiethnic complex reality of Peru, the Catholic religion is a link that unifies the country. Therefore, the state considers it necessary to recognize the church in constitutional law.

Much of this structure lasted until the 1979 constitution, when a regime of autonomy and cooperation was established between state and church. A new agreement between the Holy See and the Peruvian government went into force, as a reflection of its major role in the historical, cultural, and moral formation of Peru.

Under the current constitution, religious freedom and equality coexist with the regime of special cooperation with the Catholic Church. The state respects other religions and can establish forms of cooperation with them. Everybody has freedom of conscience and religion individually or in community with others. There is no persecution due to ideas or beliefs. The public exercise of all faiths is free, unless it offends morality or impacts public order.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president exercises supreme leadership of the armed forces. The armed forces must not take part in political affairs.

The constitution states that all persons and legal entities are obliged to participate in the military defense of the country. The purpose of the army is to guarantee the independence and territorial integrity of Peru. The national police guarantee, maintain, and reestablish internal order.

The president, with the consent of the cabinet, has the power to declare “states of exception”: A state of exception must have a definite term, and the president must inform congress of such a declaration. The state of emergency is declared in the case of disruption of peace or public disorder, catastrophe, or other serious circumstances. In these cases, the exercise of several personal rights is suspended. The state of siege is declared in the case of invasion by foreign troops, civil war, or the imminent possibility of such events. In these cases, the rights that are to be suspended must be specifically enumerated.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution must be passed by the Congress with a majority of all its members. They must

then be ratified by national referendum. The referendum is not needed if the amendment is passed in two ordinary sessions of parliament with the consent in both cases of two-thirds of the members.

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Carlos Valderrama Adriansén

PHILIPPINES

At-a-Glance

OFFICIAL NAME
Republic of the Philippines

CAPITAL
Manila

POPULATION
86,536,700 (2005 est)

SIZE
115,831 sq. mi. (300,001 sq. km)

LANGUAGES
Filipino (Tagalog), English

RELIGIONS
Catholic 83%, Protestant 9%, Muslim 5%, Buddhist and other 3%

ETHNIC COMPOSITION
Malay 95.5%, Chinese 1.5%, other 3%

DATE OF INDEPENDENCE OR CREATION
July 4, 1946

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 2, 1987

DATE OF LAST AMENDMENT
No amendment

The Republic of the Philippines is a constitutional democracy. The model of presidential government as well as the comprehensive powers and role of the Supreme Court display a clear similarity to U.S. constitutional law. The similarities root in the colonial history of the country, which after centuries of Spanish sovereignty was governed by the United States for nearly half a century before gaining independence.

That said, the overall constitution is far from being a copy of the U.S. model. Instead, it reveals a strong belief in social engineering and the mandate of the state to steer the development of the economy and society. Furthermore, since overcoming the authoritarian regime of Ferdinand Marcos, the Philippines have become famous for exercising "peoples' power," adding another element to a rather unique constitutional experience.

The president is the dominating political figure. Legislative, executive, and judicial powers are separated. Fundamental rights are guaranteed.

CONSTITUTIONAL HISTORY

The islands of the Philippines were not united as one state before the time of Spanish colonialism. In the pre-Spanish period the typical unit of government in this region was the *barangay,* which was also the word for the boats that carried the early Malay immigrants to the islands. The *barangay* was a unit consisting of about 30 to 100 families, headed by an individual ruler who had executive, legislative, and judicial power. There is evidence of written laws at that time, but information is sparse.

Unification of the islands occurred with Spanish rule, which was established soon after the explorer Ferdinand Magellan "planted the sword and cross" in 1521. During this period the Philippines were administered from afar, first by the Spanish colonial authorities in Mexico, and after 1821 directly from Spain. Whereas most parts of the Philippines were gradually transformed by the influx of Spanish language and culture and by the Roman Catholic

state religion, the small Muslim areas, where Spanish control was thin, remained culturally separate.

A constitutional history of the Philippines must begin in the early 18th century, when the colony was for three short periods granted representation in the Spanish Cortes, an early form of parliament. Starting in 1872, drafts for a Philippine constitution were debated, but Spain missed the opportunity for reform. The revocation of Philippine representation in the Cortes combined with other causes sparked revolts at the end of the 19th century. A Filipino nationalism emerged among intellectuals called *illustrados* (enlightened ones).

Revolutionary forces gained control over most parts of the Philippines, declared independence, and convened a constitutional assembly. Drawing on the constitutions of France, Belgium, and to some degree the United States, the assembly promulgated the Malolos Constitution, on January 21, 1899. It was a democratic constitution, emphasizing sovereignty of the people and containing a bill of rights. However, by this time the tide had already turned against the revolutionaries, as Spain ceded the Philippines to the United States in the Treaty of Paris of December 10, 1898. The United States, which refused to accept independence of the Philippines, gained control of the country, using overwhelming military force against the Filipino nationalists.

In the first half of the 20th century, the United States increased self-government in the Philippines step by step: A Philippine assembly convened for the first time in 1907, a Philippine Autonomy Act was adopted in 1916, and a Philippines Independence Act (Tydings-McDuffie Law) was enacted in 1934, providing a precise road map to sovereignty.

The first effective constitution was drafted by a (Filipino) Constitutional Convention and approved by the U.S. Congress in 1935. Using both the U.S. Constitution and the Malolos Constitution of 1899 as sources, it provided for a presidential form of government and contained a bill of rights. This constitution remained in force after independence was attained in 1946, although it was amended in important respects—introducing a bicameral system, decreasing the term of the president, creating an independent Commission on Elections, and guaranteeing certain business rights to U.S. citizens. A constitution adopted under Japanese occupation in 1943 and briefly implemented had no lasting effect on the development of Philippine constitutionalism.

The democratic development of the Philippines was interrupted when the elected president, Ferdinand Marcos, transformed the system into authoritarianism in the early 1970s. In January 1973, shortly after imposing martial law, Marcos held a referendum on a new constitution. The new constitution provided for a unicameral parliamentary system, under which the president was the symbolic head of state with some significant powers but was not head of the executive administration. However, Marcos filled the positions of president and prime minister simultaneously, practicing an authoritarian style of government. The Philippines remained under martial law rule until 1982.

Dissatisfaction with Marcos's leadership and economic crisis led to increasing political oppression in the early 1980s. Disaffection intensified after the assassination of the major opposition politician, Ninoy Aquino, in 1983 and culminated in 1986 after allegedly widespread fraud in the presidential elections. Widespread demonstrations, which took place mainly on one of Manila's main highways, finally forced Marcos to accept an offer of the United States for exile in Hawaii.

The opposition leader, Corazon C. Aquino, was proclaimed the first woman president of the Philippines on February 25, 1986. From the constitutional perspective it is important that the new government did not take office according to the rules of the 1973 constitution. Instead, Aquino declared a revolutionary government; Proclamation No. 3 explicitly stated that "the new government was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines." Proclamation No. 3 promulgated a provisional "Freedom Constitution." A 48-member Constitutional Commission was charged with drafting a new democratic constitution.

The commission relied on the traditions established by the 1935 constitution, while also undertaking to deal with current problems and reflect recent experiences; its deliberations were widely reported. The new supreme law was approved by a national referendum and took effect on February 2, 1987. It has been in force since, without amendment.

FORM AND IMPACT OF THE CONSTITUTION

The Philippine constitution is a single comprehensive document. In comparison to the short Constitution of the United States, it is an extensive text. It provides for the basic institutions of government and fundamental rights but also contains binding directives for state policies in many fields, thus serving as both basic law and political program.

The constitution is the supreme source of law in the Philippines. Laws and any other state action can be declared void by the Supreme Court if they do not conform to its provisions. As with the traditional U.S. approach, which from the outset strongly influenced Philippine constitutional law, the famous dictum applies: The constitution is what the judges say it is.

BASIC ORGANIZATIONAL STRUCTURE

The Philippines, despite consisting of a great number of islands, has during its constitutional history traditionally

mostly been a unitary state without much respect for a vertical balancing of powers. However, the realization of substantial local autonomy is now recognized in the constitution to be basic state policy; the basic structure and functions of local government are outlined in some detail. Further details were provided in the Local Government Code of 1991.

The constitution also provides for "autonomous regions" in Muslim Mindanao and in the Cordilleras, which are given legislative powers in certain fields; this has been put into effect so far only in Mindanao. In this respect, the constitution can be described as an example of asymmetrical federalism, which can also be seen in Tanzania, where Zanzibar has a similar special status.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution does not include a catalogue of leading principles that, could, for example, be protected against amendment. However, Article 2 contains a Declaration of Principles and State Policies. Democracy, republicanism, fundamental rights, social justice, separation of church and state, supremacy of civil authority, control of public powers, local autonomy, and peacefulness in foreign affairs may be identified as leading principles of the constitution. The Constitutional Commission described it colorfully as "pro-life, pro-poor, pro-Filipino, and anti-dictatorship." The president of the commission, Cecilia Muñoz-Palma, said: "This is a nationalist constitution which prohibits foreign military bases beyond 1991, except under certain conditions, and which outlaws the stationing of nuclear weapons on our soil. It carries the mandate for social justice, including land reform and labor rights, beyond the limits of previous constitutions. It empowers the people to amend the constitution and to pass their own laws, if desired. It devolves the powers of imperial Manila to the provinces and cities in over-centralization. It raises family solidarity to the level of a constitutional policy. It demilitarizes the police. By restricting martial law powers, the constitution made this draconian option unattractive for any government."

CONSTITUTIONAL BODIES

The principal constitutional bodies are the president and the administration; the Congress, consisting of the House of Representatives and the Senate; and the judiciary, including a Supreme Court responsible for safeguarding the constitution. Constitutional commissions—the Civil Service Commission, Commission on Elections, and Commission on Audit—are significant as well. The "people" itself may in some respect be seen as a "constitutional body" in the Philippine constitution.

The President

The presidency of the Philippines is the dominant constitutional organ, and the president is usually the dominant figure in the political life of the country. All executive power is vested in the president, who controls all executive departments, bureaus, and offices and acts as commander in chief of all armed forces. The president is elected by direct vote and serves for a six-year term. Candidates must be citizens of the Philippines by birth, residents for at least 10 years at the time of the election, and a minimum of 40 years old.

As a result of the experience of Ferdinand Marcos, who systematically abused and extended his powers as president and prime minister, respectively, the constitutional system of 1987 focuses intensively on controlling the executive. However, in regard to the powers of the president the Supreme Court has opted for a generous interpretation, asserting the existence of "residual powers" not specifically mentioned in the constitution (*Marcos v. Manglapus,* 1989).

The most significant limitation to the presidential office is the strict limit of one term, which is exceptional in comparative constitutional law. During his or her term, the president may be impeached for violating his or her duties. Although this procedure had not been finalized, President Estrada, after allegedly accepting illegal payoffs from the gambling industry, was ousted from office by "people's power" in 2001. The Supreme Court subsequently upheld the legality of the events by interpreting Estrada's behavior as effective resignation (*Joseph Estrada v. Gloria Macapagal-Arroyo,* 2001).

The Executive Administration

Besides the president, who has overall responsibility for the executive branch, there is a vice president, who is directly elected in a separate vote and who therefore may be a member of a different political party. The president nominates the candidates to head government departments and ministries, who form the cabinet. The Commission of Appointments, composed of 24 members of Congress, votes on the nominations. Executive officials must strictly avoid any conflict of interests.

Congress (House of Representatives and Senate)

The Constitutional Commission, after heavy discussion, opted in favor of bicameralism by a vote of 23 to 22. The constitution states: "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."

The House of Representatives is the first chamber (lower house) of Congress. It consists of a maximum of 260 members, 208 directly elected and 52 indirectly

elected from party lists. Members have to be "natural born citizens" of the Philippines of at least 25 years of age and can serve a maximum of three consecutive terms. They have to disclose all financial and business interests, and they may not serve in any other government or government-related offices during their term. They have a right to a salary to be determined by law and the right to immunity.

The Senate consists of 24 senators, who are selected by direct vote for six-year terms. Candidates have to be natural-born citizens of the Philippines at least 35 years of age; each senator can serve a maximum of two consecutive terms. Individual rights and obligations in office are mostly identical to those of the members of the House of Representatives.

The powers of Congress are classified as follows: (1) general legislative power, (2) specific powers attributed by the constitution, (3) implied powers that are essential or necessary to the effective exercise of the powers expressly granted, and (4) inherent powers that result from sovereignty of parliament. However, Philippine constitutionalism does not follow the English tradition of an absolute parliamentary sovereignty. In recent Philippine history, the congressional powers of impeachment and investigation have played important roles.

The Lawmaking Process

Congress has in an overall view the typical rights and duties of a modern legislature. As the Philippines are not a federal state, there was no need to circumscribe the topics of legislation. Instead, Congress is generally the competent constitutional organ for legislation. In order to ensure appropriate discussion and reflection on the law, three readings in each house are required. Inappropriate "deals" are discouraged by a requirement that each law have only one topic. Thus, the general tendency of the constitution to establish procedures as a guarantee against abuse of power is also applied to Congress.

Other organs can also interfere in the legislative process. The president can use the veto power, which can raise the approval quorum to two-thirds in both houses. Furthermore, the people themselves can use the instruments of initiative and referendum (Article 7, Sections 1 and 32), as another example of Philippines "people power."

The Judiciary

The judicial system of the Philippines is the topic of a specific provision in the constitution. Basically, only the Supreme Court is addressed in this article, and the structure and jurisdiction of the courts in general are subject to special legislation. It is fair to say that the Supreme Court, highlighted as it is in the constitution, is itself a constitutional organ. This characterization is also supported by the precise language used to emphasize the court's role in protecting the constitution.

However, the Supreme Court of the Philippines is not a special constitutional court in the German-Austrian tradition, but in structure a Supreme Court comparable to that of the United States. It consists of a chief justice and 14 associate judges. Similarly to that in the United States the position of a Supreme Court judge is not limited by term, but there is a compulsory retirement age of 70 years. The impact of this court on the constitutional and legal system of the contemporary Philippines is profound. Also in this sense the Philippines are probably the most "American" of the Asian constitutional systems.

"People Power"

It has been academically suggested in the Philippines that the constitution "deinstitutionalizes" democracy by recognizing the right of the people to intervene directly to a significant extent. Perhaps this is an exaggeration, but it is evident that the Philippine constitution contains strong elements of "direct democracy." In this it differs from the model of the U.S. constitution, although some state U.S. constitutions offer some parallels. In the Philippine constitution, "people's organizations" are explicitly embraced as part of the political structure. Furthermore, the people have the power to propose or repeal laws by referendum, to recall local government officials, and to propose amendments to the constitution. All these articles are references to the peaceful revolution by "people power" that paved the way for the current Philippine constitution, some years before such revolutions started to be routine in worldwide constitutional development.

THE ELECTION PROCESS

Suffrage is the topic of a special article of the constitution. All citizens of the Philippines from the age of 18 have the right to vote, as long as they are not disqualified by law. The right to be elected to the Senate or the House of Representatives is restricted to natural born citizens from the age of 35 and 25, respectively. Residency and literacy requirements also apply. Senators are elected by direct vote. In the House of Representatives a fifth of the representatives are elected from party lists on the basis of proportionality; the other members are also elected by direct vote.

POLITICAL PARTIES AND "PEOPLE'S ORGANIZATIONS"

The Philippines do not have an established system of traditional political parties. Political parties were basically the power forums for leading personalities under the two-party system that prevailed between 1946 and 1972, before a one-party system emerged under the domination of Ferdinand Marcos. Redemocratization introduced rediversification of the party political landscape, but parties are still widely considered to be platforms for prominent

politicians (including, as in the United States, famous movie stars), rather than programmatic political institutions in their own right.

The constitution does not contain provisions regulating political parties, but it acknowledges in general the importance of an empowered people (civil society) for the political process. The role and rights of "independent people's organizations" are described in some detail. They are defined as "bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure." Their right to participate in social, political, and economic decision making may not be abridged, and Congress is obliged to provide adequate mechanisms for consultation.

CITIZENSHIP

As the Philippines emphasize sovereignty of the country, citizenship is of major importance. However, naturalization after birth does not facilitate political ambitions, as only born citizens may run for Congress or the presidency. Citizenship by birth is based on the principle of *ius sanguinis,* meaning the nationality of mother or father is the relevant factor, rather than place of birth.

FUNDAMENTAL RIGHTS

The protection of fundamental rights can be regarded as one of the central topics of the constitution of the Philippines. It is cited in the Declaration of Principles and State Policies, and it is highlighted via the extensive Bill of Rights; furthermore, social justice and human rights are the subject of additional substantive and procedural regulation.

The Bill of Rights basically consists of classical liberal first-generation rights. The most important single provision is Article 3, Section 1: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." A remarkable detail is the equal protection of "the life of the mother and the life of the unborn from conception" (Article 2, Section 12). Also named rights are freedom of speech and assembly, access to bail and legal assistance, public information, freedom from detention without due process of law, and freedom from torture, loss of property without compensation, or religious tests for public offices. The overall purpose of the catalogue of fundamental rights is to protect human beings against the abuse of power. To safeguard the rights such measures as the inadmissibility of evidence and penal as well as civil sanctions are also constitutional guarantees.

Apart from the liberal fundamental rights the constitution provides for many social and economic rights across all sectors, specified especially in Article 13. Social justice is a fundamental value of the constitution, which clearly is intended to be able to justify certain restriction of individual rights of property. The protection of labor, rural and urban land reform, housing, health, and women's rights is part of the attempt to make social justice a reality not only for the wealthy, but also for the large number of poor people in Philippine society. Educational rights, the protection of scientific and artistic activities, and protection of family life are also elements of a comprehensive constitutional framework, which consistently links policy goals with the rights of the individuals concerned. Neither "small fishermen" nor "urban or rural dwellers" are forgotten by the constitution.

Impact and Functions of Fundamental Rights

The fundamental rights have a substantial impact on the legal system of the Philippines. The Supreme Court has the responsibility to decide on the constitutionality of legislation, which includes its conformity to fundamental rights. As preceding constitutions also listed fundamental rights, the Supreme Court can nowadays build on a substantial historical tradition in interpreting fundamental rights, although its history has not been completely successful in the defending (or at least attempting to defend) human rights. The court in its decisions also relies heavily on the jurisprudence of the courts in the United States, especially the federal Supreme Court.

The direct applicability of the Bill of Rights provisions cannot be doubted and the courts act accordingly. Concerning the many social and economic rights there is intensive discussion about the question of the extent to which they are "self-enforcing" and can be directly relied on by the judiciary. The Supreme Court has applied some of these clauses but on the other hand has also emphasized the primary responsibility of the legislature to effect them. Strong dissenting opinions in the relevant Supreme Court decisions indicate the importance of this question to the development of Philippine constitutionalism.

In order to protect fundamental rights, the constitution does not exclusively refer to judicial mechanisms; in recognition of the massive human rights problems under the Marcos regime, it also provides for an independent Commission on Human Rights with substantial investigative, monitoring, educational, and advocacy responsibilities. The Supreme Court has curbed the role of this commission in some respects; it is, however, still an important instrument of constitutional human rights policy. It also plays an important role in the participatory mechanism for human rights planning by governmental and nongovernmental organizations to develop a National Human Rights Plan.

The Philippines have ratified all major universal human rights treaties. Furthermore, the Philippines are the only member of the Association of South-East Asian Nations (ASEAN) to allow individual communications under the first additional protocol to the International Covenant on Civil and Political Rights. It seems noteworthy that this Human Rights Commission shall also

monitor the Philippine government's compliance with international treaty obligations on human rights, which is an indication that the constitution's commitment to fundamental rights also encompasses the international sources in this field.

Limitations to Fundamental Rights

As everywhere, personal freedom is not absolute under the Philippine constitution, but is subject to restrictions. Most notably the police power of the state has been a constitutional justification for many minor and major restrictions of personal liberty. The power of eminent domain and taxation additionally provide justification for interference. All these powers are themselves not absolute and entail various limitations. Fundamental rights provisions are explicitly limited in relation to legislative regulation. Somewhat obscurely, the abolition of the death penalty was combined with the authorization of the legislature to reintroduce it; as a result it was reinstated in 1993, but it was again abolished in 2006.

The scope of fundamental rights in real life is practically limited in various regards. Where the constitution provides for social and economic rights, these promises do not extinguish poverty or unemployment. Where it prohibits cruel, degrading, or inhuman punishment, this has not prevented prisons from being extremely overpopulated. Where it guarantees freedom from discrimination, it does not automatically prevent discriminatory activities within private entities, and where it guarantees freedom of expression, it does not prevent a significantly high number of killed or kidnapped journalists. Poverty and violence remain major problems in Philippine society that have not yet been solved by a very ambitious constitutional set of guarantees and policies.

ECONOMY

The constitution of the Philippines contains a lengthy chapter, National Economy and Patrimony, and a wide range of provisions relevant to labor, property, trade unions, and other economics-related subjects. Taken as a whole, the system envisaged by the constitution may be qualified as a social market economy, based on a strong belief in the ability of the state to steer economic development in order to generate wealth and overcome poverty.

A significant characteristic legacy of anticolonial struggles is the protectionist approach ("Filipino First Policy") of the constitution, which provides for discrimination against foreign competitors in practically relevant ways in some of its aspects (*Manila Prince Hotel v. Government Service Insurance System,* 1997). However, the accession of the country to the World Trade Organization has not been blocked on constitutional grounds as a result of this "economic nationalism" (*Tanada v. Angara,* 1997), and in 2004 the Supreme Court strengthened the power of the legislature to define the details of the extent of a foreign investment policy.

RELIGIOUS COMMUNITIES

The people of the Philippines are predominantly Roman Catholic (more than 90 percent of the population), and the preamble of the constitution implores the aid of the almighty God for the sovereign people. However, religious freedom is guaranteed and the constitution provides, in the tradition of the policy followed since early constitutionalism in the Philippines, for strict separation of church and state. A strong Muslim population has traditionally lived in the south of the country. In Mindanao Muslim law is partly recognized and applied by special Muslim courts to the extent that it does not conflict with constitutional values.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution of the Philippines renounces war as an instrument of national policy and describes the role of the military as follows: "Civilian authority is, at all times, supreme over the military. The armed forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory." The president is the commander in chief of all armed forces. Consequently, in pursuing the approach of not overemphasizing the role of the military, the constitution does not elaborate details in a special article, but only provides for some provisions within the General Provisions in Article 16. Military service in the Philippines is voluntary. The sole power to declare a state of war lies with the Congress, which has to vote on this question with a two-thirds majority in joint session.

Considering the background of years under martial law during the authoritarian regime of Ferdinand Marcos, it is not surprising that the constitution attempts to install safeguards against the illegitimate abuse of emergency powers. The president can still declare martial law, but his or her activities are to be controlled by Congress and—in a proceeding that can be filed by any citizen—by the Supreme Court. In general, the constitution shall not cease to be operative after the imposition of martial law.

AMENDMENTS TO THE CONSTITUTION

In recent history the Philippines have become famous for exercising "people power," ousting first President Ferdinand Marcos in 1986 and then President Josef Estrada in 1999. Both events were accepted by the Supreme Court, the first as justified by revolution, the latter more legal-

istically as an interpretation of the president's escape as resignation. Considering these events and in addition the "takeover" by Ferdinand Marcos, which also had been accepted by the Supreme Court, it could be argued that constitutional provisions do not play a decisive role when it comes to regime change in the Philippines. Some analysts even argue that the people's right to revolt is accepted by the current constitution, which explicitly acknowledges the sovereignty of the people. It is undeniable, however, that the constitution of the Philippines provides, as do most constitutions in the world, a procedure for its amendment. These provisions demand respect; therefore, it is true from the legal perspective that the constitution can only be amended in accordance with these provisions. When the Supreme Court in 1997 rejected the attempt to amend the constitution in order to allow reelection of President Ramos ("Pirma cases"), one of the judges explicitly declared as a task of the court that it never again be used as a legitimizing tool for those who wish to perpetuate their own power.

The power to amend the constitution lies with the Congress, which must vote with a three-quarters majority in both houses; with a Constitutional Convention; and with a plebiscite. Despite this variety of procedural options for constitutional amendment, the constitution of 1987 has not been amended to date.

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Jörg Menzel

POLAND

At-a-Glance

OFFICIAL NAME
Republic of Poland

CAPITAL
Warsaw

POPULATION
38,100,000 (2005 est.)

SIZE
120,728 sq. mi. (312,685 sq. km)

LANGUAGES
Polish

RELIGIONS
Catholic 95%, Christian Orthodox 1.5%, Protestant 0.3%, unaffiliated or other 3.2%

NATIONAL OR ETHNIC COMPOSITION
Polish 96%, German 2.4%, other (largely Ukrainians, Byelorussians, Lithuanians, Jews, Roma) 1.6%

DATE OF INDEPENDENCE OR CREATION
November 11, 1918

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
October 17, 1997

DATE OF LAST AMENDMENT
No amendment

The Republic of Poland, defined as the common good of all its citizens, is a democratic state ruled by law that implements the principles of social justice. The system of government is based on the separation of, and balance among, legislative, executive, and judicial powers. Poland is organized as a decentralized, unitary state. The constitution of the republic provides for guarantees of individual freedoms and rights. In case of an infringement of those rights, there are effective remedies enforceable by an independent judiciary or by a Constitutional Tribunal.

The president is the head of state. The function of the president is mainly representative, and the president does not formulate state policy. The central political figure is the prime minister as head of the executive. The prime minister is politically accountable to the Sejm as the representative body of the people. Free, equal, general, direct, and proportional elections of the members of the Sejm are guaranteed, as is as a pluralistic system of political parties.

Religious freedom is protected. The relationship between the state and the religious organizations is based on the principle of respect for the autonomy and mutual independence of each in its own sphere. The economic system can be described as a social market economy. The armed forces are obliged to observe neutrality in political matters and are subject to civil and democratic control. The Republic of Poland respects international law as binding upon it.

CONSTITUTIONAL HISTORY

The Polish state was established in central Europe in the second half of the 10th century, as a union of the principal Polish Slavic tribes under the baptized Christian ruler Mieszko I of the Piast dynasty. From the 12th until the 14th century, Poland went through a period of feudal fragmentation. In 1385 Poland and Lithuania were united under one crown. After the unification of the kingdom,

provincial assemblies composed of the knights of Little and Great Poland emerged. In the year 1493, the first Polish Diet (Sejm) was convened. The laws passed by its deputies were to be observed throughout the entire state. Twelve years later the Polish king accepted the Sejm's *nihil novi* law, which is sometimes considered the country's first constitution. According to this act, in the future nothing new was to be enacted without a joint consensus of the senators and deputies.

In the second half of the 16th century, the nobility decided that the kingship was to be an elected position; the monarch would be elected for life at a general convention. Upon his election each king had to confirm certain basic laws, known as the Henrician Articles and *pacta conventa,* which guaranteed religious tolerance and the right to refuse allegiance to the king, and which banned the imposition of new taxes without the consent of the Sejm.

As a result, the royal power became limited. Nevertheless, in the 17th century the Sejm divided into assorted factions and failed to exploit its strong constitutional position. Its sessions frequently dissolved for procedural reasons, the Sejm gradually disintegrated and the state was seriously weakened.

In 1772 Russia, Prussia, and Austria imposed the first partition of Poland, annexing about 30 percent of Polish territory. Fearing an impending catastrophe, on May 3, 1791, a group of patriotic deputies gathered in the Sejm together with the king to enact the Government Law, which was the first real constitution in Europe. The law created a new legal order in the state, based on the principles of the sovereignty of the nation and the separation of powers. It recognized the Sejm as a legislative and supervisory body and vested executive authority in the king and the Guard of Law (the cabinet of ministers), accountable to the Sejm. The decisions of the king required the countersignature of the appropriate minister.

These reforms constituted the greatest accomplishment in the history of Polish parliamentarianism, but Russia and Prussia reacted quickly. In the course of the next few years, as a result of the second (1793) and the third (1795) partitions, the sovereign state of Poland was erased from the map of Europe for 123 years.

Poland regained its independence in 1918. On March 17, 1921, the Sejm enacted a new constitution, which guaranteed civil liberties and introduced a parliamentary cabinet system. From the legal point of view the March constitution was one of the most modern legislative acts in the contemporary world. However, the political forces were not able to solve the numerous social and ethnic problems inherited from the era of partition. In May 1926, Marshal Józef Piłsudski carried out a military coup d'état. The constitution was amended with the aim of strengthening the executive. This trend culminated with the constitution of April 1935, which rejected the parliamentary cabinet system and considerably extended the powers of the president.

In September 1939, German and Soviet troops attacked Poland. The country was occupied until 1945, but the Polish government in exile continued to operate on the basis of the 1935 constitution. In postwar Poland the Communists seized power, and in 1952, the Sejm passed the constitution of the Polish People's Republic. It established numerous institutions bearing such adjectives as *democratic* or *people's,* but the totalitarian nature of the system was obvious.

The creation of the independent trade union Solidarity in 1980 revived hopes for democratization. They were shattered by the Declaration of Martial Law in December 1981. However, in 1989 Poland became the first post-Communist country to start the process of democratic transformation. The roundtable discussions of government and Communist Party officials, on one side, and the revived Solidarity Trade Union, on the other, led to an agreement on fundamental reform of the 1952 constitution. Partly democratic elections to the Sejm followed, along with completely free elections to the reinstated Senate.

The June 1989 elections were a great success for Solidarity. Candidates from its list won 99 seats of 100 in the Senate and all seats open to democratic competition (35%) in the Sejm. As a result, the democratic opposition was able to form the first non-Communist government in postwar Poland, although the Communist leader, Wojciech Jaruzelski became president.

In December 1989, parliament adopted an important constitutional reform: Poland ceased to be "a socialist state" and became "a democratic state ruled by law." The principle of the leading role of the Communist Party was abolished; in its place, freedom to create and operate political parties was proclaimed. A free market, based on full protection of ownership, replaced the Communist economic system. In 1990 the Solidarity leader, Lech Walesa, was elected president, and in 1991, free elections to both chambers of parliament were held. Further constitutional reforms were gradually implemented, including the so-called Little Constitution of October 1992. On October 17, 1997, a new, comprehensive constitution entered into force; it had been passed by joint chambers of parliament on April 2 that year and subsequently approved by national referendum on May 25.

On May 1, 2004, Poland became a member of the European Union. Poles had high hopes of participating in shaping a prosperous and peaceful future for the continent.

FORM AND IMPACT OF THE CONSTITUTION

Poland has a written constitution, codified in a single document, which is the supreme law of the land. Ratified international agreements are sources of universally binding law of the republic. The law of the European Union has precedence over Polish law.

The constitution of Poland is based on respect for freedom and justice, cooperation among public powers, and social dialogue. The principle of subsidiarity (meaning that the smaller entity should decide as long as it reasonably can) is affirmed, in an attempt to strengthen the powers of citizens and local communities. All laws must comply with the provisions of the constitution. The Constitutional Tribunal controls the constitutionality of statutes and can examine the conformity of all legal enactments with those of higher rank. The present constitution is the expression of modern legal thought; it is also an important tool helping to create a society composed of self-conscious citizens.

BASIC ORGANIZATIONAL STRUCTURE

Poland is a unitary state divided into communes, districts, and *voivodeships* (regions), with the commune the basic unit of local self-government. The *voivode,* who can be seen as a regional president, represents the Council of Ministers locally. Following the principle of decentralization, self-government exists on all levels of territorial division. Local self-government performs public tasks not reserved by the constitution or statutes to the organs of other public authorities. Within the limits established by statute, units of local self-government may set the level of local taxes and charges. Members of a self-governing community may decide matters concerning their community by means of a referendum. Citizens have the right to elect representatives to organs of local self-government and to revoke those organs, which are established by direct election.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution establishes a parliamentary system of government, defined in doctrine as rationalized parliamentarism. There is a balance of the legislative, executive, and judicial powers, with a certain tendency to diminish the dependence of the executive upon parliament, characteristic of a classical parliamentary system. The courts and tribunals, including the Constitutional Tribunal, are independent of other branches of power.

Several leading principles characterize the Polish constitutional system. They are intended to guide the interpretation of specific provisions of the constitution.

According to Article 4, the supreme, sovereign power is vested in the nation, understood as a politically, rather than ethnically, based entity. That power is exercised mostly through the mechanism of elections, but there also exist certain forms of direct democracy, particularly the referendum.

A nationwide referendum may be held to resolve matters of particular importance to the state. A referendum may also be used in amending the constitution or in ratifying agreements on joining supranational organizations. In addition, the constitution provides for the procedure of a people's initiative, by means of which any 100,000 voters may submit a bill to the Sejm.

The principle of a state ruled by law, expressed in Article 7, requires that the organs of public authority function on the basis of, and within, the limits of the law. In a broader sense, it comprises the following attributes: constitutionalism, statutes as fundamental sources of the law, separation of powers, and constitutional regulation of fundamental rights and freedoms. The Constitutional Tribunal has developed several additional rules, including "the principle of citizen's confidence in the State."

The principle of civil society is not formally proclaimed by the constitution. However, basic elements of this concept are present in numerous provisions, particularly those that guarantee political pluralism and protect political parties, trade unions, and other associations. Freedom of the mass media and freedom of conscience and religion are recognized in Poland as constitutive elements of civil society.

The principle of a social market economy is proclaimed in Article 20, which specifies that basic components of that economy are freedom of economic activity, private ownership, solidarity, and dialogue and cooperation among social partners. The right to property and the right of inheritance are protected. Expropriation may be allowed solely for public purposes and for just compensation.

For the first time in Polish constitutional history the principle of the inherent dignity of the person is made explicit. Article 30 reads, "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens." The whole system of constitutional norms is subordinated to the realization of this principle.

CONSTITUTIONAL BODIES

The structure of state authorities is established according to the concept of separation of, and balance among, powers. Executive power is vested in the president and the Council of Ministers; legislative power is vested in parliament, composed of the Sejm and the Senate; and judicial power is vested in the courts and tribunals. A number of other organs complete the list, such as the Supreme Chamber of Control, the Commissioner for Citizens' Rights, and the National Council of Radio Broadcasting and Television.

The President of the Republic

The president performs the function of head of state and guarantor of the continuity of state authority. The president ensures observance of the constitution, is the supreme commander of the armed forces, and safeguards the sovereignty and security of the state, as well as the

inviolability and integrity of its territory. The president appoints the Council of Ministers after approval by the Sejm.

The president, a Polish citizen who is at least 35 years of age, is elected in universal, equal, and direct elections, for a five-year term of office and may be reelected for only one additional term. The president may be held accountable before the Tribunal of State for an infringement of the constitution or statute or for committing of an offense.

The president promulgates statutes, but before signing a bill may refer it to the Constitutional Tribunal for a ruling on its conformity with the constitution. The president may also refuse to sign the bill and refer it, with reasons given, to the Sejm for reconsideration. If the bill is again passed by the Sejm by a three-fifths majority vote, the president must sign it.

The president represents the state in foreign affairs and ratifies international agreements, in certain cases after prior consent granted by statute. The president formally confers military ranks and appoints judges for indefinite periods on the motion of the National Council of the Judiciary. The president has the right to pardon criminal offenders. In the event of a direct external threat to the state, the president may, at the request of the prime minister, order a general or partial mobilization and deployment of the armed forces in defense of the republic.

The political position of the president is not very strong. Not charged with formulating state policy, the president instead acts as a political arbiter in situations of threats to the constitutional order or when top state authorities have failed to operate properly.

The Council of Ministers

The Council of Ministers is composed of the prime minister and two categories of cabinet ministers. The first category of ministers (or heads of committees specified in statutes) consists of those who direct a particular branch of government administration. The second category comprises ministers who perform tasks assigned to them by the prime minister. Deputy prime ministers may also be appointed. The prime minister plays a leading role, particularly in the process of appointing cabinet ministers and in the construction of the Council of Ministers.

The Council of Ministers conducts the internal affairs and foreign policy of the state. It has the right to initiate legislation, issue regulations, ensure the implementation of statutes, coordinate the work of all bodies of government administration, and conclude international agreements.

The members of the Council of Ministers are collectively and individually responsible to the Sejm. The constitution provides for the so-called constructive vote of no confidence, whereby persons who introduce a draft resolution requiring a vote of no confidence in the council must at the same time propose a candidate for a new prime minister.

The Parliament

The Polish parliament is composed of two chambers, the Sejm and the Senate. The Sejm consists of 460 deputies elected in universal, equal, direct, and proportional elections. The Senate consists of 100 senators elected in universal and direct elections. Members of both chambers are elected for a four-year term of office.

Members of parliament cannot be held accountable for their activity performed within the scope of their mandate either during their term or after its completion. A member of parliament cannot be detained or arrested without the consent of the respective chamber, except in cases when he or she has been apprehended in the commission of an offense. However, even then the marshall (speaker) of the chamber may order an immediate release of the parliament member.

The president's right to dissolve parliament is limited to two situations. The president is obliged to shorten the term of the Sejm in case of failure to form an administration. The president may optionally shorten the Sejm's term of office if it fails to pass the budget bill within four months of its receipt. Apart from this, parliament may dissolve itself as a result of a Sejm decision, leading to new elections. Any shortening of the term of office of the Sejm also entails a shortening of the term of office of the Senate.

The Sejm enjoys a considerably stronger position than the Senate. Only the Sejm adopts bills, although the Senate may propose amendments to them. Control over the Council of Ministers is exercised exclusively by the Sejm. Equal rights are conferred to both chambers only with respect to amending the constitution and ratifying an international agreement to transfer authority to a supranational organization.

The Lawmaking Process

Legislation is the most important task of parliament. The constitution enumerates in Article 87 the sources of universally binding law, among them statutes. According to Polish constitutional doctrine a statute is an act of parliament, which has a normative character and is of the highest rank as a source of law, subordinate only to the constitution, with unlimited scope of regulation. Some matters may be regulated only by means of a statute or only with an explicit statutory authorization.

The right of legislative initiative belongs to the deputies, the president, the Council of Ministers, and the Senate. The Council of Ministers may classify a bill it introduces as urgent, in which case the period for consideration and signing is shortened. The constitution also provides for popular legislative initiative; any group of 100,000 citizens who have the right to vote in elections to the Sejm may introduce legislation. This does not apply to budgetary bills and bills on the amendment of the constitution.

The Sejm considers bills in the course of three readings and passes them by a simple majority vote. A bill

passed by the Sejm is submitted to the Senate, which may adopt it outright, adopt it with amendments, or reject it completely. The Senate's rejection or amendments can be overruled by an absolute majority vote of the Sejm in the presence of at least half of the statutory number of deputies.

The president may also reject a bill. The Sejm can overrule a presidential veto with a three-fifths majority. When the president signs a bill, he or she orders its promulgation in the *Journal of Laws*.

The Judiciary

The judiciary in Poland is independent of other branches of government power. Administration of justice is implemented by the Supreme Court, the common courts, administrative courts, and military courts. Extraordinary courts or summary procedures may be established only during a time of war.

Judges are appointed for an indefinite period by the president on the recommendation of the national Council of the Judiciary. They cannot be removed from office and within the exercise of their office are subject only to the constitution and statutes. Judges cannot belong to a political party or trade union; they must not engage in public activities incompatible with the principle of independence of the courts and judges.

The constitution contains extensive guarantees of the rights of defendants in criminal processes, such as the right to defense and presumption of innocence.

The Supreme Court reviews the decisions of common and military courts on appeal. The Chief Administrative Court and other administrative courts exercise control over the performance of the public administration.

The function of constitutional review is performed by the Constitutional Tribunal. It examines the conformity of legal enactments with enactments of higher rank in accordance with a hierarchy of the sources of law specified by the constitution.

The Constitutional Tribunal can act at the request of various authorized bodies. Any court may refer a question of law to it, for a ruling as to whether a normative act conforms to the constitution, a ratified international agreement, or a statute, if the ruling could determine an issue currently examined before that court. The constitution has established the institution known as the constitutional complaint: Any person who believes that his or her constitutional freedoms or rights have been infringed upon can appeal to the Constitutional Tribunal. The complaint must relate to a specific legal provision on the basis of which a court or public body made a final decision against the complainant.

The constitution has also established the Tribunal of State, which adjudicates questions regarding the constitutional accountability of officeholders such as the president, members of the Council of Ministers, and members of parliament.

THE ELECTION PROCESS

All Polish citizens who on the day of an election have attained 18 years of age have the right to vote in that election. Qualification for eligibility depends on the kind of election—18 years of age for elections to local councils, 21 years of age for elections to the Sejm, and 30 years of age for elections to the Senate.

Parliamentary Elections

The constitutional provisions relating to elections are very general and are complemented by election statutes, or *ordynacja wyborcza*. A total of 460 deputies are elected to the Sejm on the basis of proportional representation in multimember constituencies from lists of candidates. Only those lists that have gained at least 5 percent of the total number of votes validly cast nationwide are taken into account in the allocation of seats. The list proposed by the election coalitions is taken into account in the allocation of seats only if it has gained at least 8 percent of the total number of votes cast nationwide. The 5 percent threshold may be waived in regard to election committees of national minorities.

One hundred senators are elected on the basis of majority vote in multimember constituencies.

POLITICAL PARTIES

Poland has a pluralistic system of political parties. The right to form and maintain political parties is among the political freedoms of citizens. According to Article 11 of the constitution, political parties should be founded on the principle of voluntary membership and the equality of Polish citizens. Their purpose should be to influence the formulation of state policy by democratic means. The financing of political parties is open to public inspection.

The constitution in Article 13 forbids political parties whose programs are based upon totalitarian methods and the modes of activity of Nazism, fascism, and communism. The same applies to political parties that sanction racial or national hatred, use violence to obtain power or influence state policy, or maintain secrecy in their membership structure. The Constitutional Tribunal has the authority to ban any party that falls under the Article 13 restrictions.

CITIZENSHIP

Polish citizenship is primarily acquired by birth to parents who are Polish citizens; the principle of *ius sanguinis* is applied. A foreigner who wants to obtain Polish citizenship must live in Poland for at least five years and submit the appropriate application to the president.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights in its second chapter, immediately after the basic principles of the republic. This precedence reflects the intentions of the framers, who wanted to ensure the superior position of individual rights.

The constitution distinguishes three categories of individual freedoms and rights: personal, political, and economic-social-cultural. The source of all these freedoms and rights is the inherent, inalienable, and inviolable dignity of the person. The protection of individual rights and freedoms is the obligation of public authorities.

The constitution declares that all persons are equal before the law and no one may be discriminated against in political, social, or economic life for any reason whatsoever. Polish citizens who are members of national or ethnic minorities are free to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.

The constitution adopts as a general rule that anyone under the authority of the Polish state enjoys the freedoms and rights ensured by the constitution. However, some fundamental freedoms and rights are reserved for Polish citizens, such as the right of access to public office and the right to participation in national elections or referendums.

Impact and Functions of Fundamental Rights

According to Polish legal thought, personal and political rights and freedoms are of fundamental importance. Constitutional regulation in this field takes into account international law binding upon Poland, as well as constitutional standards existing in other democratic states. In principle, the state should refrain from interfering with the legally protected autonomy of the individual unless there is a lawful reason to do so. State authorities are bound, however, actively to create adequate institutional guarantees, such as judicial protection, so that the content of constitutional norms is in fact implemented. Among the means for the defense of freedoms and rights, the constitution provides for the individual constitutional complaint and the right to apply to the commissioner for citizens' rights, for assistance in protecting his or her freedoms or rights from infringement by organs of public authority.

More problematic are economic, social, and cultural rights and freedoms. It is often held in constitutional doctrine that because of their programmatic nature, these rights and freedoms are difficult to implement. The framers included this group of rights and freedoms in the constitution but divided them into two categories.

To the first category belong rights that are judicially protected and may be exercised directly on the basis of constitutional norms. This applies to the right of ownership, other property rights, the right of inheritance, the freedom to choose and to pursue one's profession and to choose one's place of work, the right to social security, the freedom to teach, and the freedom to enjoy the products of culture.

The second category of rights and freedoms may be asserted subject to limitations defined by statute. The constitution imposes on public authorities an obligation to pursue specified policies, such as ensuring the ecological security of current and future generations or satisfying the housing needs of citizens.

Limitations to Fundamental Rights

The fundamental freedoms and rights specified in the constitution have certain limits, but any such limitation may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or of the natural environment, health or public morals, or the freedom or rights of other persons. Such limitations must not violate the essence of freedoms and rights.

Limitations on constitutional freedoms and rights may be imposed in a state of martial law, emergency, or natural disaster. However, the constitution also identifies rights and freedoms that cannot be limited by any statute. These include the dignity of the person, citizenship, protection of life, humane treatment, ascription of criminal responsibility, access to a court, personal rights, freedom of conscience and religion, the right to petition, and the protection of family and children.

ECONOMY

The constitution in Article 20 describes the Polish economic system as a social market economy. The same provision imposes on the state the obligation to mitigate the social effects of market mechanisms.

The economic system must respect rights of different actors who participate in the market, on the basis of comprehensive protection of the right to ownership and freedom of economic activity. The protection guaranteed by the constitution refers to every form of property, and limitations upon the freedom of economic activity may be imposed only by means of statute, and only for important public reasons.

Work is protected and the state is obliged to supervise working conditions. The constitution does not guarantee the right to work but only protects the freedom to choose and to pursue one's occupation and to choose one's place of work. The constitution proclaims the principle that the family farm should be the basis of the agricultural system of the state, but without infringing upon the right to ownership and freedom of economic activity.

The social aspect of the system is visible in such constitutional requirements as solidarity, dialogue, and cooperation among social partners; statutory regulation of

minimum wages; and the right to social security whenever one is incapacitated for work by reason of sickness or invalidism, as well as when one reaches the age of retirement.

RELIGIOUS COMMUNITIES

The constitutional status of religious communities in Poland may be defined according to principles enumerated in Article 25. This provision stipulates that churches and other religious organizations have equal rights and public authorities should be impartial in matters of personal conviction. The relationship between the state and churches is based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and common good.

With respect to the Roman Catholic Church, Article 25 stipulates that relations between that church and the state should be determined by international treaty concluded with the Holy See. Accordingly, in 1998 Poland ratified the Concordat with the Holy See signed five years earlier.

The relations between the state and other churches and religious organizations are determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers. Pursuant to statutory provisions in force citizens are entitled to create religious communities, take part in religious activities and ceremonies, and proclaim their religion or convictions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The principal constitutional obligations of the Polish armed forces are to safeguard the independence and territorial integrity of the state and to ensure the security and inviolability of its borders. In the event of a direct external threat to the state, the president, on request of the prime minister, orders a general or partial mobilization and deployment of the armed forces in defense of the state.

The armed forces must observe neutrality in political matters and are subject to civil and democratic control. The Council of Ministers exercises general control in the field of national defense and annually specifies the number of citizens who are required to perform active military service. Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service.

In situations of particular danger, if ordinary constitutional measures are inadequate, appropriate extraordinary measures may be introduced: martial law, a state of emergency, or a state of natural disaster. Martial law may be declared only in the case of external threats to the state, acts of armed aggression against Polish territory, or an obligation of common defense against aggression that arises by virtue of international agreement. The state of emergency may be introduced in the case of threats to the constitutional order of the state, to the security of the citizenry, or to public order.

The powers of the state bodies remain essentially intact during these periods. Only if the Sejm is unable to assemble is the president authorized to issue regulations that have the force of statute.

AMENDMENTS TO THE CONSTITUTION

A bill to amend the constitution must be adopted in the Sejm by a majority of at least two-thirds of the votes, and in the Senate by an absolute majority of the votes. However, if a bill to amend the constitution relates to principles of fundamental significance for the republic (Chapter 1); the freedoms, rights, and obligations of persons and citizens (Chapter 2); or the amendment procedure (Chapter 12), a confirmatory referendum may be held.

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Krzysztof Wójtowicz

PORTUGAL

At-a-Glance

OFFICIAL NAME
Portuguese Republic

CAPITAL
Lisbon

POPULATION
10,356,117 (2005 est.)

SIZE
37,312 sq. mi. (96,631 sq. km)

LANGUAGES
Portuguese

RELIGIONS
Catholic 92.9%, Christian Orthodox 0.22%, Protestant and other Christian 2.16%, Muslim 0.15%, Hindu and other non-Christian 0.18%, Jewish 0.02%, without religion 4.33%, other 0,04%

NATIONAL OR ETHNIC COMPOSITION
Portuguese 96.1%, other (largely Cape Verdean, Brazilian, Eastern European immigrants) 3.9%

DATE OF INDEPENDENCE OR CREATION
1143 C.E.

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral legislature

DATE OF CONSTITUTION
April 2, 1976

DATE OF LAST AMENDMENT
August 12., 2005

The Portuguese constitution of 1976 is the lasting product of the revolution of April 25, 1974, which overthrew the fascist regime that had followed the military coup of 1926 and had interrupted a series of liberal constitutions that began in 1822.

The Portuguese Republic is defined in the constitution as a democratic state based upon the rule of law, the sovereignty of the people, the pluralism of democratic expression and democratic political organization, respect and effective guarantees for fundamental rights and freedoms, and the separation and interdependence of powers. Portugal has as its aims the achievement of economic, social, and cultural democracy and the deepening of participatory democracy.

At the time of its approval, the Portuguese constitution recognized more rights than any other country. They included social, economic, and cultural rights, which were harmonized with civil and political rights as far as possible.

The system of government is mixed parliamentary and presidential. The president of the republic and the parliament are separately and directly elected by the people for different terms of office: five and four years, respectively. The president chooses the prime minister with due regard for the results of the parliamentary election, since the government is dismissed if parliament rejects a vote of confidence in its program or approves a motion of censure. The president may dismiss the prime minister and dissolve the parliament, but the administration is autonomous and may initiate legislation. The president does not initiate legislation, but has limited veto power. Political pluralism is ensured by the political parties and by the right of political minorities to form an opposition.

Portugal is a unitary state with two autonomous regions, the archipelagoes of Azores and Madeira. Church and state are separated. The state recognizes international law, interprets human rights in harmony with the Universal Declaration of Human Rights, and may accept limitations on sovereignty imposed by the European Union and the International Criminal Court.

CONSTITUTIONAL HISTORY

Portugal became independent in 1143 C.E., when the emperor of León and Castile recognized the kingdom under Afonso Henriques. There was at first no ethnic or linguistic differentiation from Galicia, which is now part of northern Spain, and a common literature flourished until the 14th century.

The reconquest against the Muslims, who at the time ruled the Iberian Peninsula, was completed with the taking of Algarve in 1267, which gave the state its current boundaries (with minor corrections). The war was a common enterprise of the king, the aristocracy, the clerical leadership, the military orders, and the enfranchised municipalities. It strengthened the royal power and contributed to an early feeling of national identity. This feeling was expressed during the dynastic crisis that followed the death of King Ferdinand through popular support of John I, an illegitimate brother of Ferdinand, against John I of Castile, his son-in-law. After the Portuguese John won the Battle of Aljubarrota (1385), the country concentrated its energies in trade with Flanders and the Mediterranean; in the conquest of Ceuta, Tangier, and Arzila; and above all in the discoveries and consequent trade with the Orient.

The Portuguese state in the Middle Ages was part of Western Christianity as a religious, cultural, and political entity. Afonso Henriques had entered a feudal relationship with the pope as a vassal in 1143; in 1245 Pope Innocent IV deposed the Portuguese king, Sancho II, and passed the kingdom to his brother, Afonso III.

Portuguese discoveries in the 15th century dramatically changed the history of the country and the world. Between 1418 and 1488, the west coast of Africa south of Morocco was systematically discovered, mapped, and opened to world trade. With the rounding of the Cape of Good Hope, the way was cleared into the Indian Ocean. In 1494 the pope divided the world between Portugal and Spain in the Treaty of Tordesillas (1494) for the purposes of trade and expansion. In the following years Portugal established a wide-ranging economic-military-political system with three main strong points (Goa in western India, Ormuz at the entry to the Persian Gulf, and Malacca between the the Indian Ocean and the South China Sea). A string of fortresses was built in ports along the coast of East Africa, the Persian Gulf, and the shores of India and Ceylon. Farther east less fortified settlements were built with the consent of the local rulers from Bengal to China, securing the trade of the Orient to Portugal for nearly a century. The king of Portugal added to his title both shores of the South Atlantic in Africa and America. He navigated, traded, and conquered in Ethiopia, Arabia, Persia, and India.

In 1580, the Portuguese Crown was inherited by King Philip II of Spain, who was accepted as King Philip I of Portugal by the Cortes (the Portuguese parliament, which included nobility, clergy, and commoners). This led to a progressive annexation by Spain. The enemies of Spain became enemies of Portugal. The Dutch, soon followed by English and French ships, put an end to the Portuguese trade monopoly in Asia and even invaded a part of Brazil.

A nationalist revolution in 1640 gave the Crown to John IV, and peace was made with Spain in 1668. To win the war of independence Portugal renewed its traditional alliance with the English monarchy, and Charles II of England married John's daughter, Catherine of Braganza, in return for a large dowry, which included Bombay and Tangier. The decay of the Portuguese empire in the 18th century was somewhat compensated for by the exploitation of gold and diamonds in Brazil.

When the Napoleonic army invaded Portugal in 1807, the Portuguese monarchy was absolute; the king held supreme legislative, executive, and judicial powers. The Crown was the monarch's personal right, inherited from the founder of the monarchy, Afonso Henriques. True, there were fundamental laws of the kingdom that could not be changed except by agreement of the king and the Cortes, including the (apocryphal) Proceedings of the Cortes de Lamego, which recorded ancient custom, and the laws made in the Cortes of 1674, 1679, and 1698 about the institution of the Crown, the regency, and the marriage of princes. But they included nothing about the correlative rights and duties of subject and king and therefore could not be characterized as having the elements of a constitution.

The royal family and court fled from the French to Brazil escorted by English vessels, and an English army landed in Portugal to fight the French. When peace finally ensued, a constitutionalist revolution in 1820 seized power from the English military command, and a constituent assembly was elected and drew up a democratic constitution for the monarchy in 1822. According to this constitution, the sovereignty is vested in the nation, from which the hereditary king receives authority.

King John VI had declared Brazil a kingdom united with Portugal in 1815, and the 1822 constitution endorsed his decision. But after John VI returned to Portugal, his son, Pedro, declared Brazilian independence and became emperor of Brazil in 1822. When John died in 1826, Pedro, as Pedro IV of Portugal, granted the country a constitutional charter providing for a parliamentary regime. His brother, Miguel, launched a civil war from 1828 to 1834 to restore the absolutist regime, but Pedro's charter was later restored, and it remained in force, with a brief interruption by a more democratic constitution between 1838 and 1842, until 1910.

At the end of 19th century, a bad financial situation, combined with national humiliation at the hands of the English over Africa territorial demands, gave momentum to the Republican Party, which established a republic through the revolution of 1910.

The republican constitution of 1911 was clearly individualistic. Its list of liberal rights included prohibition of the death penalty, habeas corpus, equality of all religions, and judicial review. The political system was parliamentary: The bicameral parliament controlled the administration and could not be dissolved. Political life was characterized by weak, short-lived administrations

and a continuous repression of the Catholic Church by the state. The Portuguese expeditionary force in World War I was insufficiently supported and was decimated in the Battle of Lys, leading to resentment of the regime in the armed forces. Poverty and structural difficulties in the economy continued unabated.

A revolt in 1926 established a military regime. Professor António de Oliveira Salazar became minister of finance in 1928 and prime minister in 1932. Salazar ushered in a new constitution in 1933, approved by plebiscite and modified in 1945, 1951, 1959, and 1971. The constitution established a "corporative" state with an elected Assembly of the Republic and a Corporative Chamber, which participated in preparing laws and, after 1959, in indirectly electing the president of the republic. The regime was in fact a one-party system and a personal dictatorship, with censorship of published opinion and a strong political police.

Before 1959 the president of the republic was directly elected, and in turn appointed the prime minister. Threatened by the election success of General Delgado in 1958, Salazar changed the constitution to make the election indirect.

The overseas colonies had long been considered provinces of the unitary state of Portugal when nationalist rebellions broke out in 1961 in Angola and later in Guinea and Mozambique. Salazar suffered a brain injury in 1968 and was replaced by Marcelo Caetano, who was unable to change the regime and to put an end to the colonial war. He was deposed by the revolution of 1974.

The revolution of April 25, 1974, began as a bloodless military coup of the secret Armed Forces Movement, which immediately gained widespread support among the people. It was followed by a transitional period until a new constitution was approved and applied. The transition was characterized by social, political, and military turmoil, during which agreements leading to the independence of most of Portugal's old colonies were reached; the very large agrarian estates were expropriated; and banking, insurance, and large industrial enterprises were nationalized (to be privatized only after 1989).

Elections to the Constituent Assembly on April 25, 1975, gave a large majority to a coalition of the Socialist Party (38%) and the Popular Democratic Party (26.4%), which supported a liberal constitution and social democratic policies. The system of government was negotiated by the military (represented by the president of the Revolutionary Council) and the political parties and the Platform of Constitutional Agreement on February 26, 1976, was produced. The constitution was approved on April 2 that year and entered into force on April 25. A transition period, during which the Revolutionary Council maintained political and legislative powers in military matters and controlled violations of the constitution, ended with the amendments of 1982, which created a Constitutional Court and subordinated the armed forces to democratic civil power.

Other constitutional revisions occurred in 1989, 1992, 1997, 2001, and 2004. Perhaps the most important changes were those of 1989, which limited sovereignty as part of the development of the European Union and allowed for the privatization of nationalized property.

The constitution of 1976 was an original document that advanced the definition of the rule of law and especially of the rights of human beings. In this it was influenced by the German Grundgesetz, by the Italian constitution, by the International Declaration of Human Rights, and by the European Convention. The definition of the social, cultural, and economic rights was influenced by the United Nations Covenant and by the Italian constitution, which again influenced the definition of the autonomous regions of Madeira and Azores. The ombudsperson concept was imported from Scandinavia. French *semi-présidentialisme* and preventive control of constitutionality were influential. The economic constitution and the definition of some economic rights may have been influenced by the Programme Commun of the French Left and by Communist constitutions of Eastern Europe, since some of those articles resulted from combined votes of the Socialist and the Communist Parties. It is difficult to identify influences, because almost every proposed article was changed in consequence of discussion.

The Portuguese constitution influenced the Spanish and other later European constitutions, as well as the constitutions of the former Portuguese colonies, which became, with Portugal and Brazil, member states of the Community of the Portuguese Speaking Countries (CPLP).

FORM AND IMPACT OF THE CONSTITUTION

The Portuguese constitution is a single document. Amendments are inserted in their appropriate place through substitutions, deletions, and additions.

The validity of the laws and other actions of the state, the autonomous regions, local governments, and any other public bodies depends upon their compliance with the constitution. Courts may not apply any rules that contravene the provisions of the constitution or the principles contained therein.

The rules and principles of general or customary international law are an integral part of Portuguese law. Rules made by the competent organs of international organizations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides. International treaties that are unconstitutional, in substance or form, but have been duly ratified may be applied as part of Portuguese law, provided that the provisions are applied as part of the law of the other treaty party, unless the unconstitutionality arises from the contravention of a basic principle.

The provisions of the treaties instituting the European Union and the norms that emanate from their organs apply internally according to European Union law, with regard to the basic principles of the democratic state under the rule of law. With a view to securing international justice and to promotion of respect for human and

people's rights, Portugal accepts the jurisdiction of the International Criminal Court under the conditions established in the corresponding treaty.

Outside the legal domain, the constitution is widely accepted in society and often used as an argument in public discussion—apart from the phrase in the original preamble about the people's decision to open the way to socialism.

BASIC ORGANIZATIONAL STRUCTURE

Portugal is a unitary state that nevertheless recognizes the self-governing system of the islands, the principles of subsidiarity, the autonomy of local authorities, and the democratic decentralization of the public service. The archipelagoes of the Azores and Madeira are autonomous regions with their own political and administrative statutes and their own institutions of self-government. As such, they have the power to legislate, in compliance with the fundamental principles of the general laws of the republic, on such matters of specific interest to the regions as are not within the exclusive powers of parliament or the administration.

Local authorities on the mainland include parishes, municipalities, and administrative regions. Every local authority includes an elected assembly with powers of deliberation and a corporate executive body responsible to it. Local authorities have their own assets and financial resources and may have tax-levying powers, in accordance with the law.

LEADING CONSTITUTIONAL PRINCIPLES

In Article 1 of the constitution, the state is denominated the Portuguese Republic and defined as "a sovereign Republic that is based upon the dignity of the human person and the will of the people and is committed to building a free and just society united in its common purposes." This definition is developed in Article 2, which says that "the Portuguese Republic is a democratic State that is based upon the rule of law, the sovereignty of the people, the pluralism of democratic expression and democratic political organization, and respect and effective guarantees for fundamental rights and freedoms and the separation and inter-dependence of powers, and that has as its aims the achievement of economic, social and cultural democracy and the deepening of participatory democracy." It is therefore possible to distinguish the leading constitutional principles as follows: (1) the republican principle, (2) the rule of law, (3) the democratic principle, and (4) the social justice principle.

The republican principle includes negatively the repudiation of any form of monarchy, autocracy, or dictatorship and of hereditary or other privileges, offices, or honors that are not equally accessible to all citizens on a basis of merit, election, or luck—but not money. The republican ideal is linked positively to the sovereignty of the people and to the principles of equality, liberty, pluralism, autonomy, participation, solidarity, and responsibility that contribute to the configuration of other principles.

The rule of law governs the operations of all state institutions and their relations to each other and to individuals, but it is also defined as including the fundamental rights and freedoms and their judicial guarantees. One of these is the right of each party in a judicial process to appeal to the Constitutional Court by invoking a violation of the constitution.

The laws are hierarchically ordered according to the bodies that created them. The rule of law thus also includes the principle of constitutionality of all state acts, including laws and constitutional changes. Constitutionality presupposes the existence of legislative and constitutional reservations, that is, of matters that can only be ruled by laws (for example, crimes and punishments, taxation, and other restrictions on rights) or by the constitution (for example, the powers of government organs). The principle of legality presupposes the separation of legislative, executive-administrative, and judicial powers, and their interdependence. For example, laws must be promulgated and can be vetoed by the president of the republic, who can also involve the Constitutional Court on questions of their constitutionality. The overall reason for the principle of separation and interdependence of powers is the protection of rights. Rights, in a broad sense, and the human dignity ensured by them, are the supreme content and justification of the rule of law.

The democratic principle is developed through the different ways of ensuring the sovereignty of the people: that is, the supremacy of the will of the people in the resolution of national and local problems. These ways may be expressed by subprinciples, such as the majoritarian principle (collective decisions are made by majority of votes), the principle of suffrage (power holders are chosen through universal, equal, direct, secret, and periodic elections), the principle of political participation (all citizens have the right to hold public office and to contribute to the formation of political will, either directly through referendum and popular initiatives or indirectly through representatives associated in political parties), and the principle of political pluralism (both majority and minorities may express themselves and associate, and the minority has the right to opposition).

The social justice principle expresses the constitution's goals of achieving economic, social, and cultural democracy and deepening participatory democracy. In this context, the constitution recognizes individual and collective economic, social, and cultural rights. The state has the duty to promote the welfare and quality of life of the people and actual equality between Portuguese in their enjoyment of economic, social, cultural,

and environmental rights (welfare state principle). The social program of the constitution has some normative content; according to the jurisprudence of the Constitutional Court, no institution aimed at social justice can be eliminated without substituting another with the same scope.

Churches and religious communities shall be separated from the state and are free to determine their own organization and to perform their own ceremonies and worship.

CONSTITUTIONAL BODIES

The constitutional bodies that have supreme authority (organs of sovereignty) are the president of the republic (and the Council of State), the Assembly of the Republic, the administration, and the courts.

The President of the Republic

The president of the republic represents the Portuguese Republic and guarantees the independence of the nation, the unity of the state, and the proper functioning of democratic institutions. He or she also is commander in chief of the armed forces.

The president has the power to dissolve the Assembly of the Republic, to appoint the prime minister, to dismiss the administration under certain conditions, to grant pardons, and to commute sentences, after receiving the opinion of the administration.

The president of the republic has the authority to promulgate and publish laws, decree laws, and regulative decrees and to sign resolutions of the Assembly of the Republic approving international agreements and the other decrees of government. The president has the power to ask the Constitutional Court to review the constitutionality of laws, decree laws, and international conventions.

Within 20 days of receiving a draft law approved by the assembly, or after the Constitutional Court rules that the draft is constitutional, the president of the republic must either promulgate the law or ask the assembly, on the basis of substantial grounds, to reconsider it. If the assembly confirms its vote by an absolute majority of the members entitled to vote—or by two-thirds of the deputies present in certain matters—the president must promulgate the law.

With respect to international relations, the president has the power to declare war in the case of actual or imminent aggression or to make peace, on the proposal of the administration, after receiving the opinion of the Council of State and with the authorization of the Assembly of the Republic.

The president of the republic is elected for a term of five years of office by universal, direct, and secret suffrage. Portuguese citizens who are entitled to vote and are at least 35 years of age are eligible for election. Any president who has served two consecutive terms must wait at least five years before seeking another term.

The Council of State

The Council of State advises the president of the republic, who presides over its meetings. It consists of the president, the president of the Assembly of the Republic, the prime minister, the president of the Constitutional Court, the ombudsperson, the presidents of the regional governments, former presidents of the republic, five citizens appointed by the president of the republic for the period corresponding to the president's term of office, and five citizens elected by the Assembly of the Republic, by a system of proportional representation, for the period corresponding to the legislative term.

The Assembly of the Republic

The Assembly of the Republic is the representative body of the people. Deputies are expected to represent the whole country, rather than the electoral district for which they were elected.

The assembly has the powers to amend the constitution, to enact legislation on any subject other than those in the exclusive powers of the administration, to delegate to the administration power to legislate, and to approve international agreements. The assembly has authority to keep the administration and the public service under review. Members of the administration must attend prearranged sessions to answer questions or receive requests for information from deputies.

The assembly debates the administration's program and can vote on motions of confidence or censure. A vote of no confidence or censure leads to the dismissal of the administration.

The Assembly of the Republic has not fewer than 180 and not more than 230 deputies, as provided in the electoral law. The legislative term lasts for four years.

Deputies are not subject to civil, criminal, or disciplinary proceedings in respect of their voting or opinions expressed in the performance of their duties. They may not testify at a trial or be a defendant and may not be detained or arrested without the permission of the assembly. Permission shall be obligatory when there is strong evidence that a serious crime has been committed.

The Lawmaking Process

Legislation includes laws, decree laws made by the administration, and regional legislative decrees. Laws and decree laws have equal force, subject to the subordination of decree laws published under legislative authority and those that develop the basic principles of the legal system. Both require promulgation by the president of the republic, as described previously.

The power to initiate laws lies with deputies, parliamentary groups, the administration, and groups of electing citizens. The power to initiate laws in the autonomous regions lies with the appropriate regional legislative assembly.

The Administration

The administration conducts the general policy of the country and is the highest organ of public administration. The prime minister is appointed by the president of the republic on the advice of the parties represented in the assembly and with due regard for the results of the general election. The other members of the administration are appointed by the president of the republic on the recommendation of the prime minister.

The administration has legislative powers: to make decree laws on matters not within the exclusive powers of the assembly, to make decree laws on matters delegated to it by the assembly, and to make decree laws amplifying laws that state basic principles of the legal system. The administration has exclusive legislative powers in matters concerning its own structure and operation. The administration also has power to make regulative decrees necessary for the proper enforcement of the laws. Decree laws and regulative decrees must be promulgated by the president of the republic.

The administration is dismissed when the assembly rejects its program, fails to support a motion of confidence, or supports a motion of censure. The president of the republic may, after hearing the opinion of the Council of State, dismiss the administration when necessary to safeguard the proper functioning of democratic institutions.

The Judiciary

The courts are independent and subject only to the law. There are the following categories of courts, in addition to the Constitutional Court: the Supreme Court of Justice and the courts of law of first instance and of second instance, which have general jurisdiction in civil and criminal matters; the Supreme Administrative Court and other administrative and fiscal courts; and the Court of Audit. Maritime courts, arbitration courts, and judgeships of peace may be established.

The Constitutional Court has the specific power to administer justice in matters involving questions of constitutional law. It is composed of 13 judges, 10 chosen by the Assembly of the Republic; each candidate must receive the support of two-thirds of those voting (provided that amounts to an absolute majority of deputies). The remaining three judges are chosen by the first 10. Six of the 13 members must be judges; the remainder must be lawyers. Judges of the Constitutional Court hold office for nine years and cannot be reappointed. The president of the republic may ask the Constitutional Court to review the constitutionality of any provision of any law or decree he or she has been asked to promulgate.

Such a ruling may also be requested by the ombudsperson, the attorney general, one-tenth of the assembly deputies, or other authorities specified in the constitution. The court may also make such a ruling on its own initiative after three identical decisions of the court on individual appeals. The court may also overturn laws or decrees on grounds that they violate superior law and may invalidate regional laws that it believes exceed the limits of legislative authority of the national or regional authorities. All the Constitutional Court's rulings are generally binding.

The Constitutional Court also has jurisdiction to hear constitutional appeals against lower court decisions. In any case, appeals may only be made on questions of the unconstitutionality or illegality of the law. The appealed court, if censured, must then review the facts of the case on the basis of the decision of the Constitutional Court.

The Constitutional Court also has the authority to decide whether there has been a failure to enact legislation that is necessary to implement the constitution. The initiative for such a ruling must be that of the president of the republic, the ombudsperson, or, in a case when the rights of an autonomous region have been contravened, the presidents of the regional legislative assemblies.

Finally, the Constitutional Court controls the constitutionality and legality of referendums, is the supreme electoral court, decides appeals against loss of parliamentary seats or appeals related to elections in the Assembly of the Republic, and has certain powers of control over political parties (verifying the legality of their constitutions, dissolving them, reviewing their financial accounts, and deciding appeals from internal disciplinary and other decisions). The latter powers have been added through constitutional amendments or laws and demonstrate the high regard the Court enjoys.

The decisions of the Constitutional Court have had considerable impact on the legal, political, and social life of the country and contribute to making the constitution a living element in the public sphere. The court has managed to show evenhanded restraint; for example, it ruled that a referendum on abortion could proceed, as either outcome would be constitutional. It has also shown boldness; for example, it overturned a minimal age limit of 25 for receiving income benefits, proclaiming a right to a minimal living standard based on the principle of respect for human dignity.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens over the age of 18 have the right to vote and to be elected. The elections are conducted in accordance with the principle of proportional representation.

Binding referendums may be called by the president of the republic on the proposal of the assembly or the administration. A referendum may also be held on the initiative of citizens. The only subjects for a referendum are matters of national interest otherwise lying within the authority of the assembly or the administration—that of the approval of laws or international conventions. Amendments to the constitution may not be submitted to a referendum.

All citizens have the right to submit, individually or jointly with others, petitions, representations, claims, or complaints to any authority. They must be informed, within a reasonable time, of the result of the claim. Everyone, personally or through associations, enjoys the right of *actio popularis,* to help prevent, suppress, or prosecute offenses against public health, consumer rights, the quality of life, the preservation of the environment, and the cultural heritage.

POLITICAL PARTIES

The political parties are the means to organize and express the will of the people. They are obliged to respect the principles of national independence, the unity of the state, and political democracy.

Political parties that are represented in the assembly but not in the administration have the right to be informed regularly and directly by the government on the progress of the principal matters of public interest. All political parties must register with the Constitutional Court, which reviews their constitution and their finances and has the power to dissolve them, especially if they adopt a fascist ideology.

CITIZENSHIP

Portuguese citizens are all persons who are regarded as such by Portuguese law or international conventions. According to nationality law, individuals born in Portugal are Portuguese citizens; there are also ways of acquiring citizenship by application.

FUNDAMENTAL RIGHTS

The Portuguese constitution recognizes a very comprehensive set of fundamental rights, including liberties or negative rights against the state; rights of political participation; economic, social, and cultural rights that characterize a social state; and fourth-generation rights, such as the right to a good environment. The constitution distinguishes three categories: personal rights, freedoms, and guarantees; rights, freedoms, and guarantees of political participation; and rights, freedoms, and guarantees of workers. Other economic, social, and cultural rights are also recognized.

In principle, aliens and stateless persons temporarily or habitually resident in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens. This does not apply to political rights, to the performance of nontechnical public functions, or to rights and duties explicitly restricted to Portuguese citizens. Citizens of Portuguese-speaking countries may, by international convention and provided that there is reciprocity, be granted rights not otherwise conferred on aliens, except the right to become president of the republic, president of the assembly, prime minister, or president of a supreme court, or to serve in the armed forces or in the diplomatic service. Provided that there is reciprocity, the law may confer upon aliens who reside in the national territory the right to vote for and to stand for election as members of the organs of local authorities.

Impact and Functions of the Fundamental Rights

The constitutional provisions relating to rights, freedoms, and guarantees are directly applicable to, and binding on, both public and private entities. It is a basic responsibility of the state to guarantee fundamental rights and freedoms.

Limitations to Fundamental Rights

In a provision (Article 18) adopted from the German constitution, the Portuguese constitution states that rights, freedoms, and guarantees may be restricted by law only in matters expressly provided for in the constitution, and only to the extent necessary to safeguard other rights or interests protected by the constitution. Laws restricting rights, freedoms, and guarantees must be general and abstract in character, must not have retroactive effect, and must not limit the essential content of the right in question.

ECONOMY

The so-called economic constitution within the Portuguese constitution covers 38 articles, including an entire section on economic organization, and chapters on workers rights, liberties, and guarantees and economic rights. Such a comparative weight is due to the revolutionary context of the first version. However, the constitutional amendments of 1982 and of 1989 have eliminated the socialist trend of the first version, especially the irreversibility of nationalizations.

Among the basic principles of economic organization are the coexistence of public, private, cooperative, and social sectors in the ownership of the means of production; freedom of business initiative and organization; and government economic plans in the framework of a mixed economy. These principles are linked to the aim of achieving economic democracy, as an element of the social justice principle of the constitution.

RELIGIOUS COMMUNITIES

Freedom of conscience, religion, and worship is inviolable. The right to conscientious objection is guaranteed according to law, not only in respect of military service but also in general. This is an important innovation in constitutional history, introduced by amendment in 1982.

Churches and religious communities are separate from the state, are free to determine their own organization, and are permitted to perform their own ceremonies and worship. The separation of churches from the state is a basic principle that cannot be changed through constitutional amendment.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are obliged to obey the civilian authorities. They have the responsibility to provide military defense of the republic, to satisfy the country's international obligations of a military character, and to participate in humanitarian and peace missions undertaken by the international organizations that include Portugal. The armed forces may be used to perform civil protection missions, to help meet basic needs, to improve the quality of life of the people, and to support technical and military cooperation initiatives.

A state of siege or a state of emergency may be declared in all or any part of the national territory, but only in the event of actual or imminent aggression by foreign forces, of serious threat to or disturbance of the democratic constitutional order, or of a public disaster. A declaration of a state of emergency or a state of siege must in no case affect the rights to life, personal integrity and identity, civil capacity, and citizenship of the person; the nonretroactivity of criminal law; the defense rights of accused persons; and the freedom of conscience and religion. A declaration of a state of siege or a state of emergency may not affect the powers and operation of the organs of sovereignty and of self-government of the autonomous regions, nor the rights and immunities of their members.

The constitutional amendment of 1997 removed the requirement of compulsory military service. A 1999 law put peacetime military service on a voluntary basis. The right to conscientious objection is a fundamental right.

AMENDMENTS TO THE CONSTITUTION

The Assembly of the Republic may revise the constitution five years after the date of the previous amendment. It may also, by a majority of four-fifths of all deputies, assume special powers to revise this constitution at any time. Amendments must be approved by a majority of two-thirds of all deputies.

No amendments can change national independence and the unity of the state; the republican form of government; the separation of the churches from the state; the rights, freedoms, and guarantees of citizens; the rights of workers, workers' committees, and trade unions; the coexistence of public, private, cooperative, and social sectors in the ownership of the means of production; the role of economic plans within the framework of a mixed economy; universal, direct, secret, and regular suffrage for the election of members of the organs of sovereignty, the autonomous regions, and local government and a system of proportional representation; pluralism in expression and political organization, which shall include political parties and the right of democratic opposition; separation and interdependence of the organs of sovereignty; judicial review of norms for positive unconstitutionality and unconstitutionality by omission; independence of the courts; autonomy of local authorities; and political and administrative autonomy of the archipelagoes of the Azores and Madeira.

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José de Sousa e Brito

QATAR

At-a-Glance

OFFICIAL NAME
State of Qatar

CAPITAL
Doha

POPULATION
840,290 (2004), 80% noncitizens

SIZE
4,399 sq. mi. (11,437 sq. km)

LANGUAGES
Arabic

RELIGIONS
Sunni Muslim 77%, Shiite Muslim 16%, Hindu or other 7%

NATIONAL OR ETHNIC COMPOSITION
Qatari 20%, South Asian 33%, other Arab 25%, Iranian 17%, other (Europeans, Japanese, Americans) 5%

DATE OF INDEPENDENCE OR CREATION
September 3, 1971

TYPE OF GOVERNMENT
Constitutional hereditary monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral Advisory Council

DATE OF CONSTITUTION
April 19, 1972 (provisional)
June 8, 2004 (ratification)
June 9, 2005 (in force)

DATE OF LAST AMENDMENT
No amendment

The emirate of Qatar is a constitutional, hereditary monarchy. The emir is head of state and has in the past enjoyed almost absolute authority. Since 1995, Qatar has undergone a process of political transformation initiated by the new emir, Sheikh Hamad bin Khalifa Al Thani, aimed at modernizing the state apparatus and implementing the rule of law. A permanent constitution, which was accepted in a public referendum in 2003 and ratified in June 2004, went into force on June 9, 2005, replacing the provisional constitution from 1972.

The political system of Qatar does not, and will not, include political parties. Free elections took place for the first time in 1999, when the Central Municipal Council was formed.

The law is based on Islamic principles.

Qatar's national income is primarily derived from oil and natural gas exports. Qatar is a social welfare state; however, social welfare provisions do not apply to the huge number of non-Qatari, who make up some four-fifths of the population.

CONSTITUTIONAL HISTORY

The Al Thani family has ruled the Qatar peninsula since the late 19th century. Threatened by the Ottoman Empire, the emir of Qatar signed a protection agreement with the British in 1916. After the withdrawal of the British military forces from east of Suez in 1968, a plan for a federation emerged, uniting Qatar with Bahrain and seven other states of the region. During the federal negotiations, Qatar drafted a provisional statute, which was promulgated on April 2, 1970. After independence in 1971, the statute was revised; a provisional constitution was developed and entered into force on April 19, 1972. It provided for the confirmation of the Al Thani family as the ruling dynasty, the establishment of a Council of Ministers, and the creation of an Advisory Council. The Advisory Council, the function of which was to advise the ruler on legal and financial matters, was established in 1972.

After the 1990–91 Gulf crisis, leading citizens demanded wider participation in political affairs. Political

liberalization did not, however, begin until the new emir, Hamad bin Khalifa Al Thani, ascended to power in 1995. He set up a committee in 1999 to draft a permanent constitution. Accepted in 2003 via public referendum and ratified by the emir in 2004, the new permanent constitution took effect on June 9, 2005.

FORM AND IMPACT OF THE CONSTITUTION

The permanent constitution (*ad-dustur*) is codified in a single document. It provides for public participation in governance for the first time in Qatari history. Although this participation is limited, it is hoped to have a future impact on internal control mechanisms and help overcome troubled alliances within the large Al Thani family. The Advisory Council still has only modest powers. Any progress toward democracy will require constitutional revisions to expand parliamentary power.

BASIC ORGANIZATIONAL STRUCTURE

Qatar is a constitutional, hereditary monarchy with a centralized government.

LEADING CONSTITUTIONAL PRINCIPLES

Qatar's political system is described as democratic (Article 1). The constitution provides for the separation of powers, whereby executive and legislative powers remain largely under the authority of the emir while the judiciary is independent. The Islamic sharia is a principal source of legislation, although it is not the only source.

The people of Qatar see themselves as belonging to the Arab nation (*al-umma al-arabiyya*).

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the emir, the Council of Ministers, the Advisory Council, and the judiciary.

The Emir

The emir is head of state. Assisted by the Council of Ministers and the Advisory Council, he holds both executive and legislative power. The emir is also commander in chief of the armed forces and minister of defense.

Rule in Qatar is hereditary in the reigning Al Thani family. According to the permanent constitution, power is to be handed down from father to son. In the event that the reigning emir is no longer able to act as such, the Council of the Ruling Family makes this fact public.

The Council of Ministers

The Council of Ministers (Majlis al-Wuzara) is the highest executive organ. It controls internal and external affairs in accordance with the constitution and the law, proposes draft laws to the Advisory Council, and administers the finances of the state.

The emir appoints all ministers including the prime minister. Currently 11 ministers are in office, including one female minister. Ministers can be removed from office with a two-thirds majority vote of the Advisory Council.

The Advisory Council

The Advisory Council (Majlis as-Shura) is the legislative body. Laws are debated in the council; government policy and the budget need its approval. Resolutions of the Advisory Council are passed by an absolute majority of the members in attendance. Council sessions are open to the public.

Council members have a four-year term of office. According to the new constitution, two-thirds of the 45 council members are elected by direct, general, and secret ballot, and one-third is appointed by the emir.

The council can remove a minister with a two-thirds majority vote. This can be difficult to reach if the appointed members vote to retain the minister, because all of the elected members must then vote for the removal.

The emir can dissolve the Advisory Council, but he must justify this act, and the council cannot be dissolved twice for the same reason. When it is dissolved, the election for a new council must take place within six months. Until a new council is elected, the emir, with the assistance of the Council of Ministers, holds the power of legislation.

The Lawmaking Process

The Advisory Council debates draft laws proposed by the Council of Ministers. A law takes force after it has been ratified by the emir and promulgated via publication in the official gazette. If the emir refuses ratification, the law is returned to the Advisory Council. Should the Advisory Council pass the bill again with a two-thirds majority, the emir is obliged to ratify it.

The Judiciary

The judiciary acts independently.

Qatar had a dual court system up until 2004, in which the Islamic sharia courts and the civil courts (*mahakim al-adliyya*) had different functions. The sharia courts were under the jurisdiction of the Ministry of Awqaf and Islamic Affairs, while the civil courts, according to codified law, were supervised by the Ministry of Justice.

With the new judicial system introduced in 2004, all courts were united under one judicial body. A court of cassation (final appeal), a court of appeal, and a court of first instance were formed. A Supreme Judicial Council, presided over by the head of the court of cassation,

was established. The Supreme Judicial Council is now the highest authority in the judiciary of Qatar.

In early 2005 Qatar set up a Shiite personal law court. The new constitution makes no provision for court restrictions on executive authority.

THE ELECTION PROCESS

All citizens of Qatar, male and female, have the right to vote in elections at age 18 and to stand for election at age 30.

POLITICAL PARTIES

Qatar does not have organized political pluralism. Political parties do not exist.

CITIZENSHIP

Qatari citizenship is patrilineal: The child of a Qatari father acquires citizenship by birth.

FUNDAMENTAL RIGHTS

The permanent constitution defines public rights and duties. It guarantees equality before the law regardless of sex, race, language, or religion. Personal freedom, freedom of expression, freedom of assembly, and freedom of the press, of printing, and of publication are guaranteed in accordance with the law.

Impact and Functions of Human Rights

Since the process of political transformation in Qatar only began in 1999, judging the impact of newly established rights is difficult. However, the individual liberties anticipated for Qatari citizens seem in the process of fulfillment. In May 2004, for example, a law permitting the introduction of trade unions was passed.

Limitations to Fundamental Rights

The constitution distinguishes between basic rights for all and special rights for citizens. Only those who have Qatari citizenship enjoy freedom of assembly and the right to establish organizations. The same is true of free access to education.

Most special rights, such as freedom of the press, are guaranteed only in accordance with the law. The founding of the satellite television channel Al Jazeera in 1996, for example, was a significant step in the direction of genuine freedom of the press and has had an enormous local and translocal impact. However, as with other media in Qatar, criticism of the ruling family is still strictly avoided.

ECONOMY

The permanent constitution does not stipulate a particular economic system. The state guarantees freedom of economic enterprise based on social justice and balanced cooperation of private and public activity. It further encourages investment, providing the necessary guarantees and facilities.

RELIGIOUS COMMUNITIES

Freedom to practice religion is guaranteed. Religious communities do not have explicit rights.

MILITARY DEFENSE AND STATE OF EMERGENCY

According to Article 71, the emir can declare a war of defense; a war of aggression is prohibited. He can also declare martial law in a state of emergency, but that declaration must be approved by the Advisory Council.

AMENDMENTS TO THE CONSTITUTION

The permanent constitution can be amended only by a two-thirds majority of the Advisory Council. Certain fundamental provisions, such as the hereditary rule and functions of the emir, cannot be changed. Furthermore, no article of the permanent constitution may be proposed for amendment within 10 years of entry into force.

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Bettina Gräf

ROMANIA

At-a-Glance

OFFICIAL NAME
Romania

CAPITAL
Bucharest

POPULATION
21,680,900 (2005 est.)

SIZE
92,043 sq. mi. (238,391 sq. km)

LANGUAGES
Romanian

RELIGIONS
Orthodox 86.8%, Catholic 4.7%, Protestant 4.7%, other 3.8%

NATIONAL OR ETHNIC COMPOSITION
Romanian 89.5%, Hungarian 6.6%, Roma 2.5%, German 0.3%, Ukrainian 0.3%, other 4.2%

DATE OF INDEPENDENCE OR CREATION
December 1, 1918

TYPE OF GOVERNMENT
Semipresidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 8, 1991

DATE OF LAST AMENDMENT
October 19, 2003

Romania is a semipresidential republic, founded on the principles of democracy, the rule of law, and division of powers. It is a unitary state, divided into 40 administrative entities. The constitution is a written document that guarantees fundamental human rights.

The head of state is the president, elected by equal, universal, and direct vote. The legislative branch is represented by parliament, which is bicameral.

State and church are separated in Romania. The economic system can be described as an emerging market system.

CONSTITUTIONAL HISTORY

In Romania, the constitution appeared later than in other European countries, such as France or Italy.

For centuries, the Romanian territories were under Ottoman domination. During the 18th century, after a series of treaties, Romanian entities obtained the right to trade freely, which facilitated the flourishing of capitalism.

An important moment in constitutional history was the unification of two Romanian territories—Muntenia and Moldova—in 1859, under the rule of Alexandru Ioan Cuza. Cuza initiated a reform process and, in 1864, two documents were adopted—Cuza's Statute and the electoral law—that together represented the first Romanian constitution. According to the statute, the ruler (*domnitorul*) and a bicameral parliament exercised state powers. The statute dealt with the lawmaking process and the operations of government. The electoral law attached to the statute specified electoral rights and regulations and eligibility to vote and stand for office.

Cuza abdicated in February 1866, and the German prince Carol of Hohenzollern-Sigmaringen was designated to rule the country. A constitution was adopted the same year. It regulated issues such as the Romanian territory, the rights of Romanians, the powers of the state, finances, and the army. Special attention was

given to the right to property, which was considered sacred and inviolable. The legislative power was collectively exercised by the king and the legislature, which comprised a Senate and a Chamber of Deputies. The executive power rested with the ruler. The 1866 constitution was amended several times and remained in force for over half a century.

The second half of the 19th century was characterized by industrial development and agricultural reform. In terms of political evolution, an important event was the independence war of 1877, which gained Romania recognition as a sovereign state. At the end of World War I (1914–18), after the dissolution of the Austro-Hungarian and Russian Empires, Transylvania, Bukovina, and Bessarabia became part of Romania. A new constitution was needed to sanction these changes.

This new constitution was adopted in 1923 and represented a liberal project. Although similar in many respects to its predecessor, the 1923 constitution was more democratic, as it guaranteed wider rights and freedoms, especially electoral ones.

The historical circumstances of the year 1938 triggered the imposition of a royal dictatorship by King Carol II, who imposed a new constitution, subjected to plebiscite on February 24 and promulgated a few days later. The most important change was the concentration of state powers in the hands of the king, who was declared "head of the state" and was given both legislative and executive powers. The universal vote was abolished.

In 1940, King Carol II was forced to abdicate in favor of his son. The new constitution was suspended, the legislature dissolved, royal prerogatives reduced, and the president of the Council of Ministers was vested with full dictatorial powers. In 1944, as Romania faced defeat in World War II (1939–45), the constitution of 1923 was partially reinstated. Several normative acts of a constitutional nature were adopted in the next few years, with the aim of reinforcing democratic rule.

On December 30, 1947, the monarchy was abolished and a republic proclaimed. As a consequence, the constitution of 1923 was abrogated, and in April 1948 a new constitution was adopted. It characterized Romania as a unitary, independent, and sovereign state, emerging from the fight of the people against fascism and imperialism.

The new constitution stipulated that all powers emanated from and belonged to the people; as a consequence all natural resources and communication media were declared public property. Article 11 created the legal framework for the subsequent nationalization of the economy, by stipulating that the means of production, banks, and insurance companies in private hands could become state property when required by the general interest.

Between 1948 and 1952, Romanian economic life was revolutionized under pressure from the Soviet military occupation. A new constitution, adopted in September 1952, regulated both the state power and the national economy. Three social-economic modes were recognized: socialist, small merchandise production, and capitalist. The state was reorganized along Leninist principles of centralism. Article 80 put an end to political pluralism, as Romania became a one-party state.

The next decade was characterized by the dissolution of private property and the strengthening of the leading role of the Communist Party. In 1965, another constitution was adopted. It maintained the principle of a single-party state but also enumerated fundamental rights and obligations of citizens.

The revolution of December 1989 generated fundamental changes in Romanian society and triggered radical constitutional reform. In 1991, a new constitution was adopted and approved by referendum. It was amended in 2003 and is currently in force. Romania's new polity is based on principles such as the republican form of government, the division of powers, the rule of law, political pluralism, the bicameral structure of parliament, freedom and democracy, respect for human rights, and the responsibility and removability of those who hold government power.

FORM AND IMPACT OF THE CONSTITUTION

Romania has a written constitution, which consists of a single document. It takes precedence over national law as well as over the treaties ratified by the parliament. Therefore, in order to prevent situations of noncompliance with Romania's international obligations, a treaty that is contrary to the constitution can be ratified only after a constitutional amendment.

The constitution has a significant impact in Romanian society, given that all the other laws must comply with it.

BASIC ORGANIZATIONAL STRUCTURE

Romania is a unitary state; it has one constitution, one system of laws, one parliament, one head of state, and a single judicial system with nationwide jurisdiction.

The territory is divided into 40 territorial-administrative entities called counties (*judete*). Each has an elected county council, competent to decide upon local issues.

LEADING CONSTITUTIONAL PRINCIPLES

According to Article 1 of the constitution, Romania is a democratic and social state, governed by the rule of law, in which human dignity, citizen's rights and freedoms, the free development of human personality, justice, and political pluralism represent supreme values. These values are said to be guaranteed in the spirit of the democratic

traditions of the Romanian people and the ideals of the revolution of December 1989.

The leading constitutional principles are the rule of law, the democratic and social state, and the division of powers. The rule of law sets limits on the power exercised by the government. In other words, in Romania no one is above the law; free access to justice has a crucial role.

Romania is a democratic state where legitimacy of the public authorities is based on the will of the people, as revealed by free and fair elections. Among other characteristics of the Romanian state one can include a pluralist political system, the political responsibility of the government to parliament, and the independence of the judiciary.

In Romania, education, public health, and social protection are fundamental values guaranteed by the constitution. Public education is free of charge. Moreover, the state grants scholarships to children or young people of disadvantaged families. Similarly, the state is committed to take the necessary measures to ensure public hygiene and health. Last but not least, the state promotes economic development and social protection with a view to ensuring a decent living standard for the people. Citizens have the right to pensions, paid maternity leave, medical care in public health centers, unemployment benefits, and other forms of public social security and assistance.

The state is organized on the basis of the principle of the separation and balance of powers—legislative, executive, and judicial—within the framework of constitutional democracy.

CONSTITUTIONAL BODIES

The most important constitutional bodies are the parliament, the president, the administration, the judiciary, and the Constitutional Court.

The Parliament

The parliament, the supreme representative body of the Romanian people and the sole legislative authority of the country, exercises political control over the executive. It is bicameral, consisting of a Chamber of Deputies and a Senate. Both chambers are elected by universal, equal, direct, secret, and free suffrage for a term of four years.

Article 72 grants members of the two chambers parliamentary immunity; they cannot be held judicially accountable for the votes cast or the political opinions expressed while exercising their office. Deputies and senators can only be prosecuted by the prosecutor's office attached to the High Court of Cassation and Justice and cannot be searched, detained, or arrested without the consent of their chamber and only after they are heard.

The Lawmaking Process

Making laws is the most important function of the parliament. In theory, parliament is the sole legislative authority in the country; in practice, however, it shares this function with the executive, which has legislative initiative, as do the administration and citizens.

The administration exercises this initiative by introducing bills to whichever chamber has the right to decide first on the bill as indicated in the constitution. The chamber has 45 days to debate and adopt the bill. For codes and other complex laws, the time limit is 60 days. If the time limit is exceeded, the draft law is deemed adopted. After the first chamber adopts or repeals the draft law, it is submitted to the other chamber, which makes the final decision.

Once a law has been adopted by parliament, it is submitted to the president of the republic to be promulgated within 20 days. The president can return the law to the parliament for reexamination, but he or she may do so only once. After promulgation, the law is published in the *Official Gazette of Romania* and takes force three days after the publication or on a subsequent date specified in its text.

The President

The president of Romania is the head of state and is elected by universal, equal, direct, secret, and free suffrage. This process confers a special political status: as representative of the Romanian state in international relations, protector of national independence, and guardian of the constitution and of the proper functioning of public authorities. The president also acts as a mediator between the state powers as well as between state and society.

The term of office of the president used to be four years. Starting with the presidential elections of 2004, the term of office is five years.

The president designates a candidate for the office of prime minister and appoints the rest of the administration after a vote of confidence in parliament. The president promulgates the laws and concludes international treaties negotiated by the government. The president is also the commander in chief of the armed forces. Among other powers, the president appoints civil servants, including judges, and grants individual pardons for criminal offenses.

The Administration

The administration consists of the prime minister and the ministers. Its role is to ensure the implementation of the domestic and foreign policy of the country and exercise general management of public administration. The candidate for the office of prime minister is designated by the president, but in order for the administration to be appointed, parliament must pass a vote of confidence on its program and its members. Only the parliament can dismiss the government; it does so by a vote of no confidence.

The Judiciary

In Romania, justice is administrated by the High Court of Cassation [final appeal] and Justice and the other courts

set up in conformity with the law. The right to appeal a judicial decision before a higher court is guaranteed.

According to Article 124 of the constitution, judges are independent and subject only to the law.

The Constitutional Court is charged with guaranteeing the supremacy of the constitution. It consists of nine judges appointed for a term of office of nine years. Its main role is to decide the constitutionality of laws. The court can be asked to decide a matter by an ordinary court, at the request of one of the parties or on its own initiative.

One of the most important decisions the Constitutional Court has made regarded the fundamental right of access to justice. The court interpreted the provisions of the Code of Criminal Procedure as guaranteeing the right of the interested party to challenge a decision of the prosecutor before the court, even though the code did not stipulate such a right or provide procedures for such a challenge.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every citizen at least 18 years old has the right to vote for the president, members of the parliament, and local authorities (mayors and members of county and local councils). Article 36, however, denies the vote to mentally deficient persons, declared as such by a final court decision, and convicted felons, who are temporarily deprived of their electoral rights.

In order to stand for elections, candidates must have the right to vote and have their domicile in Romania. Those officials who are not allowed to join a political party—judges of the Constitutional Court, people's advocates, magistrates, active members of the armed forces, police, and certain other civil servants—cannot stand for office unless they resign from their post. Persons younger than 23 years old cannot be elected to the Chamber of Deputies; the cutoff age is 33 for the Senate and 35 for the presidency.

The Chamber of Deputies and the Senate are elected in districts, by universal, equal, direct, secret, and freely expressed suffrage, on the basis of a party list system and independent candidatures, according to the principle of proportional representation. The electoral threshold is 5 percent of the votes for political parties and between 8 percent and 10 percent for political alliances formed of two or more political parties.

POLITICAL PARTIES

According to Article 8 of the constitution, political pluralism represents a condition and a guarantee of constitutional democracy in Romania. Political parties contribute to the definition and expression of the political will of the people. However, not all political views can be freely expressed; Article 40 stipulates that political parties that, by their aims or activity, militate against political pluralism, the rule of law, or the sovereignty, integrity, or independence of Romania are unconstitutional. The unconstitutionality of a political party can only be determined by the Constitutional Court.

Political parties have four main sources of financing: membership fees, donations, income generated by party activities, and public funds.

CITIZENSHIP

Romanian citizenship is primarily acquired by birth. The principle of *ius sanguinis* prevails. A child is a Romanian citizen if at least one of his or her parents is a Romanian citizen. The child's birthplace, and the parents' residence, are not relevant.

FUNDAMENTAL RIGHTS

The Romanian constitution defines fundamental rights extensively in its second chapter (Articles 15–54), Fundamental Rights, Freedoms and Duties. It recognizes several categories of rights. The first are generically called "Inviolabilities"; they ensure respect for life, freedom of movement, and physical and psychological safety. This category also includes the interdiction of torture and inhuman or degrading treatment, the interdiction of the death penalty, the right to individual freedom and safety, the right to defense and representation in court, and respect for one's private life, family life, and domicile.

The second category includes the so-called social and economic rights, which are designed to ensure the social and material conditions of life including education. They include the right to study, the right to health protection, the right to work, the right to certain social conditions of work, the right to strike, the right to property, the right to marriage, the right to a healthy environment, the right to decent living conditions, and the right of children and disabled persons to special social protection.

A third category includes exclusively political rights, which may only be exercised by Romanian citizens, for the purpose of governing the country. These include the right to vote, the right to be elected, and the right to be elected to the European Parliament.

The fourth category consists of social and political rights and freedoms that are needed by citizens for the purpose of governing or achieving their social and spiritual goals. These rights include freedom of conscience, freedom of expression, the right to information, freedom of association, the right to assembly, and the inviolability of correspondence.

The fifth category consists of two fundamental rights known as guarantee rights: the right to petition and the right of a person injured in the exercise of his or her fundamental rights by a public authority to obtain reparation.

The Romanian constitution also contains, in Article 18, the right to asylum. This grants certain foreign citizens or those without any citizenship the right to live in the country.

A general equal treatment clause contained in Article 16 guarantees that all persons are equal before the law and public authorities. It also includes some specific equality provisions, such as the equality of men and women and the interdiction of discrimination.

These fundamental rights and freedoms stem from several international instruments to which Romania is a party, such as the Universal Declaration of Human Rights. In fact, Article 20 states that the rights provisions in the constitution must be interpreted in accordance with the Universal Declaration of Human Rights and other treaties to which Romania is a party. In case of a difference between the constitution and the treaties, the latter are to prevail, unless the Romanian constitution or law is more favorable than the international law, it which case it is applied.

Impact and Functions of Fundamental Rights

In the Romanian constitutional system, fundamental rights are primarily defensive rights, which imply the nonintervention of the state in the exercise of the right. However, the state also has a positive obligation to create the necessary legal and administrative means to ensure the proper exercise and protection of these rights.

Fundamental rights apply not only in relations between individuals and state authorities but also in those between individuals. Inviolabilities such as the right to physical integrity or the respect of one's private life, family life, and domicile must be upheld in all circumstances.

Limitations to Fundamental Rights

Article 49 of the Romanian constitution lists cases in which the exercise of a right or freedom can be limited. However, the limitation must be made via an explicit law and can be imposed only for the purpose of protecting national security, order, public health and morals, the rights and freedoms of others, and criminal investigation or of responding to natural hazards or disasters.

The enumeration is limitative and cannot be extended. Furthermore, the restriction of the right or freedom is submitted to certain conditions: Namely, any restriction must be necessary to the functioning of a democratic society (a criterion largely developed by the European Court of Human Rights), proportional with the situation that has generated it (the principle of proportionality), and nondiscriminatory, and it must not affect the very existence of the right or freedom.

The Romanian constitution does not contain provisions aimed at punishing the abuse of fundamental rights. However, there are a number of internal laws, such as the Civil Procedure Code or the Penal Code, that contain interdictions and punishments for certain types of rights abuse.

ECONOMY

The Romanian constitution specifies, in Title 4, Economy and Public Finances, that Romania has a market economy founded on independent entrepreneurial initiative and free competition. The state is obliged to guarantee free trade, protect against unfair commercial practices, and create circumstances favorable to the improvement of living standards.

The right to property and the right to inheritance are mentioned in the chapter concerning fundamental rights, as are the right of assembly and the right to form trade associations, both crucial to a market economy. Private property and public property enjoy equal protection. Expropriation is limited by strict conditions such as just reparation. Nationalization on the basis of discriminatory criteria is forbidden. To prepare for membership in the European Union, recent amendments to the constitution allow persons who have foreign citizenship or no citizenship to own and inherit land in Romania.

In sum, Romania can be said to have an emerging market economy.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a human right, as are the rights of religious communities. State and church are separate, and there is no established state church. Religious communities are independent of the state, but they enjoy support through chaplaincies in the army, hospitals, penitentiaries, asylums, and orphanages.

Dominant religions, by number of adherents, are the Orthodox and Catholic Churches.

Religious communities enjoy financial independence from the state and conduct their activity on the basis of collections from the adherents. In order for them to benefit from state funds, a government decision must be issued with this purpose. Religious communities administer their activities according to their own statutes, which must, however, respect applicable laws.

MILITARY DEFENSE AND STATE OF EMERGENCY

Military service is one of the elements included in Chapter 3, Title 2, of the Romanian constitution, Fundamental Duties. Citizens can be subject to military conscription between the ages of 20 and 35. Since the revision in 2003, the Romanian constitution no longer conceives military service as compulsory for men. Both men and women may volunteer for military service.

Romania has obliged itself, as party to international treaties, not to produce atomic, biological, or chemical weapons.

A state of defense or state of emergency is declared by the president, who must submit the declaration for the approval of the Parliament within five days. If Parliament is not in session, it must be convened and must continue to work throughout the state of defense or state of emergency.

During these states, the exercise of some fundamental rights and freedoms can be restricted upon agreement from the minister of justice. The restrictions must be in strict proportion to the needs of the situation.

The ministry of internal affairs coordinates the measures taken during these periods. Civil authorities essentially maintain their powers intact but also gain new responsibilities related to the state of defense or emergency.

AMENDMENTS TO THE CONSTITUTION

The Romanian constitution can be amended on the initiative of the president, the administration, at least one-quarter of the number of deputies or senators, or 500,000 citizens who hold the right to vote.

The draft of the amendment must be adopted by the Chamber of Deputies and by the Senate by a majority of at least two-thirds of the number of members in each chamber. It must also be approved by the citizens, through a referendum held no later than 30 days from the date of passing the draft.

No amendment can be made to any constitutional provision affecting the national, independent, unitary, and indivisible character of the Romanian state; its republican form of government; its territorial integrity; its official language; the independence of its judiciary; or its political pluralism. Likewise, no revision shall be made if it results in the suppression of citizens' fundamental rights and freedoms, or of the safeguards thereof. The constitution also cannot be revised during a state of siege, emergency, or war.

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RUSSIA

At-a-Glance

OFFICIAL NAME
The Russian Federation, or Russia

CAPITAL
Moscow

POPULATION
145,200,000 (2005 est.)

SIZE
137,821 sq. mi. (357,021 sq. km)

LANGUAGES
Russian

RELIGIONS
Christian Orthodox 50%, Muslim 13%, Buddhist 1.5%, Jewish 0.5%, unaffiliated or other 35%

NATIONAL OR ETHNIC COMPOSITION
Russian 79.8%, Tatarian 3.8%, Ukrainian 2%, Bashkirian 1.2%, Chuvash 1.1%, other (about 155 nationalities) 13.3%

DATE OF INDEPENDENCE OR CREATION
June 12, 1990

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 12, 1993

DATE OF LAST AMENDMENT
June 6, 2001

The Russian Federation is a democratic, federal, law-based state with a republican form of government. All citizens of Russia have the right to participate in forming the country's legislature, the Federal Assembly, and to elect its head of state, the president of Russia, by free democratic elections.

The Russian state is a federation uniting 89 entities: 21 republics, six territories, 49 regions, two cities of federal importance, 10 autonomous areas, and one autonomous region. The governmental bodies of the federation carry out their powers within the limits set up by the constitution. At the same time, significant powers are exercised directly by federal bodies: the president, the Federal Assembly, and the executive administration. The president has extensive powers, heads the system of government bodies, and is the guarantor of the observance of the federal constitution. The president is the central political figure in Russia.

Russia is an emerging democratic state. All modern political rights and forms of participation, such as freedom of speech, assembly, processions, and demonstrations, are given to all Russians, who may use them to influence state internal affairs.

Russia has a multiparty system. Religious freedom is guaranteed, and state and religious communities are separated. The Russian economic model can be characterized as a market economy subject to bureaucratic intervention by the state. Russia has military forces, whose supreme commander is the president. The military doctrine of Russia has a defensive character, combining adherence to world peace with a firm determination to protect national interests and to guarantee the military safety of Russia and its allies.

CONSTITUTIONAL HISTORY

Most historians see Russian history as beginning in the mid-ninth century. However, the history of the Russian

people began much earlier. Their ancestors the Slavs have been present in Europe since antiquity.

Russian annals say that the Slavs who lived to the north of Novgorod were constantly at odds among themselves and invited Scandinavian Varyags (Vikings) to install order. It is doubtful whether there is historical truth to this; in any case, Vikings invaded many countries without invitation. The historical fact is that Rurik, the famous Varyag leader, entered the area with his forces, occupied Novgorod, and reigned from 862. This event is conventionally considered to be the foundation of the Russian state.

At the beginning of the 10th century Prince Oleg united the separate Slavic states, including Novgorod and Kiev, in an association of Slavic tribes called Kievskaja Rus. Kiev, "mother of Russian cities," became the center of the country. Under Prince Vladimir, Kievskaja Rus accepted Orthodox Christianity from the Byzantines in 988, and the blossoming of the Kievan state began.

During this feudal era, Russia faced continuous struggle against its neighbors. In the 13th century a Mongolian nomad state called the Golden Horde appeared in East Asia. In 1235, Mongolian armies led by Khan Batyj appeared in the Ural Mountains. After defeating the Volga Bulgars and destroying their capital, the nomads turned to Russia, destroying and burning cities and inflicting immense losses on the population. The following year, Khan Batyj moved against the Kievskaja Rus; Kiev was burned in 1240. The Mongolian yoke remained over Russia for about two centuries, influencing the course of all subsequent Russian history.

During the Mongolian occupation, Kievskaja Rus lost its former strength. The little-known city of Moscow became the power center of Russia thanks to the skillful politics of the Moscow princes. By the end of the 14th century, the Moscow state had become so strong that Grand Duke Dimitry Donskoy was able to oppose the Golden Horde openly. Donskoy inflicted a decisive defeat on the armies of Khan Mamaj in 1380 on the Kulikovo field, near the river Don. According to historians, the Moscow state was born on the Kulikovo field.

In 1480, Ivan III refused to render tribute to the Mongolians. Soon after that, the Golden Horde fell apart and Mongolian power in Russia ended. The grandson of Ivan III, Ivan IV (The Terrible), accepted a new title, czar and grand duke of all Russia. Ivan's rule marked the beginning of a new period in the development of Russian statehood: a monarchy tempered with representation for the nobility. After Ivan's death Russia was ruled de facto by the boyar (high-ranking noble) Boris Godunov, who, after the death without issue of Ivan's son, Feodor, was elected the new czar by the Zemskiy Sobor, the representative body of Russia. The first years of his rule were successful, but after 1600, chaos reigned during a 13-year Time of Troubles. Polish forces took advantage of this anarchy, and in 1610 they occupied Moscow. In 1612, the Russian national militia freed Moscow, where in 1613 representatives of the Russian people gathered from all regions of the country and elected Michael Romanov czar via the Zemskiy Sobor. The house of Romanov ruled Russia for the next 300 years.

In 1689, Peter I acceded to the throne. He transformed the backward Moscow state into the Russian Empire, which entered the family of European states as a great power. Through many wars, he won control of the east coast of the Baltic Sea. In 1721 he proclaimed himself czar of all Russia; at that moment the Russian state became an absolute monarchy. The most significant reforms were actually carried out by Catherine II (1762–96) and Alexander II (1855–81). Catherine decentralized the empire and established the beginning of local self-government; Alexander abolished serfdom, introduced local self-government in the zemstvas (regions) and cities, and carried out judicial reform.

The crucial reform of the regime of absolute monarchy took place early in the 20th century under the pressure of ceaseless revolutionary activity. By the Manifest of October 17, 1905, Czar Nicholas II gave legislative powers to the newly created legislative body, the State Duma. Together with the State Council created earlier by Alexander I, the legislature had been formed in Russia. The position of prime minister was also created.

In February 1917, in the third year of World War I (1914–18), famine in Saint Petersburg led to disorder. Up to 200,000 soldiers stationed in the city, and now opposed to the war, joined workers in a revolt. The czar and his government were arrested and replaced by the so-called Provisional Government formed by deputies of the State Duma. Thus, Russia became a bourgeois-democratic republic.

However, thanks to indecision and inaction in the Provisional Government, the influence of the radical Communists (Bolsheviks) increased significantly. In mid-October 1917 the Bolsheviks under Vladimir Lenin launched their own revolution. On October 25 they arrested all members of the Provisional Government and, facing hardly any resistance, occupied all governmental agencies in Saint Petersburg. Thus, the authority of the Soviets (Bolshevik-controlled workers' councils) was established in Russia. When the Bolsheviks lost nationwide elections to the Constituent Assembly, they disbanded the body by force and fashioned their own institutions.

The first constitution of Russia was passed in 1918, for the Russian Soviet Federative Socialist Republic (RSFSR). It declared the sovereignty of the Russian state, the class domination of workers and peasants (under Communist Party leadership), and the establishment of a socialist regime. During the next 70 years, new constitutions were adopted three times (1925, 1937, and 1978) for Russia.

The same also happened for the Union of Soviet Socialist Republics (USSR) in 1924, 1936, and 1977. This federal union was formed in 1922 after Russia reconquered various parts of the old Russian Empire and set up local soviet republics. Each new constitution proclaimed a new stage of development of the Soviet state and ostensibly established new foundations for human rights and new state mechanisms to defend the interests of the people. However, typical of all the Soviet constitutions was the monopolistic power of the Communist Party, Marxist

ideological context, and the denial of the internationally recognized principle of the difference and interaction between state and society.

All Soviet constitutions had a fictitious character: Human rights were proclaimed, but were never realized in practice. This tension inevitably led to a crisis in Soviet constitutional doctrine, which began in the 1980s. The answer to this crisis was a declaration by the first Congress of People's Deputies of the RSFSR of June 12, 1990, On the State Sovereignty of the RSFSR. This was rapidly followed by the collapse of Soviet society and the Soviet state, and the rapid disintegration of the USSR.

In 1993, President Boris Yeltsin started the process of drafting a new constitution. In a situation of sharp sociopolitical confrontation, the Communist-dominated Supreme Soviet of Russia blocked all attempts to pass the new constitution. On September 21, in contradiction to the norms of the 1978 constitution, Yeltsin dissolved the Congress of People's Deputies of Russia as well as all Soviet government bodies. On December 12, 1993, the people adopted the new constitution, opening a new period in the history of the political system of Russia.

FORM AND IMPACT OF THE CONSTITUTION

Russia has a written constitution, codified in a single document. The supremacy of the constitution and of federal laws throughout the territory of Russia is the legal expression of the country's sovereignty. The constitution has a dual legal nature: It is the law of the federation, regulating the conduct of its territorial subunits, and it is the law of the society established by the people, aimed at protecting society from an arbitrary state.

The federal constitution and laws, by virtue of their predominance, do not require any endorsement by the various subunits of the federation; they apply directly in all of the territory of the state. Hence, if any local laws or other legal actions of the territorial members of the Russian Federation conflict with the constitution of Russia or with federal laws, all courts and administrative bodies are obliged to apply the federal constitution and federal laws directly.

Russia is a founding member of the United Nations Organization and a permanent member of its Security Council.

BASIC ORGANIZATIONAL STRUCTURE

Russia is a federation with 89 territorial members that are equal in rights. There are 21 republics, six territories, 49 regions, two cities of federal importance, 10 autonomous areas, and one autonomous region. However, there is a trend to streamline the number of members of the federation, through the association of territories. For example, from December 1, 2005, onward, the Perm area and the Comi-Permyatskiy autonomous region are united into a new entity—the Perm territory.

Each of the 21 "republics" is considered to be a state within the structure of Russian federalism and has the right to adopt its own constitution and laws. The territories, regions, cities of federal importance, autonomous region, and the autonomous areas are territorial formations. Each has a basic constituent document, a charter, and laws.

The federal structure of Russia is based on the principle of state integrity and the equality and self-determination of the diverse peoples in the federation. In relation to the federal bodies of state authority, all members of the Russian Federation are equal. Russia guarantees the rights of indigenous peoples according to universally recognized principles and the norms of international law, and in accordance with treaties and agreements signed by Russia.

The distribution of powers between the center and the members remains the most important problem in their relationship. The constitution defines the jurisdiction of Russia, the powers of the federation members, and their joint jurisdiction. The members possess full state power unless an issue is assigned by the constitution to the federation or to joint jurisdiction.

The official language is Russian, but republics have the right to establish their own official languages, which are used alongside Russian. Local self-government is recognized, guaranteed, and independent within the limits of its authority. Local taxes exist separately from the state budgets and state taxes.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution proclaims certain basic characteristics of Russia. It is federal, democratic, and law-bound with a republican form of government.

In a multinational state such as Russia the federal form of government is perhaps the most appropriate, as it allows a blending of the general interests of all people of Russia with the interests of each specific nation within the state.

The principles of government stated in the constitution correspond to the best practices of state construction in foreign countries, considering the historical and national features of Russia. They are designed to create an optimal realization of political, economic, and other freedoms. The principle of division of powers between the federal organs of government supports the democratic transformation of Russia and prevents the concentration of powers in the hands of one person in an authoritative regime.

The idea of a state founded on the rule of law is critically important. However, today this principle has not

yet been implemented in fact. Instead it should be seen as one of the important goals that may be accomplished as Russian governmental institutions are reformed and a prosperous society arises.

Russia by its constitution is also a social state, which aims to create conditions for a life of dignity for all and for the free development of the person. Undoubtedly, the complexities of the current period have limited the resources available to the state to spend on social policy. Only if the economy of Russia improves considerably would it be possible to count on appropriate social help from the state.

Russia is a secular state. No religion can be established as a state religion or as an obligatory belief. Religious associations are separate from the state and are equal before the law.

CONSTITUTIONAL BODIES

Government in Russia is exercised by the following federal bodies: the president as head of state; the Federal Assembly, consisting of the Federation Council and the State Duma, as the legislature; the administration as the executive authority; and the judiciary, consisting of the Constitutional Court, the Supreme Court, the Higher Court of Arbitration, and other federal courts.

As Russia is a federal state, government functions are carried out not only by nationwide bodies, but also by government bodies within the members of the federation, which display a variety of government structures and functional organization. The federal constitution accepts such variety. These government systems are established independently, though they must follow the general principles of representative and executive government established by federal law.

The President

The constitution gives the president primary responsibility for maintaining the operation and the interaction of government authorities. The president defines the basic directions of external and internal policy; these policies need to be realized in corresponding laws passed by parliament, which are then accepted by the state authorities at all levels. According to the constitution, the president is the guarantor of the constitution and of the rights and freedoms of human beings and citizens.

The president is also the head of state. He or she represents Russia inside the country and on the international level. All diplomatic representatives are accredited with the president, who in turn appoints or dismisses Russia's diplomatic representatives to foreign states and international organizations. The president also exercises the right of pardon.

The president is the supreme commander in chief of the military forces. As such he or she appoints all commanders of the military forces and approves the military policy of Russia. The president can declare martial law, within the limits of federal constitutional law.

The president can initiate legislation and can veto laws. The president appoints a prime minister, with the consent of the State Duma, and approves the structure of the executive government on the suggestion of the prime minister.

The Federal Assembly (Parliament)

At the federal level, the Federal Assembly is the legislature of Russia. It consists of two chambers: the Council of the Federation and the State Duma.

As a rule, the chambers sit separately, and joint sessions are rare. The deputies of the State Duma represent all citizens of Russia. The Council of the Federation comprises representatives of the federation's territorial subunits.

Legislative activity is concentrated mainly in the State Duma. Bills are initiated only there; the Council of the Federation can approve or disapprove Duma laws within certain limits.

The Federal Assembly has only limited control over the administration. Both chambers of parliament have the right to control the execution of the federal budget. The State Duma also has the power to vote no confidence in the administration, which must then resign.

The Federal Executive Administration

The federal administration is the supreme executive body. It presides over the social and economic transformations of the country and over the implementation of state economic policy. The administration develops the draft federal budget and reports on its execution; it manages federal property; provides uniform financial, credit, and monetary policy; and carries out state support of culture, science, and public services.

Basic functions of the executive government are the implementation of federal laws and the supervision of the workings of all administrative bodies. It exercises its powers by adopting regulations on strategic and current issues of public administration, and by using the right of legislative initiative.

The Lawmaking Process

The right of initiative is vested in the president, the Council of the Federation and its members, deputies of the State Duma, the executive administration, and the legislative bodies of the members of the federation. This power also belongs to the Constitutional Court, the Supreme Court, and the Higher Arbitration Court, but only on issues within their sphere of authority.

Bills are submitted to the State Duma. Those introducing or abolishing taxes and other financial bills can be submitted only with the approval of the executive administration.

A federal law is adopted by the State Duma by a majority of its members. The Duma then sends it to the Council of the Federation within five days. The federal

law is considered approved if the council either approves the bill by more than half of its members or fails to consider it within 14 days (except in certain matters in which the constitution requires its consideration). If the council tries to alter the bill, the chambers can create a conciliatory commission; or the State Duma can approve the original bill by a two-thirds majority and bypass the council.

An adopted federal law goes to the president for signing and publishing. If within 14 days of receiving the law the president rejects it, the State Duma and the Council of the Federation must reconsider it. If both chambers approve the law by two-thirds majorities, the president has to sign and publish the law.

Besides federal laws, the State Duma can adopt federal constitutional laws, as stipulated in the constitution. Such laws require approval by a three-fourths majority of the members of the council and a two-thirds majority of the deputies of the State Duma. The president cannot reject an adopted federal constitutional law.

The Judiciary

The judiciary is separate from the legislative and the executive bodies. According to the constitution, its particular attributes are independence, exclusiveness, and legality. Its main purposes are the protection of human rights and basic freedoms of the constitutional regime of Russia and the assurance of the legality of government actions.

The judiciary's exclusiveness entails that no other government body has the right to take up the functions or powers of the courts. Only they can declare a person guilty or impose criminal punishment. The legality of judicial power ensures that all judicial bodies and judges are bound by the constitution and federal laws.

The judiciary in Russia consists of the Constitutional Court, the Supreme Court, the Higher Arbitration Court, and other federal courts. The constitution also includes the office of procurator-general within the structure of the judiciary. The procurator-general of Russia is appointed by the Council of the Federation; he or she heads all bodies of state prosecution. The procurator-general is responsible for criminal prosecution and representation of the government in court proceedings.

THE ELECTION PROCESS

Free elections are defined in the constitution as the supreme direct expression of the power of the people. The will of the people, as expressed in elections, actually allows the democratic organization of authority in Russia. All representative bodies within Russia, the members of the federation, and local government are formed by elections. According to federal law, the president is also an elected position.

Only citizens of Russia have the right to vote; each citizen can exercise this right after having reached the age of 18 years. The minimal ages for election to federal and local government bodies are established by federal or regional laws. Anyone declared by a court to be incapacitated or imprisoned on a court verdict has no right to vote or be elected.

Presidential Elections

All citizens of Russia elect the president every four years. The president must be a citizen of Russia, at least 35 years old, and must have lived continuously in Russia for a minimum of 10 years before the elections. The president cannot serve more than two consecutive terms. Presidential elections are performed in two rounds: If no candidate receives more than 50 percent of the vote in the first round, the two candidates who receive the greatest number of votes run in a second, final round.

Parliamentary Elections

Elections to the State Duma take place every four years. Any citizen of Russia who is 21 years old and has the right to vote in elections can be elected as a deputy of the 450-member State Duma. Exactly half of the deputies are elected in a proportional system from lists submitted by federal parties. The other half are elected in single-mandate districts by relative majorities. As a result of the 2005 constitutional reform, from 2007 onward all deputies will be elected by the proportional system.

POLITICAL PARTIES

Ideological pluralism is guaranteed in Russia. No ideology can be established as a state or obligatory ideology. Associations are equal before the law. Ideological pluralism is understood as the right of persons, social groups, political parties, and associations to develop theories, views, and ideas concerning the economic, political, legal, and other aspects of Russia, foreign states, and the world as a whole; to propagate these views and ideas; and to conduct activities introducing these ideologies in practical life.

Parties have the right to propose candidates for elective offices including preelection campaigns. Political parties may not receive financial and other material aid from foreign states, organizations, or citizens. Currently, four leading political parties are represented in the State Duma.

Public associations, including political parties, are barred if they aim to promote violent change of the fundamental principles of the constitutional system, to infringe the integrity of Russia, to undermine the safety of the state, to create armed units, or to instigate social, racial, national, or religious strife. The party system is still in a formative stage in Russia.

CITIZENSHIP

Citizenship of Russia is acquired and terminated according to federal law. It is acquired by birth if at least one

parent is a Russian citizen; by admission to citizenship of Russia; by restoration of citizenship for persons who were citizens of Russia but have lost their citizenship; and by other grounds as stated in federal law or international treaty. Russia also encourages those who live in the territory of Russia to acquire Russian citizenship.

Citizenship of Russia is equal irrespective of the way it was acquired. No one can be deprived of citizenship or of the right to change it. Citizenship cannot in any way be limited on the basis of social, racial, national, language, or religious differences. Citizenship is not terminated if a citizen resides outside Russia.

FUNDAMENTAL RIGHTS

According to the Russian constitution, the rights and freedoms of every human being are the supreme value. The recognition, observance, and protection of the rights and freedoms of all citizens and residents are the obligation of the state.

The specific human rights are listed in special clauses of the constitution, but the source and the basis of these rights are outside the sphere of the state, meaning that the state has to respect and protect them, but does not create them. They are inviolable and indestructible. The state must not only abstain from intervention against rights and freedoms, it is also obliged to protect them and actively create the conditions for their realization. In addition, the declaration of the protection of human rights imposes a duty on the state to create special institutions for their protection. The constitution, for example, establishes the office of an ombudsperson.

Emphasis on human rights as the supreme value recognized, respected, and protected by the state does not diminish the state in any way. On the contrary, this state duty considerably raises the influence of the state on the activity of society and on economic and cultural life.

Impact and Functions of Fundamental Rights

The majority of the rights and freedoms guaranteed in the Russian constitution are enjoyed by every resident, including foreign citizens and those without any citizenship. However, the constitution explicitly reserves certain rights and freedoms to citizens; for example, some rights and freedoms are predominantly political and thus pertain only to citizens of Russia. On occasion the constitution specifically addresses the rights of foreign citizens and those who have no citizenship.

Russia has assumed a duty to protect rights and freedoms from any illegal intervention or restriction. This does not mean that the state abstains completely from the sphere of rights. The state requires that no one may abuse his or her rights or freedoms, and no one may infringe upon the rights and freedoms and legitimate interests of other persons.

The state by law defines the maintenance, range, and limits of rights and freedoms; the means to guarantee their observance; and the duties of each person in Russia, such as the payment of taxes, the preservation of the environment, and the provision of military service. Human rights and freedoms can sometimes conflict. Society and the state must resolve these contradictions according to constitutional principles.

The Russian constitution reflects all the categories of rights accepted in modern legal theory: civil rights, political rights, economic rights, social rights, cultural rights, and ecological rights.

Civil rights are understood to entail a person's freedom to make decisions independently of the state. The spiritual and physical freedom from state control evolved historically before other freedoms, in the form of freedom of worship, freedom of speech and belief, and freedom of movement. Since being charged with a crime is often connected with imprisonment, the rights in this sphere historically also evolved early. Among them are the right to be considered innocent before an independent court can find otherwise, and the invalidity of evidence gained through torture.

Political rights allow citizens to participate in the formation of government institutions and to engage in political activity. Economic rights are basically connected with property rights; they include the freedom to engage in manufacturing, exchange, and distribution and consumption of goods and services. Social rights evolved later in the 20th century. They primarily concern wages, freedom to enter into labor contracts, the right to rest, and the right to a pension. Cultural rights are associated with the freedom of access to the spiritual and material assets created by the human community.

In the second half of the 20th century a new category appeared—ecological rights. These have resulted from the conflict between scientific and technical developments, on the one hand, and the requirements of a healthy environment, on the other.

Limitations to Fundamental Rights

The Russian constitution allows restrictions on fundamental rights under certain conditions, derived from the condition that the individual lives in a society in which personal freedom is exercised in interaction with other people. Everyone has duties to other people, society, and the state.

According to the constitution, fundamental rights can be limited only by special federal law, and only with the aim of protecting fundamental constitutional principles, morals, health, the rights and the legitimate interests of other persons, the maintenance of the defense of the country, and the safety of the state. No restriction must exceed what is necessary to achieve its legitimate aim.

The first requirement is quite clear. Only the legislature, by means of federal law, can establish any restriction; the president, the federal administration, and the members of the federation all lack such powers.

The other conditions are formulated in a rather general manner. The security of rights may depend on a correct estimation by the legislature of the danger menacing fundamental constitutional principles or public morals.

ECONOMY

The constitution guarantees the free movement of goods, services, and financial assets. It obliges the government to support fair economic competition, recognizes a general freedom of economic activity, and guarantees property rights for all people. Equal protection is accorded private, state, municipal, and other forms of ownership in Russia. The constitution does not contain a special section about the economic basis of the state; it also does not establish any "leading" pattern of ownership and does not provide any restrictions on other forms of ownership. The constitution obliges the state to engage in certain economic activities; however, the state may not establish any monopolies and must prevent unfair competition.

The constitution aims to encourage a market economy as the economic basis of Russian society. State bodies and institutions of local self-government are not allowed to draw income or benefits from the exercise of their powers.

The constitution's economic provisions have not been completely implemented in Russia. In practice, both large and small enterprises depend on administrative influence within the government. Such sectors as gas, electricity, pipelines, municipal services, railway transportation, and seaports are still directly supervised by the state. The judicial system also is under the influence of the state. The right to own real estate is essentially limited; thus the local bureaucracy has the opportunity to pressure businesses. At the same time, most of the gross national product is created by the private sector, and in many fields of industry sharp market competition does exist.

RELIGIOUS COMMUNITIES

Russia is a multidenominational state where people of various creeds live, including Orthodox Christians, Muslims, Buddhists, Catholics, Lutherans, Jews, and pagans. Christianity, Islam, Buddhism, and other religions of the Russian people form an integral part of its historical heritage. Freedom of worship assumes freedom of activity for religious associations on the basis of the principle of equality.

As a secular state, Russia does not render preference to any religion and does not forbid any religious activity as long as the law is respected. State bodies do not interfere with the internal affairs of religious associations. This position of the state is based on the loyalty of religious associations to the state and its laws. The procurator-general supervises the execution of the laws concerning freedom of worship and religious associations. To suppress illegal extremist activity, the government can forbid separatist religious associations, but such decisions may be adopted only by means of a court decision.

According to the federal law on the freedom of worship and religious associations, religious associations in Russia are created in the form of religious groups and religious organizations. A religious group is a voluntary association of citizens, carrying out its activities without registration by the authorities and without the status of a legal person. A religious organization is an association of citizens of Russia or other persons who constantly and lawfully live in Russia with a common creed, registered as a legal person or entity. In the beginning of 2003, there were 21,500 religious organizations registered in Russia.

The state has the power to deny registration to religious groups that infringe on human rights and commit crimes. The state limits the activities of religious associations or individual believers only when necessary to protect fundamental constitutional principles, morals, health, or the rights and legitimate interests of other persons. The state opposes proselytizing activity, which is incompatible with the laws and exercises a wrongful influence on the people.

According to the constitution, religious associations are separate from the state, and they may not be financed by the state budget. They are also barred from participation in political life. The state has no right to assign any state functions to religious associations. Religious associations and their hierarchies are not included in the system of the government and of local self-government; they must not influence state decisions.

Religious organizations may not be formed within state organs, institutions of local self-government, or public educational institutions. Civil servants have no right to use their positions to pursue the interests of religious associations. They may, however, participate in religious ceremonies as ordinary believers. In public buildings, religious symbols must not be exhibited.

Although religious associations are separated from the state, they are not separated from society. Therefore, the state is compelled to reckon with the opinions of the religious public. Religious organizations may own property, run mass media, and engaged in charities. They can also receive certain financial privileges from the state.

Separation of religious associations from the state requires that the character of education is secular. At the same time, however, the churches can have educational institutions for the preparation of their clerics.

MILITARY DEFENSE AND STATE OF EMERGENCY

Martial law in Russia can be imposed by the president, who must immediately inform both chambers of the Fed-

eral Assembly. The decree must immediately be broadcasted by radio and television, and officially published. The Council of the Federation must consider the decree within 48 hours; unless a majority of council members vote in favor, the decree expires on the following day.

The president must also notify the secretary-general and member states of the United Nations about the introduction of martial law and about the deviation from the obligations of Russia under international treaties entailed by the restrictions of human rights. The same kind of information is given after the cancellation of martial law.

The state of emergency establishes a special legal regime for government bodies, institutions of local self-government, and officials, organizations, and public associations as specified in the federal constitutional law on the state of emergency. The law prescribes restrictions on the rights of individuals and associations and imposes additional duties on them.

The state of emergency can be declared only if there is a real, extreme, and unpreventable threat to the safety of citizens or to the fundamental constitutional principles of Russia, and only if elimination of this threat is impossible without emergency measures.

The state of emergency is declared by a decree of the president, who immediately informs the Council of the Federation and the State Duma. A decree that is not approved by the Council of the Federation becomes invalid 72 hours after the moment of its promulgation. The validity of the state of emergency entered in the entirety of Russia cannot exceed 30 days, and it cannot exceed 60 days if it is declared in separate districts. After this time limit, the state of emergency is considered terminated. If the circumstances forming the basis are eliminated before the expiration date, the president cancels it.

AMENDMENTS TO THE CONSTITUTION

The constitution of Russia is rigid from the point of view of the amending process. The Federal Assembly may not revise provisions of Chapters 1 (Fundamental Constitutional Principles), 2 (Human Rights), and 9 (Constitutional Amendments and Review of the Constitution).

If a proposal to review any provisions of these chapters is supported by three-fifths of the members of the Council of the Federation and the deputies of the State Duma, a Constitutional Assembly must be convened. This assembly either confirms the existing text of the constitution or drafts a new constitution, which must be adopted by the Constitutional Assembly by two-thirds of its members or submitted to a referendum. In case of a referendum, the new constitution is considered adopted if more than half of the electorate participates in the referendum and over half of those who vote support it.

Amendments to other chapters can be adopted by two-thirds of the members of the State Duma and three-quarters of the members of the Council of the Federation. They go into force after they have been approved by the bodies of legislative power of at least two-thirds of the members of the federation.

Proposals for amendments may be submitted by the president of the republic, the executive administration, the legislative bodies of the members of the federation, and groups of at least one-fifth of the members of the Council of the Federation or the State Duma.

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Nickolay Peshin

RWANDA

At-a-Glance

OFFICIAL NAME
Republic of Rwanda

CAPITAL
Kigali

POPULATION
7,954,013 (2005 est.)

SIZE
10,169 sq. mi. (26,338 sq. km)

LANGUAGES
Kinyarwanda (official), French (official), English (official), Kiswahili

RELIGIONS
Catholic 56.5%, Protestant 26%, Adventist 11.1%, Muslim 4.6%, indigenous beliefs 0.1%, unaffiliated or other 1.7%

NATIONAL OR ETHNIC COMPOSITION
Hutu 84%, Tutsi 15%, Twa 1%

DATE OF INDEPENDENCE OR CREATION
July 1, 1962

TYPE OF GOVERNMENT
Republic; presidential, multiparty system

TYPE OF STATE
Unitary, decentralized

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
June 4, 2003

DATE OF LAST AMENDMENT
No amendment

The constitution of Rwanda establishes a presidential system based on the rule of law and premised on the separation of executive, legislative, and judicial powers. Organized as a centralist state with a decentralized public administration, Rwanda is made up of 12 provinces (French, *préfectures*) with local governments and a strong central government.

The constitution provides for far-reaching guarantees of human rights. It is still early to determine whether the public authorities respect the fundamental rights theoretically protected; an independent judiciary is, in principle, entrusted to be the guardian of the listed rights and freedoms and ensure respect for them. Because of Rwanda's long-standing history of ethnic conflict and violence, the cardinal principles of the constitution are national unity, reconciliation, and the eradication of divisions.

The president of the republic is the head of state and the central political figure. As both head of the executive and guardian of the constitution, the president is granted extensive powers. Democratic principles are generally recognized and entrenched in the constitution, including regular elections of members of parliament and a pluralistic system of political parties.

Religious freedom is guaranteed and state and religious communities are separated. The economic system can be described as a social market economy. By law, the military is subject to the civil government. By constitutional law, Rwanda is obliged to contribute to international peace.

CONSTITUTIONAL HISTORY

Rwanda emerged as a single kingdom in central Africa in the middle of the 15th century C.E. and maintained its independence until the middle of the 19th century C.E. In 1895, Rwanda became part of German East Africa along with Burundi and Tanganyika. After the defeat of Germany in World War I (1914–18), the Versailles Treaty of 1919 assigned Ruanda-Urundi to Belgian rule; in 1923, Rwanda became a mandate territory of the League of Nations under the administration of Belgium.

In 1959, three years before independence from Belgium, government power was transferred from a Tutsi-dominated monarchy to a Hutu elite in what was known as the social revolution. The year 1959 triggered broader constitutional and political developments. Over the next several years, a wave of political violence left several thousand Tutsi dead, and thousands more driven into exile in neighboring countries.

On July 1, 1962, Rwanda was granted independence. It adopted its first constitution as an independent state on November 24, 1962. The constitution abolished the Mwami regime (a functional monarchy) and established a "democratic, social, and sovereign Republic." In 1973, Major-General Juvénal Habyarimana gained power after a successful military coup d'état. The second republic adopted a new constitution on December 17, 1978. This document decreed that political life was to be organized under a single party; the president of the ruling party was the only candidate eligible for the presidency of the republic; every Rwandan was, by law, a member of the party.

In October 1990, the Rwandese Patriotic Front (RPF), a liberation movement of mostly Tutsi refugees, began a civil war. Despite the ongoing conflict, Rwanda adopted a new constitution on June 10, 1991, officially authorizing the country to function as a pluralistic democracy.

The Rwandan government and the RPF then engaged in political talks, which culminated in the signing of the Arusha Peace Accords on August 4, 1993, an agreement guaranteeing power sharing by the two factions and officially ending the civil war. In April 1994, the plane carrying President Habyarimana of Rwanda and President Ntaryamira of Burundi was shot down in Rwanda.

Within hours of the plane crash, Hutu militia and elements in the army went on a rampage, killing in the ensuing 100 days about 1 million people and displacing more than double that number. Tutsi and Hutu alike were suspected of supporting the RPF. The RPF ended the killings by gaining power in a military victory in July 1994. The new regime adopted a transitional constitution, consisting of the June 10, 1991, constitution; the 1993 Arusha Accords; and the declarations of political parties.

On June 4, 2003, after a referendum, Rwanda adopted a new constitution, marking the end of a nine-year transition period. The framers of the constitution tried to ensure that genocide, divisions, discrimination, and dictatorship would never happen again.

The Republic of Rwanda is a founding member state of the African Union.

FORM AND IMPACT OF THE CONSTITUTION

Rwanda has a written constitution, codified in a single document, called the Constitution of the Republic of Rwanda. The constitution is the supreme law of the republic and takes precedence over all other national law. In principle, international law must be in accord with the constitution to be applicable within Rwanda. In general, the law in Rwanda complies with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Rwanda is a centralist state with a decentralized public administration made up of 12 provinces, each with its own local government. The provinces differ considerably in geographical area, population size, and economic strength. Federal laws govern the degree of administrative and financial autonomy allowed to the provinces.

LEADING CONSTITUTIONAL PRINCIPLES

Rwanda's system of government is presidential. There is a separation of executive, legislative, and judicial powers, complemented by checks and balances. The judiciary is independent.

The Rwandan constitutional system is defined by a number of leading principles: eradication of any divisions among Rwandans; promotion of national unity, dialogue, and consensus; pluralistic democratic government; equality of all Rwandans; and a social and secular republic based on the rule of law.

Emerging at a critical historical conjuncture in the political development of Rwanda, the constitution shapes political participation in light of the country's political and social history. For example, while representative democracy is recognized, the constitution stipulates that only two-thirds of the representatives in the Chamber of Deputies are elected by direct universal suffrage. The rule of law is entrenched in the constitution and safeguarded by a variety of mechanisms: an independent judiciary, a human rights commission, and an ombudsperson. Religious neutrality is explicitly contained in the constitution.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic and the cabinet ministers, the bicameral parliament, and the Supreme Court.

The President and Cabinet

The president is head of the executive, guardian of the constitution, and guarantor of national unity. The constitution stipulates that executive power is vested in the president of the republic and the cabinet. The president appoints and dismisses the prime minister and, on the prime minister's recommendation, appoints and dismisses other ministers. In principle, members of the cabinet are

appointed on the basis of their representation in parliament; however, no political party may hold more than 50 percent of the seats in the cabinet.

The cabinet implements national policy as agreed upon with the president. The cabinet is accountable to both the president and parliament.

The president of the republic can appoint and promote executive officers, senior officers in the army, and the police. As the commander in chief of the armed forces, the president has authority to declare war. The president is also the dominant political figure in Rwandan politics.

The president is elected by simple majority through direct universal suffrage for a seven-year term and can be reelected only once.

The Parliament

The Rwandan parliament is the central representative organ of the people, with power to make laws and to oversee the executive. It consists of two chambers: the Chamber of Deputies, whose members are elected for a five-year term, and the Senate, whose members serve a nonrenewable term of eight years.

Only two-thirds of the delegates in the Chamber of Deputies are elected in a general, direct, free, equal, and secret balloting process. One-third of the seats are reserved for women, who are chosen through indirect elections by local governments. Each local government in the 12 provinces elects a senator; the other members of the Senate are appointed by the president of the republic, by political organizations, and by academic institutions.

The Lawmaking Process

The right to initiate legislation is vested in each representative and in the cabinet. Certain bills of special importance can only become law with the Senate's assent. The president of the republic may raise objections to laws passed by parliament, but if these are rejected by parliament, the bill can pass into law.

The president of the republic may call a referendum on proposed laws of general national interest. The president can also issue presidential and executive orders and can promulgate legislation adopted by the cabinet when parliament is unable to convene. Such decree laws must be approved by parliament at its next session. The cabinet may exercise control over the agenda of parliament by using its priority rights: Upon its request, cabinet bills are always given priority over all other matters on the agenda.

The Judiciary

The judiciary is independent and separate from the legislative and executive branches of government.

The highest Rwandan court is the Supreme Court, consisting of a president, a vice president, and 12 appointed judges. It ranks above the high court of the republic and all provincial, district, municipality, and town courts. Generally, the Supreme Court hears appeals against decisions of the high court of the republic and the military high court, as well as constitutional disputes and criminal cases against high public officials. The Supreme Court also provides authentic interpretation of custom in cases in which the written law is silent.

Authentic interpretation of the law, however, is vested in parliament; the Supreme Court may only provide an opinion. Generally, judges are elected by the Senate on the basis of a list submitted by the president of the republic, who is required to consult the cabinet and the Superior Council of the Judiciary. The constitution also establishes a traditional system of justice, called Gacaca, specifically designed to hear cases against lower-level participants in the crimes committed in 1994.

THE ELECTION PROCESS

All Rwandans over the age of 18 have the right to vote in elections. Candidates must be over 21 to be elected to the Chamber of Deputies, and over 40 to be elected to the Senate.

POLITICAL PARTIES

The constitution of Rwanda recognizes a pluralistic system of political parties. Because of the country's recent political history and the role played by political parties in the genocide of 1994, activities of political organizations are closely regulated. For example, political parties are prohibited from recruiting their members on the basis of any discriminatory ground, including religion; two political parties (Christian Democrat and Islamist) had to change their name as a result. In addition, political parties must constantly reflect the unity of Rwandans, as well as gender equality at all levels.

The constitution also entrenches a forum of political parties meant to ensure consensus and promote national unity. The Senate may lodge a complaint against a political organization, and the organization can be banned by a decision of the high court of the republic or by the Supreme Court on appeal. Just what constitutes "divisionism" or discrimination is disputed in Rwandan politics. A resolution of these questions would be a critical indication that the government is promoting adherence to the rule of law, including freedom of expression, opinion, and association, to the fullest extent possible.

CITIZENSHIP

Rwandan citizenship is primarily acquired by birth; a child acquires Rwandan citizenship if one of his or her parents is a Rwandan citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights and duties of the citizens in its second chapter, directly after the provisions on the state and national sovereignty. The constitution guarantees the traditional set of liberal human rights and civil liberties. An equality clause prohibits discrimination of "whatever kind."

The constitution imposes an absolute obligation to respect, protect, and defend the human person and contains numerous references to the vital importance of human rights. The constitution enumerates many fundamental rights and freedoms and makes specific reference to the various international human rights instruments to which Rwanda adheres, including the African Charter on Human and People's Rights.

The constitution also enumerates duties. It draws on the treatment of "duties" in the African human rights convention, signaling the importance attached to this instrument.

The fundamental rights set out in the constitution have binding force on the legislature, the executive, and the judiciary as directly applicable law.

Impact and Functions of Fundamental Rights

Still suffering the consequences of the 1994 genocide, Rwanda in its human rights discourse focuses on the principle of equality and the prohibition of discrimination in all its manifestations.

Limitations to Fundamental Rights

Some limitations to fundamental rights have been introduced with the specific aim of preventing the recurrence of past abuses. For example, the constitutional freedoms of association, assembly, opinion, and the press are subject to ordinary legislation.

ECONOMY

The Rwandan constitution does not specify a particular economic system. However, certain basic decisions set by the framers of the constitution, such as the freedom of property, the freedom of occupation or profession, and the right to form associations, indicate a preference for a free-market system. The constitution also defines Rwanda as a social state. Taken as a whole, the Rwandan economic system can be described as a social market economy, which combines aspects of social responsibility with market freedom.

RELIGIOUS COMMUNITIES

While there is no established state church, freedom of religion or belief, which is guaranteed as a human right, involves rights of religious communities. Religious communities regulate and administer their affairs independently within the limits of the laws that apply to all associations.

MILITARY DEFENSE AND STATE OF EMERGENCY

Creation and maintenance of armed forces for defense are responsibilities of the government. Apart from defending the territorial integrity of the republic, the armed forces may only be used for special purposes that are specifically listed in the constitution, such as participating in humanitarian activities in the event of disasters, collaborating with other security organs in safeguarding public order, or participating in international peacekeeping and humanitarian assistance missions.

Ordinary legislation controls national service, whether civil or military.

The military is subject to civil government. The Republic of Rwanda ratified the Chemical Weapons Convention in 2004.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be changed at the initiative of the president of the republic upon the cabinet's proposal, and if two-thirds of the members of both chambers of parliament vote in favor. The amendment then requires the support of three-quarters of the members of each chamber of parliament.

Certain fundamental provisions, including the term of office of the president of the republic, political pluralism, and the constitutional regime, can be amended only via a referendum. The amending clause itself is rigid and may not be changed.

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Idi Gaparayi

SAINT CHRISTOPHER AND NEVIS (ST. KITTS AND NEVIS)

At-a-Glance

OFFICIAL NAME
Federation of Saint Christopher and Nevis; Federation of Saint Kitts and Nevis

CAPITAL
Basseterre

POPULATION
46,710 (2005 est.)

SIZE
101 sq. mi. (261 sq. km)

LANGUAGES
English

RELIGIONS
Anglican 25%, Methodist 25%, Pentecostal 8%, Moravian 8%, other Protestant 12%, Roman Catholic 7%, Hindu 2%, other 13%

NATIONAL OR ETHNIC COMPOSITION
Black African origin 90.4%, mulatto 5%, Indo-Pakistani 3%, British, Portuguese, and Lebanese 1%, other 0.6%

DATE OF INDEPENDENCE OR CREATION
September 19, 1983

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral parliament plus Nevis Island legislature in specified matters

DATE OF CONSTITUTION
September 19, 1983

DATE OF LAST AMENDMENT
No amendment

St. Kitts and Nevis is a federal state that adheres to the form of the British Westminster style parliamentary system of government. The uniqueness of its 1983 constitution derives from the provisions for the autonomy of the island of Nevis with regard to certain "specified matters" and the establishment of the separate Nevis Island Assembly (legislature) to address these local concerns. Both versions of the name—Saint Christopher and Nevis as well as Saint Kitts and Nevis are—official, although Saint Kitts and Nevis is preferred.

As a constitutional monarchy within the British Commonwealth of Nations, Saint Kitts and Nevis recognizes Queen Elizabeth II or her successors as the titular head of government. The British monarch is represented by a governor-general, who resides in Basseterre. Although legally responsible for the government of both islands, the governor-general appoints a deputy to represent him or her on Nevis. As the highest executive authority on the islands, the governor-general appoints the prime minister, the deputy prime minister, other ministers of the government, the leader of the opposition in parliament, and members of the Public Service Commission and the Police Service Commission. The governor-general may prorogue (adjourn) or dissolve the parliament at any time. In the judicial sphere, the governor-general has the power of pardon.

As in most Commonwealth countries, however, the apparently sweeping nature of the governor-general's powers is restricted by the requirement that the he or she act only in accordance with the advice of the prime minister. In Saint Kitts and Nevis, the governor-general is permitted to act without consultation only when the prime minister cannot be contacted because of absence or illness.

The federal government of Saint Kitts and Nevis is directed by a unicameral parliament known as the National Assembly, established by the 1983 constitution to replace the House of Assembly. The island of Nevis elects representatives both to the National Assembly and to its own Nevis Island Assembly. The focus of effective power in the federal government is the cabinet of ministers, which consists of the prime minister and other ministers.

The constitution of Saint Kitts and Nevis provides for far-reaching guarantees of human rights.

CONSTITUTIONAL HISTORY

Christopher Columbus visited Saint Kitts and Nevis on his second voyage in 1493 and found it inhabited by warlike Carib. He named it Saint Christopher for his patron saint. Divided during the 17th century between warring French and English colonists, Saint Kitts was given to Britain by the 1713 Treaty of Utrecht; although the French captured Brimstone Hill in 1782, the island was restored to Great Britain by the 1783 Treaty of Versailles. Nevis was also sighted by Columbus in 1493. The island's name derives from Columbus's description of the clouds atop Nevis peak as *las nieves,* or "the snows." It was settled by the English in 1628 and soon became one of the most prosperous of the Antilles.

The islands of Saint Kitts, Nevis, and Anguilla were united as a "presidency" within the Leeward Islands Federation by a federal act in 1882, a status it retained until 1956. The three-island grouping participated in the West Indies Federation from 1958 to 1962 and took part in the unsuccessful negotiations of the so-called Little Eight (Antigua and Barbuda, Barbados, Dominica, Montserrat, Saint Kitts-Nevis-Anguilla, Saint Lucia, and Saint Vincent and the Grenadines) that broke off in 1966. When these efforts failed, Saint Kitts-Nevis-Anguilla, along with most of the other small Caribbean colonies, accepted the British offer of associated statehood on February 27, 1967. The islands were granted full internal self-government, with the United Kingdom retaining responsibility for defense and foreign affairs. The Anguilla Act of July 1971 placed Anguilla directly under British control. On February 10, 1976, Anguilla was granted a constitution and its union with Saint Kitts and Nevis was formally severed in 1980.

A constitutional conference was held in London in 1982. In spite of disagreement over special provisions for Nevis, Saint Kitts and Nevis became independent on September 19, 1983. In August 1998, a vote in Nevis on a referendum to separate from Saint Kitts fell short of the two-thirds majority needed.

FORM AND IMPACT OF THE CONSTITUTION

Saint Kitts and Nevis has a written constitution, codified in a single document—the Constitution of Saint Christopher and Nevis of June 23, 1983. It is the supreme law of the state and makes void any inconsistent legal provision. International law does not find explicit regulation within the constitutional body.

BASIC ORGANIZATIONAL STRUCTURE

The state is divided into 14 parishes. The constitution provides for a Constituency Boundaries Commission that has the task of reviewing the number and the boundaries of the constituencies and to report accordingly at certain intervals to the governor-general. It can recommend a modification of the existing administrative structure, and the National Assembly makes the final decision.

The Nevis Island Assembly is a separate eight-member body (five elected, three appointed) charged with regulating local affairs. The Nevis Island Assembly is subordinate to the National Assembly only with regard to external affairs and defense, and in cases in which similar but not identical legislation is passed by both bodies. The guidelines for legislative autonomy in Nevis are contained in the "specified matters," areas of local administration for which the Nevisian legislature may amend or revoke provisions passed by the National Assembly. There are 23 specified matters, including agricultural regulations, the borrowing of funds or procurement of grants for use on Nevis, water conservation and supply, Nevisian economic planning and development, housing, utilities, and roads and highways. These restrictions on Kittian control over internal Nevisian concerns appear to have been one of the major concessions (along with a local legislature and the right of secession) made by the People's Action Movement (PAM) to the Nevis Reformation Party (NRP) in order to maintain the two-island union after independence.

Nevisian secession from the federation would require a two-thirds vote in the Nevis Island Assembly and the approval of two-thirds of the voters in a referendum. Saint Kitts has no corresponding right of secession, reflecting the desire of the smaller island to protect itself from possible exploitation by its larger neighbor. The government of Nevis closely parallels the structure of the federal government and has a premier analogous to the prime minister, an assembly incorporating both elected and appointed members, and a body functioning as a local cabinet, the Nevis Island administration, which includes the premier plus two or more members of the Nevis Island Assembly. Disputes between the Nevis Island Administration and the federal government must be decided by the High Court.

Discussions continue on how the political relationship between the two islands can be improved, including review of the present constitution.

LEADING CONSTITUTIONAL PRINCIPLES

The Federation of Saint Christopher and Nevis is an independent Commonwealth realm with Queen Elizabeth II

as head of state, represented in Saint Kitts and Nevis by a governor-general, who acts on the advice of the prime minister and the cabinet. The legislative, executive, and judicial branches are distinct and independent; none of these branches may delegate the exercise of its proper functions. Those who hold public office must take an oath to observe and comply with the constitution and the laws and to bear true allegiance to Her Majesty Queen Elizabeth II.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the parliament, which includes both the National Assembly and the Nevis Island Assembly and Administration; the governor-general; the prime minister; and the cabinet ministers. The constitution also provides for a supervisor of elections and a director of audit.

The National Assembly

The National Assembly is unicameral and comprises 14 members. Eleven members are elected to represent single-member constituencies (three of whom are from the island of Nevis) and three members are appointed by the governor-general—two on the advice of the prime minister and one on the advice of the leader of the opposition. The 11 members are elected by universal suffrage. The three appointed members are known as senators, although they do not form a separate house of parliament. The term of office for all 14 members of parliament is five years. The constitution provides for one standing committee, the Advisory Committee on Prerogative of Mercy; parliament is free to set up additional nonstanding committees. The cabinet of ministers is collectively responsible to the parliament.

The Nevis Island Assembly, Nevis Island Administration

The Nevis Island Legislature can make laws, which are called ordinances, for the peace, order, and good government of the island of Nevis with respect to the "specified matters." A law made by the Nevis Island Legislature that exceeds the specified matters and is inconsistent with a provision enacted by parliament is void.

The functions of the Nevis Island Administration are to advise the governor-general in the government of the island of Nevis. The administration is collectively responsible to the assembly.

The Governor-General, the Prime Minister, and Cabinet Ministers

The executive authority of Saint Kitts and Nevis is vested in Her Majesty Queen Elizabeth II. In practice, it is exercised on behalf of her majesty by the governor-general. The governor-general appoints as prime minister the person who appears likely to command the support of the majority of the representatives. The prime minister and the cabinet conduct the affairs of state and are responsible for the general direction and control of the executive. The cabinet is collectively responsible to the National Assembly. The prime minister must keep the governor-general regularly and fully informed.

The Supervisor of Elections

The governor-general designates a supervisor of elections who exercises general supervision over the registration of voters and the conduct of elections of representatives. The supervisor of elections is in turn supervised in the performance of his or her functions by a three-member Electoral Commission.

The Director of Audit

The constitutional body in charge of the oversight of public finances is the director of audit, who is appointed by the governor-general acting in accordance with the recommendation of the Public Service Commission. The director of audit is a public office and enjoys full functional and administrative independence.

The Lawmaking Process

Any question proposed for decision in the National Assembly is decided by a majority of the votes of the members present and voting. The power of parliament to make laws is exercised by bills passed by the National Assembly and assented to by the governor-general. When the governor-general assents to a bill, the bill becomes law as soon as it is published in the *Gazette* as law.

The Judiciary

The judiciary is independent; it is part of the eastern Caribbean legal system, with the Eastern Caribbean Supreme Court based in Saint Lucia. Any person who alleges that any provision of the constitution has been or is being contravened can, if he or she has a relevant interest, apply to the High Court for a declaration and relief. The right to apply for a declaration and remedies in respect of such an alleged contravention is additional to any other legal action with respect to the same matter. There is a possibility of appeal to the Court of Appeals, and, further, to her majesty in council.

THE ELECTION PROCESS

Every Commonwealth citizen 18 years or older who meets the residence qualifications in Saint Kitts and Nevis is entitled to be registered as a voter in one constituency.

A person is qualified to be elected or appointed as a member of the National Assembly if he or she is a citizen

of the age of 21 years or older, and at least one of his or her parents was born in Saint Kitts and Nevis. The candidate must also be domiciled there at the date of his or her nomination for election and appointment.

POLITICAL PARTIES

The politics of Saint Kitts and Nevis is based on a multiparty system.

CITIZENSHIP

Citizenship of Saint Kitts and Nevis is obtained by birth or by naturalization. Every person born in Saint Kitts and Nevis who was a citizen of the United Kingdom and colonies on September 19, 1983, or later, became a citizen on that day. The same rule applies to every person born outside Saint Kitts and Nevis if either of his or her parents or any one of his or her grandparents was born therein or was registered or naturalized while resident in Saint Kitts and Nevis. The constitution provides for dual citizenship, meaning that a citizen cannot be denied a passport on grounds of entitlement to apply for nationality in another country.

FUNDAMENTAL RIGHTS

The constitution establishes the fundamental rights of all persons, whatever their race, place of origin, birth, political opinions, color, creed, or sex may be, but subject to respect for the rights and freedoms of others and for the public interest. The right to life is guaranteed; no person can be deprived of life intentionally, save in execution of the sentence of a court in respect of a criminal offense of treason or murder of which the person has been convicted.

In addition, the constitution acknowledges the right to personal liberty, protection from slavery and forced labor, protection from inhuman treatment, protection from deprivation of property, and protection of persons or property from arbitrary search or entry. It also includes a provision securing protection of the law and of freedom of conscience, of expression, of assembly and association, and of movement, and protection from discrimination on the grounds of race, sex, or other factor.

ECONOMY

The constitution protects the right to private property. No property of any description can be taken except in accordance with the provisions of the law and for the payment of fair compensation within a reasonable time.

Saint Kitts and Nevis was the last sugar monoculture in the eastern Caribbean. In recent years the government has instituted a program of investment incentives to diversify its economy and has particularly promoted tourism.

RELIGIOUS COMMUNITIES

The constitution provides for freedom of religion, and the government respects this right in practice. All groups are free to maintain links with coreligionists in other countries. The government is secular; it does not take any steps to promote interfaith understanding. Relations among the various religious communities are generally amicable. The local Christian council conducts activities to promote greater mutual understanding and tolerance among adherents of different denominations within the Christian faith.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Royal Saint Kitts and Nevis police force has approximately 370 members and includes a 50-person Special Services Unit. There are also a coast guard and a small, newly formed defense force.

The governor-general can declare a state of emergency for a period of seven days during a session of parliament, and for a maximum of 21 days in any other case unless the National Assembly has approved the state of emergency by resolution.

AMENDMENTS TO THE CONSTITUTION

Parliament may alter any of the provisions of the constitution by a vote of two-thirds of the representatives. Additional requirements for changing certain provisions are specified in Article 38.

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Lasia Bloß

SAINT LUCIA

At-a-Glance

OFFICIAL NAME
Saint Lucia

CAPITAL
Castries

POPULATION
164,213 (2005 est.)

SIZE
239 sq. mi. (619 sq. km)

LANGUAGES
English, French patois

RELIGIONS
Roman Catholic 90%, Anglican 3%, other Protestant 7%

NATIONAL OR ETHNIC COMPOSITION
Black 90%, mixed 6%, East Indian 3%, white 1%

DATE OF INDEPENDENCE OR CREATION
February 22, 1979

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 20, 1978

DATE OF LAST AMENDMENT
No amendment

Saint Lucia gained independence in 1979 after being ruled by Britain since 1815. Since then it has been a parliamentary monarchy within the British Commonwealth.

Saint Lucia is a parliamentary democracy. The country is divided into 11 quarters. The legal system is based on the English common law. The British monarch is head of state and is represented by the governor-general. The preamble to the constitution professes faith in fundamental rights and freedoms, respect for the principles of social justice, and commitment to democracy—the principle of a government freely elected on the basis of universal adult suffrage—as well as to the rule of law. The government generally respects fundamental rights and freedoms. Religious freedom is guaranteed. There are no provisions addressing military forces in the constitution.

The economic system can be described as an agrarian market-based economy.

Saint Lucia is a full and participating member of the Caribbean Community (CARICOM).

CONSTITUTIONAL HISTORY

Saint Lucia is the second-largest island of the British Lesser Antilles, located roughly in the center of the Windward Island chain. Arawak Amerindians first settled on the island in the third century C.E., and the Carib later took over. The island was sighted by the Spanish in the first decade of the 16th century. After early failed attempts to settle there, it remained uncolonized until the mid-17th century, when it was ceded by the king of France to the French West India Company in 1642. In the following decades and centuries Saint Lucia alternately fell under the control of France and Britain 14 different times. Saint Lucia was finally ceded from the French to the British in 1815 and administered as a British Crown colony from 1838 until 1885, when it became administered as part of the British Windward Islands. The island was a province of the short-lived West Indian Federation from 1958 to 1962. The island was granted self-government in 1967 and achieved full independence on February 22, 1979.

FORM AND IMPACT OF THE CONSTITUTION

Saint Lucia has a written constitution, codified in one main document with three annexed schedules. The constitution is the supreme law of Saint Lucia and prevails over other

legal provisions. Laws that are inconsistent with the constitution are void insofar as they are inconsistent.

BASIC ORGANIZATIONAL STRUCTURE

Saint Lucia is a unitary state divided into 11 quarters as administrative divisions.

LEADING CONSTITUTIONAL PRINCIPLES

The head of state (the monarch) is bound by the constitution and does not, with some exceptions, take part in the daily business of the state. The judiciary is independent, and the rule of law is manifested in the preamble of the constitution, enhanced by the country's subordination to the Eastern Caribbean Supreme Court.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the governor-general and the parliament, which is composed of the Senate and the House of Assembly, and the administration or cabinet. There is also a parliament commissioner.

The Governor-General

The governor-general represents the sovereign, who appoints him or her. The duties of the governor-general include appointing the prime minister and deputy prime minister and appointing the cabinet minister on the advice of the prime minister.

The Parliament

According to the constitution, the parliament of Saint Lucia consists of the queen, the Senate, and the House of Assembly. It is the legislative body of Saint Lucia.

The House of Assembly

The House of Assembly consists of 17 members elected for five-year terms in single-seat constituencies. The prime minister is normally the head of the party that wins the most votes in elections for the House of Assembly.

The Senate

The Senate has 11 appointed members. Six members are appointed on the advice of the prime minister, three on the advice of the leader of the opposition, and two after consultation with religious, economic, and social groups.

The Prime Minister and the Cabinet

The governor-general appoints a member of the House of Assembly who has the support of the majority of the members of the house to be prime minister. The governor-general also appoints, on the prime minister's recommendation, members of Parliament from the ruling party as cabinet ministers. The cabinet advise the governor-general on its activities and is responsible to the parliament for any advice given to the governor-general and for every action taken by a minister in the execution of office. The prime minister and cabinet can be removed by a no confidence vote.

The Parliament Commissioner

The parliament commissioner is not an elected member of the parliament and is appointed by the governor-general for a term not exceeding five years. The duties of the parliament commissioner are to investigate any action, decision, or recommendation made by any administration department or authority that appeared to be a result of faulty administration or injustice, not including proceedings in a court.

The Lawmaking Process

One of the main duties of the government is to make laws for the peace, order, and good government of Saint Lucia. The House of Assembly and the Senate pass bills for the governor-general's assent; they are afterward published in the official gazette as laws. In some specially defined cases it suffices that a bill be passed only by the House of Assembly before being presented to the governor-general.

The Judiciary

The two-level court system includes the Courts of Summary Jurisdiction (Magistrate's Courts) and the High Court, both of which have civil and criminal authority. The lower courts accept civil claims up to approximately $1,850 (EC$5,000) and criminal cases that are generally classified as "petty." The High Court has unlimited authority in both civil and criminal cases. All cases may be appealed to the Eastern Caribbean Court of Appeal, which is the highest court of Saint Lucia. Cases also may be appealed to the Privy Council in London as the final court of appeal. A family court handles child custody, maintenance, support, domestic violence, juvenile affairs, and related matters.

THE ELECTION PROCESS

Under the constitution, general elections must be held at least every five years by secret ballot. They may be held earlier at the discretion of the executive government in power. The right to vote in the election is granted to all citizens who are 21 years of age or above. If the administration so decides, the voting age can be lowered to 18 years. All citizens, except senators and members of the police forces, who are at least 21, literate, and not bankrupt have the right to stand for election to the House of Assembly.

POLITICAL PARTIES

Saint Lucia has three main political parties. Freedom of assembly and association is provided for by the constitution as a protected right. However, the constitution does not explicitly recognize political parties; nor is their formation required for participation in elections.

CITIZENSHIP

Upon the date of independence, February 22, 1979, citizenship was granted to citizens of the United Kingdom and Colonies (UKC) who were born, naturalized, or registered in Saint Lucia. A person born in the territory of Saint Lucia after February 22, 1979, regardless of the nationality of the parents, is also granted citizenship, as is a child born abroad, before or after independence, of which at least one of whose parents is a citizen or was eligible for citizenship at the time of independence.

Those foreigners or Commonwealth citizens who reside in Saint Lucia for seven years or who are married to a citizen of Saint Lucia, either living or deceased, may request citizenship. This request, however, is subject to the approval of the government. Dual citizenship is recognized.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights and their protection in its first chapter. The constitution guarantees the traditional set of liberal human rights and civil liberties but does not address economic or social rights.

Impact and Functions of Fundamental Rights

The constitution is the supreme law of Saint Lucia and prevails over other legal provisions. Laws that are inconsistent with the constitution, including the fundamental rights it guarantees, are void to the extent that they are inconsistent.

Limitations to Fundamental Rights

The fundamental rights specified the constitution are subject to limitations intended to ensure that the enjoyment of the rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

ECONOMY

There is no specific economic system defined in the constitution, but it contains provisions that must be met while structuring the economic system. The first chapter of the constitution protects against deprivation of property without compensation, and the privacy of the home and other property. The country has been a primarily agrarian, market-based economy but has been able to attract foreign business and investment, especially in its offshore banking and tourism industries.

RELIGIOUS COMMUNITIES

The first chapter of the constitution protects freedom of conscience, including freedom of thought and of religion, as a fundamental right and freedom. This provision also involves the religious communities. The government generally respects this right in practice and does not tolerate its abuse, either by governmental or private actors. It maintains a close relationship with the Christian Council.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Royal Saint Lucia Police has 704 officers, including a 35-officer special services unit, which has some paramilitary training, and a coast guard unit. The civilian authorities maintain effective control of the security forces.

AMENDMENTS TO THE CONSTITUTION

There are different provisions concerning alterations or amendments to the constitution. The core provisions of the constitution can only be changed by the votes of three-quarters of the members of parliament. Other provisions can be changed by the votes of two-thirds of the members of parliament.

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Bettina Bojarra

SAINT VINCENT AND THE GRENADINES

At-a-Glance

OFFICIAL NAME
Saint Vincent and the Grenadines

CAPITAL
Kingstown

POPULATION
121,000 (2005)

SIZE
150 sq. mi. (389 sq. km)

LANGUAGES
English, some French

RELIGIONS
Anglican 47%, Methodist 28%, Roman Catholic 13%, other (including Protestant denominations, Seventh-Day Adventist, and Hindu) 12%

NATIONAL OR ETHNIC COMPOSITION
African descent 66%, mixed 19%, East Indian 6%, Carib Indian 2%, other 7%

DATE OF INDEPENDENCE OR CREATION
October 27, 1979

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Independent sovereign state within the Commonwealth

TYPE OF LEGISLATURE
Unicameral

DATE OF CONSTITUTION
October 27, 1979

DATE OF LAST AMENDMENT
review in process

Saint Vincent and the Grenadines is a parliamentary democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. The country is organized as six districts spread over the island of Saint Vincent and the 30 islands constituting the Grenadines.

The constitution provides for guarantees of human rights. These are widely respected by the public authorities; however, some human rights problems remain, such as excessive use of force by police, poor prison conditions, and an overburdened court system. If a violation of the constitution occurs, there are remedies enforceable by an independent judiciary, including the Eastern Caribbean Supreme Court—known in the country as the Saint Vincent and the Grenadines Supreme Court—as a high court and court of appeals. The constitution is currently undergoing a review carried out by a commission with public participation.

The British queen, Elizabeth II, is the formal head of state; she is represented by a governor-general, who has predominantly ceremonial functions. The prime minister, as the elected head of the executive government, is the central political figure but is dependent upon the parliament.

Religious freedom is guaranteed, and state and religious communities are separated. The economy depends to a large extent on agricultural products, construction, and tourism; it is burdened by periodic destruction by tropical weather. The country continues to suffer from unemployment and low per capita gross domestic product. The economy is based on a market system. Saint Vincent maintains no military force except a paramilitary unit within the police.

CONSTITUTIONAL HISTORY

Saint Vincent and the Grenadines was discovered by Christopher Columbus in 1498. It became a British colony in 1763 and remained—except during four-year French

rule that began in 1779—under the British through various stages of colonial status until its independence in 1979. A representative assembly was authorized in 1776, a Crown colony government installed in 1877, and a legislative council created in 1925. From 1838 Saint Vincent was part of the federal colony of the Windward Islands. In 1958, it became part of the British West Indies with an internal self-government. Four years later, Saint Vincent became a separate British dependency, restyled in 1969 in an associated state. As of October 27, 1979, Saint Vincent is an independent state within the British Commonwealth.

Similarly to other former British colonies, Saint Vincent is a constitutional parliamentary monarchy. Saint Vincent and the Grenadines maintains close relations with the United States, Canada, and the United Kingdom; it cooperates with regional organizations, such as the Organization of Eastern Caribbean States (OECS) and the Caribbean Community and Common Market (CARICOM); it is a member of the United Nations, the Commonwealth of Nations, the Organization of American States, the Association of Caribbean States (ACS), and other international organizations.

FORM AND IMPACT OF THE CONSTITUTION

Saint Vincent and the Grenadines has a written constitution, codified in a single document, called the Constitution. It is the supreme law of the land and takes precedence over all other national law. Some human rights are not enshrined in the constitution but provided by ordinary law.

BASIC ORGANIZATIONAL STRUCTURE

Saint Vincent and the Grenadines is a state made up by the island of Saint Vincent and a number of smaller islands, islets, and cays referred to as the Grenadines. The central government administers the law in all parts of the country.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government of Saint Vincent and the Grenadines is a parliamentary democracy. There is a division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent.

Political participation is shaped as an indirect, representative democracy; in certain instances referenda may be held. The rule of law is applied.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the governor-general, the cabinet of ministers, and the House of Assembly.

The Governor-General

Formally, the British queen or king is the head of state. She or he appoints the governor-general as her or his representative, “who shall hold office during Her Majesty’s pleasure”; no term of office is specified in the constitution. The governor-general exercises executive authority on behalf of her majesty but must act in accordance with the advice of the cabinet of ministers. The governor-general appoints senators, the prime minister, and the leader of the opposition and may at any time prorogue (adjourn) or dissolve the parliament.

A deputy may be appointed to represent the office in cases of absence or other reasons of unavailability.

The Executive Administration and Cabinet of Ministers

The executive administration consists of the governor-general, the prime minister, and a number of ministers determined by parliament. Considered together, the prime minister and other ministers are referred to as the cabinet of ministers. Its function is to advise the governor-general. All ministers are appointed by the governor-general from among the members of the House of Assembly; they are collectively responsible to the house; the prime minister is subject to a no confidence vote by the parliament.

The House of Assembly (Parliament)

The parliament of Saint Vincent consists of her majesty and the House of Assembly. The house consists of representatives elected in constituencies in a general election (currently 15, as established by a Boundary Commission in accordance with the Constitution), six senators appointed by the governor-general or the advice of the prime minister and the leader of the opposition, the attorney general, and the speaker of the house if he or she is not a member of the parliament. Representatives and senators vacate their seats every time parliament is dissolved, and senators may be required to step down by the governor-general. The normal term of office is five years.

The parliament is the central body that makes laws for the peace, order, and good government of Saint Vincent. It may oust the prime minister by a vote of no confidence, which requires an absolute majority of all the representatives.

The Supervisor of Elections

The supervisor of elections supervises general elections. He or she also conducts referenda for the approval of an amendment to the constitution.

The Lawmaking Process

One of the main duties of the parliament is the passing of legislation. This is done in cooperation with other constitutional organs. Generally, a decision is made by a majority of the votes of the members present and voting. Bills passed by the parliament must be assented to by the governor-general and be published in the *Official Gazette* to become law. Restrictions to the lawmaking power of the parliament apply with regard to certain financial measures.

The Commissions

The Vincentian constitution makes provision for a number of commissions, such as the Public Service Commission, the Judicial and Legal Services Commission, and the Police Service Commission, which, with the cooperation of the governor-general, exercise control over the administration and the executive.

The Public Service Board of Appeal

The Public Service Board of Appeal hears appeals against disciplinary measures within the administration.

The Judiciary

The judiciary is independent of the administration. The High Court has original jurisdiction in questions relating to the constitution. Lower courts may in proceedings before them refer to the High Court questions as to the constitutionality of a given measure as they arise. Decisions by the High Court may be appealed before the Court of Appeals and Supreme Court; decisions of the latter in certain matters may be taken for appeal to her majesty in council.

The Eastern Caribbean Supreme Court, established by a number of Caribbean countries, has unlimited jurisdiction in accordance with the Supreme Court Act. It acts as the Court of Appeals for Saint Vincent and the Grenadines.

THE ELECTION PROCESS

All Vincentians over the age of 18 have the right to vote in elections. Commonwealth citizens of 21 upward who have resided in Saint Vincent for 12 months before the election may qualify to be elected a representative. The election process is supervised by the supervisor of elections in accordance with the constitution.

POLITICAL PARTIES

Saint Vincent and the Grenadines has a pluralistic system with two major political parties. Of them, the Unity Labor Party (ULP) won 12 of the 15 seats in parliament in the 2001 elections; the New Democratic Party (NDP) holds the remaining seats.

CITIZENSHIP

Every person born in Saint Vincent becomes a citizen at the date of his or her birth except when the parents belong to the diplomatic corps of a foreign country. Persons born outside Saint Vincent may become citizens if one of their parents is a citizen. A Commonwealth citizen may be registered as a citizen of Saint Vincent; citizenship can also be acquired through marriage to a citizen.

FUNDAMENTAL RIGHTS

The 1979 constitution defines fundamental rights in its first chapter, in which it guarantees the traditional set of human rights and civil liberties.

The protection of the right to life is the starting point; it does not, however, prevent the execution of a death sentence where permitted by law and reasonably justificable in respect of a criminal offense. The constitution guarantees numerous specific rights. The human rights set out in the constitution have binding force for the legislature, the executive, and the judiciary as directly applicable law; thus, they are binding for all public authority.

The right to personal liberty and the protection from discrimination may be suspended in cases of emergency.

Impact and Functions of Fundamental Rights

Human rights are a centerpiece of the Vincentian legal system. Redress can be sought before the High Court for a violation of fundamental rights in the constitution, irrespective of any other lawful action. In addition, any court may in any proceedings before it refer a question as to the contravention of the fundamental rights to the High Court.

Limitations to Fundamental Rights

The fundamental rights are limited explicitly in the constitution by respect for the rights and freedoms of others and by the public interest, but no fundamental right may be disregarded completely: even the derogation in cases of emergency may only happen via reasonably justifiable measures for dealing with the situation.

The protection of fundamental rights is limited for members of a disciplined force, such as the military, police, or prison service.

ECONOMY

The Vincentian constitution does not specify a specific economic system. Yet, as in other constitutions, some provisions can be interpreted as providing a general economic framework in terms of a free-market system, such

as the protection of property, the freedom to form associations, and the protection from slavery or forced labor.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for religious communities. There is no established state church. The state may provide financial assistance for places of education established and maintained by religious communities; otherwise the public authorities remain neutral in their relations with religious communities, and religions must be treated equally.

The right to freedom of religion is reflected in practice. The government is secular, does not interfere with individuals' religious rights, and administers a policy that contributes to the generally free practice of religion. The government maintains a close relationship with the Christian Council, which comprises the Anglican, Roman Catholic, Salvation Army, and Methodist denominations. In public schools pupils receive nondenominational religious instruction on a voluntary basis.

MILITARY DEFENSE AND STATE OF EMERGENCY

Saint Vincent and the Grenadines maintains the Royal Saint Vincent Police. It is the only security force in the country and includes a coast guard and a small special services unit with some paramilitary training.

The police forces remain under the effective control of the civilian authorities. However, some human rights abuses committed by police forces have been reported.

The governor-general may declare a state of emergency in times of war, as a result of volcanic eruption or other natural disaster, or when action by any person constitutes a danger to public safety. A declaration of emergency generally elapses after seven days.

AMENDMENTS TO THE CONSTITUTION

Parliament may generally amend the constitution. However, certain sections, including the chapter containing fundamental rights, may only be submitted to the governor-general for assent if the alteration has been approved in a referendum by two-thirds of the valid votes. The constitution is currently undergoing a review.

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Florian Wegelein

SAMOA

At-a-Glance

OFFICIAL NAME
Independent State of Samoa

CAPITAL
Apia

POPULATION
177,714 (2005 est.)

SIZE
1,137 sq. mi. (2,944 sq. km)

RELIGIONS
Christian

LANGUAGES
Samoan and English (official)

NATIONAL OR ETHNIC COMPOSITION
Samoan 92.6%, other 7.4%

DATE OF INDEPENDENCE OR CREATION
January 1, 1962

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 1, 1962

DATE OF LAST AMENDMENT
March 2, 2001

Samoa is a parliamentary democracy organized on the basis of a cabinet headed by a prime minister. Its constitution was enacted in 1962, after a constitutional convention that ended the administration by the New Zealand Government of Western Samoa as a United Nations Trust Territory.

The constitution heralded the creation of Samoa as an independent state. Fundamental rights are guaranteed. Samoa has a growing market economy. The constitution is founded on Christian principles. Freedom of religion is guaranteed. Samoa does not have a military.

CONSTITUTIONAL HISTORY

After international claims by the British, German, and American governments, the control of Samoa (also known at that time as the Navigator Islands) was settled by treaty in 1899. The treaty granted the United States control of the eastern islands and Germany control of the western islands.

At the outbreak of World War I (1914–18), New Zealand forces took Western Samoa for the British government. At the end of the war, Western Samoa became a League of Nations Mandate and New Zealand was designated as the administrative power. The New Zealand administration lasted until 1962.

The period of New Zealand governance was not free of political troubles. Traditional Samoan leaders did not willingly accept New Zealand administration. The Mau, a nonviolent opposition movement, became very popular. Increasing opposition generated repression and considerable civil unrest.

During the New Zealand colonial administration, basic government institutions were provided by the 1921 Samoa Act. There was no representation of Samoan people until the act was amended in 1923. This amendment gave recognition to the Fono a Faipule (meeting of traditional chiefs) as a council of advisers to the administrator. An amendment of the Samoa Act in 1926 established local representation in the Legislative Council.

After World War II (1939–45) Western Samoa became a United Nations Trust Territory. In 1947, New Zealand began to consider self-government for Samoa and undertook a series of reforms of colonial government institutions. The Samoa Amendment Act of 1947 extended the legislative

powers of the assembly and increased its members to 14, 12 of whom were elected by the Fono a Faipule. In 1953, a constitutional convention representing all sections of the Samoan population was called to produce a constitution for Western Samoa, which was not completed until 1960.

In 1957, the Samoa Act was amended again to abolish the Fono a Faipule, to enlarge the assembly with directly elected members, and to redefine the powers of the assembly. The assembly consisted of three official members, five European members, and 41 Samoan members who were elected by a limited suffrage.

By the end of 1960, the constitutional convention had approved a draft constitution. On the advice and under the supervision of the United Nations, a plebiscite took place on May 9, 1961, at which the Samoan people chose independence and approved the constitution. This was the first time Samoans had voted according to adult universal suffrage.

Samoa became an independent state and the constitution entered into force on January 1, 1962. The constitution was influenced by post–World War II human rights philosophy and was based on the legal structures introduced by New Zealand in the colonial period.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is one document. It has 117 articles with key portions on fundamental rights, the head of state, the executive, parliament, the judiciary, public service, finance, land, and titles.

The constitution has proved to be very stable. At the time of its enactment it envisaged representation through chiefs (*matai*). Only *matai* could be elected to the Legislative Assembly and only *matai* could vote. This form of representation was accepted by the United Nations as satisfying the requirements of democracy because *matai* were the chosen representatives of their relevant family groups.

In 1962, parliament had 47 members. Of these 45 members represented territorial constituencies (whose electors were holders of *matai* title), and two represented individual voters who were citizens of non-Samoan origin.

The constitution has high political relevance and is the dominant set of rules for the government of Samoa. It is supplemented by and, to a degree, depends on the operation of Samoan custom (Faa Samoa).

The constitution is at the top of the hierarchy of norms. Next in order are legislation enacted by the Legislative Assembly, then subordinate legislation, and finally custom. English common law and equity are also sources of law in Samoa.

BASIC ORGANIZATIONAL STRUCTURE

The state is relatively small and centralized. Local government is conducted in a traditional way by each village. The authority of each village is recognized by the Village Fono Act 1990, which confirms an executive, legislature, and judicial authority in the village leadership.

LEADING CONSTITUTIONAL PRINCIPLES

The preamble of the constitution explicitly recognizes the role of God and Samoan custom. These principles are important for the interpretation of the constitution and of human rights issues.

The constitution provides for the basic principles of democracy. Important rules are also contained in the Electoral Act 1963, in which provisions are made for the right to vote and the right to stand for election in parliament. There was a change of the electoral system in 1991 to provide for universal adult suffrage rather than *matai* suffrage. This significant change was made without changing the constitution.

The constitution is the supreme law of Samoa. The Supreme Court has the power to determine constitutionality. The doctrine of separation of powers is indicated by Parts 4, 5, and 6, which deal with the executive, legislature, and judiciary, respectively.

CONSTITUTIONAL BODIES

The main constitutional organs are the head of state, the cabinet, parliament, the judiciary, and the Public Service Commission.

Head of State

The constitution establishes that the head of state is known as O le Ao le Malo. The key local leaders at the time of passing the constitution—Tupua Tamasese and Malietoa Tanumafili II—became joint heads of state for life; Tupua died in 1963. Upon the death of Malietoa, the head of state will be elected by the Legislative Assembly for the five-year term provided by the constitution.

The executive power is vested in the head of state, who must act on the advice of the cabinet or the appropriate minister.

Cabinet

The cabinet consists of at least eight, but no more than 12, members of parliament, appointed by the head of state acting on the advice of the prime minister. The prime minister, who is also appointed by the head of state, presides over the cabinet and must command the confidence of a majority of the members of parliament.

Parliament

Parliament consists of the head of state and the Legislative Assembly. The Legislative Assembly is unicameral and has 49 seats. Their members are elected by popular vote for a term of five years.

The Lawmaking Process

Lawmaking follows the English practice of three readings of a law proposal, followed by signature of the head of state.

The Judiciary

The system of courts for Samoa comprises the Fa'amasino Fesoasoani Court, the Magistrates' Court, the Supreme Court, and the Court of Appeal. Judges are appointed by the head of state acting on the advice of the Judicial Service Commission. The chief of justice is appointed by the head of state on the advice of the prime minister.

The Land and Titles Court is a special court that has jurisdiction of matters relating to customary land and traditional Samoan title. It operates in accordance with its own rules of procedure without the presence of lawyers and independently of the general court system. This court has significant jurisdiction because the *matai* plays an important role in the political system and because 80 percent of Samoan land is held in customary title.

The Public Service Commission

The head of state, acting on the advice of the prime minister, appoints the members of the Public Service Commission. Its main function is to provide for planning, management policy, monitoring, and evaluation of human resources in the public service. It also acts as an advisory body to the cabinet in matters relating to "appointments, grading, salaries, promotions, transfer, retirement, and terminations of appointments, dismissals, and discipline."

THE ELECTION PROCESS

General elections to the Legislative Assembly are carried out within three months of dissolution of the previous assembly, as the head of state appoints.

A person is qualified to stand for election to the Legislative Assembly if he or she is a citizen of Samoa and is not disqualified by any law of Samoa. The Electoral Act of 1963 provides that 47 of the 49 seats are reserved for *matai* title holders and two seats are reserved for citizens not of Samoan heritage.

All Samoan citizens over the age of 21 are entitled to vote.

POLITICAL PARTIES

The Human Rights Protection Party (HRPP) and the Samoan National Development Party (SNDP) are both represented in parliament. The HRPP is the dominant party.

CITIZENSHIP

Every person born in Samoa is a Samoan citizen by birth. A person who is born outside Samoa whose father or mother is a citizen of Samoa at the time of his or her birth is a Samoan citizen by descent.

FUNDAMENTAL RIGHTS

The constitution provides for the protection of fundamental rights including the right to life, the right to personal liberty, freedom from inhuman treatment, freedom from forced labor, the right to a fair trial, and rights concerning criminal law.

Impact and Functions of Fundamental Rights

There is a continuing tension between the village authorities, acting on behalf of customary rights, and individuals. The village communities still tend to give preference to the community's interest over that of individuals. Failure to comply with a village order may, for example, lead to an order of banishment against the offender and his or her family. Such an order is also frequently accompanied by destruction or confiscation of the offender's property.

Limitations to Fundamental Rights

Some restrictions of rights are allowed in the public interest, including freedom of speech, assembly, association, movement, and residence. Fundamental rights may also be restricted by emergency orders made during declared states of emergency.

ECONOMY

The constitution establishes a treasury fund that must receive all money raised by Samoa. It has provisions relating to appropriated and unauthorized expenditure. Although there is no specific provision in the constitution regarding the economy, the Samoan economy has in recent times developed rapidly and along market lines not dissimilar to those of New Zealand. There has been a pattern of corporatization of government departments and activities, with a declared goal of privatization. The Samoan economy has been supported by substantial international aid.

RELIGIOUS COMMUNITIES

The constitution is declared to be founded on Christian principles, but freedom of conscience and belief is protected.

MILITARY DEFENSE AND STATE OF EMERGENCY

Samoa does not have a military force. The constitution provides that the head of state, in consultation with the

cabinet, can declare a state of emergency for a limited time. Emergency orders can restrict constitutional rights and freedoms but are laid before parliament and are subject to its control.

AMENDMENTS TO THE CONSTITUTION

The constitution can be altered by an act of parliament passed with the special majority of two-thirds of the total membership. Amendments to Article 102 (relating to the alienation of customary land) also require the support of two-thirds of the national electorate voting in a poll.

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Tony Angelo

SAN MARINO

At-a-Glance

OFFICIAL NAME
Republic of San Marino

CAPITAL
San Marino

POPULATION
29,300 (2005 est.)

SIZE
24 sq. mi. (61 sq. km)

LANGUAGES
Italian

RELIGIONS
Roman Catholic

NATIONAL OR ETHNIC COMPOSITION
Sammarinese, Italian

DATE OF INDEPENDENCE OR CREATION
301 C.E.

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
1600 (statutes); July 8, 1974 (Declaration of Rights)

DATE OF LAST AMENDMENT
February 26, 2002

The Republic of San Marino is a parliamentary democracy. The form of government has specific features deriving from the constitutional and political history of the republic. The dominant role of parliament (Consiglio Grande e Generale) in the decision-making process works against the principle of separation of powers; however, the assembly itself has always been a collegial and republican body.

The parliament has lawmaking powers, policymaking functions, the power of appointment, as well as judicial and administrative functions. All the constitutional bodies are elected by the parliament.

The two capitani reggenti, elected by the parliament for six-month terms, combine the functions of head of state, head of the executive (Congresso di Stato), and speaker of the parliament. The executive, made up of members of the parliament and presided over by the head of state, has only recently obtained more autonomy and explicit functions of government and policymaking.

The Republic of San Marino has an uncodified constitution composed of a series of different laws and documents. One of the most important documents is the 1974 Declaration of the Rights of the Citizens and the Fundamental Principles of the Order of San Marino, which has a primary role in the hierarchy of legal sources. It contains several provisions showing characteristics of an entrenched constitution. The document contains provisions on the relation between citizens and the government, the protection of human rights, and the main principles concerning the organization of the state.

CONSTITUTIONAL HISTORY

The main feature of San Marino's constitutional history is its continuity. Its constitutional organization is ultimately based on statutes (Leges Statutae), going back to the 13th century and codified in 1600 C.E. Most of these statutes are still binding.

According to tradition, San Marino was founded in 301 C.E., when a Christian stonemason named Marinus hid on the peak of Mount Titano to escape from the anti-Christian Roman emperor Diocletian. He founded a small community of people who followed Christian beliefs.

Undoubtedly, the oldest body was the Arengo, the Assembly of the Heads of Families, which held all legislative

and judicial powers. This created a type of government that can be described as a direct patriarchal democracy, tailored to a small close-knit community.

The transformation from direct to representative democracy took place in the 16th century when the powers of the Arengo were transferred to the parliament (Consiglio Grande e Generale). The latter was appointed by the Arengo from among its most distinguished members.

The most important day in the constitutional history of San Marino was March 25, 1906, when the Arengo passed a constitutional reform giving all citizens the right to vote in parliamentary elections. The form of government thus changed from an oligarchy to a democracy. This change was strengthened by a series of subsequent political developments, interrupted only during the period 1923–43, when San Marino was under fascist rule. The 1974 Declaration of Rights can be seen as the culmination of this process.

FORM AND IMPACT OF THE CONSTITUTION

San Marino does not have a written constitution. However, as the 1974 Declaration of Rights formalized certain constitutional matters, it occupies the high position in the hierarchy of legal sources typical of a rigid constitution. Some of the historical Leges Statutae, which continue to have some legal standing, have constitutional content.

Article 1 of the Declaration of Rights refers to the European Convention on Human Rights and other international treaties concerning human rights. These treaties prevail over conflicting domestic legislation.

BASIC ORGANIZATIONAL STRUCTURE

San Marino is a unitary state.

LEADING CONSTITUTIONAL PRINCIPLES

San Marino has a parliamentary democracy. The dominant role of parliament is strictly connected to the political traditions of a small, homogeneous, and conservative community.

The republican form of government, the protection of civil and political rights, and the principle of collegiality at all levels of the political system are constant features in the history of San Marino. Consequently, separation of powers is not needed as an instrument to protect fundamental rights. There is a strong overlap between legislative and administrative functions.

The population of San Marino enjoys social and cultural rights typical of a welfare state.

CONSTITUTIONAL BODIES

The constitutional bodies fixed in the 1974 Declaration of Rights are the head of state (capitani reggenti), the executive (Congresso di Stato), the parliament (Consiglio Grande e Generale), and the judiciary, including the Constitutional Court (Collegio dei Garanti), which was introduced by the Constitutional Reform of 2002.

The Head of State (Capitani Reggenti)

The capitani reggenti carry out the functions of a head of state collegially. They are elected by parliament in a secret ballot requiring an absolute majority. According to a constitutional convention, the capitani reggenti are chosen from among the members of parliament. Their mandate lasts for half a year (they begin office on April 1, and October 1, every year). They cannot be reelected for at least three years after a previous mandate. They preside over the parliament and the executive (Congresso di Stato). Collegiality and a short mandate prevent a shift toward authoritarianism.

The Executive (Congresso di Stato)

The executive (Congresso di Stato) is elected by the parliament from among its members. It is politically responsible to the parliament and carries out government and administrative activities; however, there is no explicit relationship of confidence between the executive and the parliament.

The Parliament (Consiglio Grande e Generale)

The parliament (Consiglio Grande e Generale) is composed of 60 members elected through universal and direct suffrage. It exercises legislative, political, and supervisory functions. The peculiarity of the parliament of San Marino lies in its administrative functions and powers of appointment. Therefore, the form of government is decidedly parliamentarian.

The Lawmaking Process

According to the standard procedure for approving a law, a bill must be included in the order of the day of parliament, which then assigns it to the relevant committee. After the committee has scrutinized the bill, it is sent back to the parliament for final debate and approval. A bill is approved by a majority of those voting. Constitutional amendments or laws have to be approved by a qualified majority of two-thirds of the assembly; if it fails to reach that threshold, but does win an absolute majority, a referendum can be held. Finally, organic laws (*leggi qualificate*) have to be approved by an absolute majority of the members of parliament.

The Judiciary

Until 2003, parliament appointed all the ordinary judges (who had to be from outside the country). The Consiglio dei Dodici (Council of Twelve), chosen by parliament from among its members and presided over by the head of state (capitani reggenti), was a third instance court in civil and administrative proceedings.

Since 2003, there has been one first instance court, organized as two benches, one civil and one administrative. Judges are now selected through a public examination system and can be from San Marino. This reform guarantees independence and freedom of the judiciary, as called for in the 1974 Declaration of Rights.

The Constitutional Court (Collegio dei Garanti) is composed of three sitting members and three deputies, elected by parliament by a majority of two-thirds of the members. The court carries out constitutional review of laws, acts having force of law, and customary laws. Furthermore, the Constitutional Court decides on the admissibility of referendums, resolves jurisdictional disputes of constitutional bodies, and pursues inquiries concerning the head of state.

THE ELECTION PROCESS

All citizens at least 18 years old can vote. All citizens who are at least 21 years old on the day of the elections can be elected.

POLITICAL PARTIES

The Republic of San Marino has a multiparty political system, with a proportional electoral system.

CITIZENSHIP

The primary way to become a citizen of the Republic of San Marino is by birth. The parliament can accord naturalization in special cases provided for by law.

FUNDAMENTAL RIGHTS

Historically, the principles of equality, personal freedom, freedom of expression, and freedom of assembly are part of the political and legal heritage of the Republic of San Marino. Article 5 of the 1974 Declaration of Rights states that "human rights are inviolable." The subsequent articles (6 to 11) enumerate the most important of these.

In some cases, the Declaration of Rights merely recognizes preexisting rights such as personal freedom, freedom of domicile, freedom of assembly, freedom of association, freedom of conscience, and freedom of creed. It also recognizes the right to vote, to be elected, and to join political parties and trade unions.

The document also contains a series of so-called social rights. They include the right to free education, social security, and a clean and safe environment, as well as protection of the historical and culture heritage.

Impact and Functions of Fundamental Rights

The basic rights set out in the Dichiarazione (Declaration) have binding force for all constitutional bodies.

Limitations to Fundamental Rights

Article 5 of the 1974 Declaration of Rights declares human rights as inviolable.

ECONOMY

The constitution of San Marino does not prescribe any particular economic system. Nevertheless, the country shows the typical features of a social market economy.

RELIGIOUS COMMUNITIES

Freedom of religion in San Marino encompasses both beliefs and practices. There is no established state church.

MILITARY DEFENSE AND STATE OF EMERGENCY

The army of the Republic of San Marino is staffed on a voluntary basis and is responsible to the head of state. In cases of internal or international states of emergency the parliament can call up all citizens between the ages of 16 and 60.

AMENDMENTS TO THE CONSTITUTION

Amendments to the 1974 Declaration of Rights have to be approved by a qualified majority of two-thirds of the Grand and General Council. If they are approved by only an absolute majority, a referendum is held.

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Licia Califano

SÃO TOMÉ AND PRÍNCIPE

At-a-Glance

OFFICIAL NAME
Democratic Republic of São Tomé and Príncipe

CAPITAL
São Tomé

POPULATION
151,000 (2005 est.)

SIZE
380 sq. mi. (1,001 sq. km)

LANGUAGES
Portuguese (official language), Bantoues, Portuguese Creole (Crioulo)

RELIGIONS
Roman Catholic 82%, Protestant 15%, small animist minority 3%

NATIONAL OR ETHNIC COMPOSITION
Descendants of African slaves (Servicais, Forras, Angolares) 80%, Mestizo 10%, Europeans 2%, other 8%

DATE OF INDEPENDENCE
July 12, 1975

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 10, 1990

DATE OF LAST AMENDMENT
January 29, 2003

A tiny island state facing a high degree of poverty and low economic development, São Tomé and Príncipe is one of Africa's most open and pluralistic democracies. Within the limits of a restrained budget, the rule of law and fundamental rights are fairly well respected. The constitutional system is based on the model of presidential democracy.

CONSTITUTIONAL HISTORY

São Tomé and Príncipe were two uninhabited islands until Portuguese sailors arrived on the day of Saint Thomas (Portuguese, São Tomé) in 1470. It fell under the Portuguese Crown in the 16th century and saw considerable development as a port of transshipment in the slave trade and later as an exporter of sugar and cocoa. Slave labor was formally abolished in 1876, but forced paid labor continued until the middle of the 20th century and gave rise to social conflicts.

With decolonization beginning in Africa in the 1950s, a liberation front called Movimento de Libertação de São Tomée Príncipe (MLSTP) was formed abroad. When the Portuguese dictatorship was overturned in 1974, the new Portuguese government negotiated transition to independence, which was achieved on July 12, 1975.

The MLSTP established one-party rule following Marxist doctrine. In 1990 São Tomé and Príncipe became one of the first African countries to introduce multiparty rule. The constitution dating from 1975 was revised in 1990, but not completely replaced. The recent constitutional revision of 2003 has constituted an additional step of development toward constitutional democracy and has devolved some power to subnational entities.

FORM AND IMPACT OF THE CONSTITUTION

Despite the economic hardship the country faces, it has successfully followed the path of democracy and respect for the rule of law over the last two decades. Two unsuccessful coup attempts were made since 1990, the

second in 2003. However, order was quickly restored by nonviolent means.

A regular transition from the first democratic president to the second was achieved in 2001. The constitution appears to have considerable impact, and the country is one of the freest in Africa.

BASIC ORGANIZATIONAL STRUCTURE

São Tomé and Príncipe is a unitary state and a presidential republic. The island of Príncipe has some autonomy.

LEADING CONSTITUTIONAL PRINCIPLES

The 1990/2003 constitution has important features taken from the Portuguese presidential type of government, with an even more powerful position of the president of the republic. There is a division of powers among the legislature, the judiciary, and the executive, under the supervision of the president. Rule of law and fundamental rights are enshrined in the constitution. The socialist past still is visible in the text of the constitution.

São Tomé and Príncipe is a secular state. It aims at promoting peaceful relations with neighboring countries and countries of Portuguese language and proclaims its adherence to the values of the United Nations (UN) and the African Union. International treaty law takes precedence over national legislation, but not over the constitution.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president of the republic, the executive administration, the Council of State, the National Assembly, the Constitutional Tribunal, and the Supreme Court of Justice.

The President of the Republic

The president is the most powerful figure in the constitutional life of São Tomé, as the head of state and supreme commander of the armed forces. The president guarantees national independence and ensures the proper functioning of the institutions.

The president is directly elected for five years. There is in principle no limit to reelection. No person can, however, be elected for three *consecutive* terms. In order to be eligible, candidates must have São Toméan nationality and be of São Toméan descent, with no other citizenship; they must have lived permanently on the national territory at least three years before their candidacy and must be older than 35.

The president may not hold any other office. He or she must notify the National Assembly of any absence from the national territory; its assent is required for absence of more than five days or travel on official duty. If the necessary assent is not sought, the president is removed from office without further steps. In case of incapacity, the president is replaced by the president of the National Assembly.

The president appoints the prime minister and the council of ministers and can demand the resignation of the prime minister at any time. The president also has the power to dissolve the National Assembly after a favorable vote in the Council of State.

The president may veto a law voted in the National Assembly. The veto can be overridden by a qualified majority.

The president is responsible to the Supreme Court for crimes committed while in office when acting in official duty. The accusation must first be approved by two-thirds of the members of the National Assembly, acting upon a proposal by one-fifth of its members. Other crimes are tried before ordinary courts, after the term of office ends.

The Executive Administration

The executive administration is composed of the prime minister, the cabinet ministers, and the secretaries of state. It is appointed by the president of the republic, taking into consideration the results of parliamentary elections. A new administration has to be formed after every election. The prime minister must be of São Toméan descent and may not possess another citizenship. The administration is politically responsible before the assembly. Holding of executive governmental posts is incompatible with holding any other post in public and private institutions.

The executive administration convened in the Council of Ministers appoints high civil and military officers. It also disposes of extensive regulatory power and has the power to initiate laws.

The Council of State

The Council of State is a consultative organ for the president of the republic. It is composed of the president of the National Assembly, the prime minister, the president of the Constitutional Court, the attorney general of the republic, the president of the regional government of the autonomous region of Príncipe, the former presidents of the republic, three distinguished citizens chosen by the president for the duration of the president's term of office, and three citizens chosen by the National Assembly for the term of the legislature on the basis of proportional representation of political forces. The Council of State may make recommendations on dissolution of the National Assembly, declaration of war and peace, and other matters.

The National Assembly (Parliament)

Members of the National Assembly are elected by universal suffrage for four-year terms with the possibility

of reelection. The constitution affirms the principle that each member represents the whole nation, not his or her constituency.

The size of the assembly is determined by law; it currently has 55 members. Parliamentary activity is limited to two biannual sessions. A Permanent Committee assures continuity between these two sessions.

The constitution provides for parliamentary immunity. A member of parliament can be removed from the assembly by a secret vote of two-thirds of the members of the assembly, in cases of grave disrespect for his or her duties.

The National Assembly can remove the administration by a motion of censure. It has the power to appoint the judges of the Supreme Court.

The Lawmaking Process

The National Assembly disposes of the power of lawmaking. The division between parliamentary lawmaking power and governmental regulatory power is determined by a catalog in the constitution.

The Judiciary

There is a single jurisdiction for civil, criminal, and administrative affairs. It is formally independent, and the independence of individual judges is constitutionally protected. The Supreme Court is at the apex of the judiciary.

The judiciary decides matters related to the respect for fundamental rights. The judiciary has ruled against both the executive administration and the president, but it apparently is still subject at times to influence and manipulation. The court system is overburdened, understaffed, inadequately funded, and plagued by long delays in hearing cases.

The Constitutional Tribunal

The Constitutional Tribunal is composed of five members, three of them members of the judiciary, the other two jurists of other professions. The tribunal has the power to review the constitutionality of legal norms, whether statutes or international agreements; it rules on whether the president is incapacitated; it reviews the electoral process and referenda; and it decides on the legality and constitutionality of political parties.

THE ELECTION PROCESS

Elections are open, universal, direct, equal, and secret. Elections have produced changing majorities in parliament and have replaced a president from one party with a successor from another. A recent constitutional revision introduced popular referendums. The National Assembly or the Council of Ministers can propose referendums on matters within their purview; other issues to be decided by referendum are specified in the constitution or the law.

Since the latest constitutional revision, foreign nationals may participate in local government elections on condition of reciprocity.

POLITICAL PARTIES

São Tomé and Príncipe has become a multiparty state. The MLSTP, the only party admitted until 1990, still has considerable power in the political process, though not enough to obstruct political change. The current president of the republic is of the opposition Ação Democrática Independente (ADI) party.

CITIZENSHIP

Citizenship is acquired either by descent from a São Toméan father or mother, regardless of the country of birth, or by birth on São Tomé and Príncipe. Naturalization is possible on condition of five years of residence and renunciation of former citizenship. Naturalization is subject to certain conditions, among others "good morality" and sufficient means of support. São Toméan citizens may keep their nationality when they acquire a foreign one.

FUNDAMENTAL RIGHTS

The constitution enshrines a vast catalogue of fundamental rights, including an elaborated list of social rights. Their exercise may be restricted during a state of emergency.

The general human rights record is good. However, there are problems in some areas, in part caused by the lack of resources for public institutions. Security forces have on occasion beaten and abused detainees, although the constitution prohibits torture and degrading treatment; they have also on occasion violently dispersed demonstrations. Prison conditions are harsh, and the judicial system is inefficient. Violence and discrimination against women are widespread, child labor remains a problem, and labor practices on plantations are harsh.

The police force is ineffective and widely viewed as corrupt. Police officers have successfully been held responsible for human rights abuses in court. Government and international donors are trying to improve the living conditions of security agents, to reduce the temptation for corruption.

Defense rights are constitutionally protected. However, they find their limits in the underequipped court system.

Freedom of press is recognized. Although permitted by law, there is no private radio or TV. Opposition parties receive free airtime. Freedom of association and assembly is also in principle respected, although police sometimes mishandle political demonstrations. Although equality of men and women is far from realized, a woman was recently appointed prime minister.

The death penalty has been abolished by the constitution. No person may be extradited to a country that applies the death penalty for the crime in question.

ECONOMY

The constitution provides for a mixed economic system. Private, public, and cooperative property is constitutionally protected; the right to join a labor union is recognized.

RELIGIOUS COMMUNITIES

Although predominantly Roman Catholic, São Tomé and Príncipe is a secular republic. Freedom of religion is guaranteed.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the commander in chief of the armed forces. Military service is compulsory, and the defense of the country the "honor and supreme duty" of every citizen. It appears that the defense forces have not acquired any lethal weapons since 1990.

Declarations of war need parliamentary approval, as does any participation by the armed forces in foreign military operations or any presence of foreign troops on the national territory.

A state of emergency can be declared by the president, but it requires parliamentary authorization. The constitution does not specify any additional conditions on the exercise of emergency powers.

AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution may be initiated by three-quarters of the members of the National Assembly, and approved by two-thirds of the members. The president of the republic may call a popular referendum on an amendment at the proposal of the National Assembly, but has no veto power in the matter.

Limits to constitutional revision have been recently introduced. A revision may not impact the independence and the territorial integrity of the country, the secular and republican form of government, fundamental rights, the separation of powers, the guarantee of free elections, the autonomy of regional and local government, the independence of the courts, or political pluralism.

No new constitutional revision may be approved until five years have passed since the previous revision. No constitutional revisions are allowed during a state of emergency.

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Malte Beyer

SAUDI ARABIA

At-a-Glance

OFFICIAL NAME
Kingdom of Saudi Arabia (Al Mamlakah al Arabiya as Suudiyah)

CAPITAL
Riyadh

POPULATION
25,795,938 (2005 est.)

SIZE
829,995 sq. mi. (2,149,690 sq. km)

LANGUAGES
Arabic

RELIGIONS
Muslim 93.7%, Christian 3.7%, Hindu 1.1%, other 1.5%

NATIONAL OR ETHNIC COMPOSITION
Arab 90%, Afro-Asian and other 10%

DATE OF INDEPENDENCE OR CREATION
September 23, 1932

TYPE OF GOVERNMENT
Monarchy

TYPE OF STATE
Centralist unified state with 13 provinces

TYPE OF LEGISLATURE
Council of Ministers that enacts laws (subject to royal veto); Consultative Council (Majlis al-Shura; appointed by monarch and advisory only)

DATE OF CONSTITUTION
Basic Law of March 1, 1992

DATE OF LAST AMENDMENT
No amendment

The Kingdom of Saudi Arabia is a unitary state under the hereditary monarchy of the al-Saud family. Saudi Arabia's Basic Law of Governance, promulgated by King Fahd in 1992, declares that the Quran (the words revealed to the Prophet Muhammad) and the *sunnah* (traditions from the life of Muhammad) are the constitution of Saudi Arabia and that the state shall be governed in accordance with sharia (Islamic law). The Basic Law provides that the king, who is also the prime minister, shall rule the kingdom in accordance with sharia and that he will choose his successor from among the direct descendants of the founder of the al-Saud dynasty. The king chooses the members of his Council of Ministers, which acts as the principal lawmaking body of the state, but whose decisions are subject to royal veto.

Although the Basic Law effectively provides that the king is the ultimate political authority in the state, high Islamic religious leaders, collectively known as the Ulema, have significant influence over the king and the other political institutions. The exact nature and degree of the influence of the Ulema are debated, but it is commonly believed that the king, despite all of the power vested in him by tradition and through the Basic Law, would be unable to govern without *ijma* (consensus) and *shura* (consultation). It is generally believed that the influence proceeds in both directions between the king and the Ulema and that each is to some extent dependent on the other for its legitimacy and influence.

Saudi Arabia is not a democracy, and citizens do not have the right to vote. The Basic Law states that citizens shall have rights in accordance with sharia. It is widely believed that the judicial system of Saudi Arabia is not free and does not operate in an independent manner, and therefore that laws may be inconsistently applied to the benefit of the state, the royal family, or other influential persons. In the early 21st century, the Saudi government began to take some limited steps to introduce elections of officials at the local level.

CONSTITUTIONAL HISTORY

The Kingdom of Saudi Arabia first became a unified and independent political entity in 1932 under King Abdul-Aziz ibn Abdelrahman al-Saud (who is generally called ibn Saud outside Saudi Arabia and Abdul-Aziz inside Saudi Arabia), who conquered rival tribes and united the different regions of the modern-day kingdom. During the 20th century, Saudi Arabia was transformed from a poor desert kingdom largely populated by warring Bedouin tribes and coastal merchants and fishermen into one of the richest countries in the world, holding the world's largest known oil reserves.

The constitutional history of modern Saudi Arabia may reasonably be said to have begun during the lifetime of the Prophet Muhammad in the sixth and seventh centuries C.E. The Prophet lived in the holy cities of Mecca and Medina, where he received revelations that culminated in the creation of the Quran, the holiest text for Muslims and the basis for much of sharia (Islamic law), which is recognized as being the underlying law of the modern Saudi state. The traditions of Muhammad's life constitute the *sunnah,* which is recognized as the second most important source of sharia and is also recognized as law in Saudi Arabia. (The *sunnah* are collected and recorded in stories and quotations known as *ahadith.*) Saudi Arabia is particularly marked by the fact that the two most sacred sites of Islam, the mosques of Mecca and Medina, are on its soil. The official title of the king of Saudi Arabia is Custodian of the Two Holy Mosques.

Throughout much of its history after the seventh century, the Arabian Peninsula—modern-day Saudi Arabia, Yemen, and other Gulf states—was the scene of ongoing struggles among warring clans. Traditionally, the two most important competing geographical regions were the Hijaz and Nejd. The Hijaz, which is located along the western coast of the peninsula, contained the important trading, transportation, and religious centers of Mecca, Medina, and Jeddah. The geographical center of Arabia is the desert region of the Nejd, the site of the modern-day capital, Riyad. Traditionally, the Hijaz has been the more cosmopolitan, literate, and sophisticated part of Arabia, and the Nejd populated by less educated desert Bedouin. These perceived regional differences, though sometimes exaggerated and sometimes downplayed, continue to have social and political significance within Saudi Arabia.

European powers began to attempt to control portions of the Arabian Peninsula in the 16th century. The Turkish Ottoman Empire conquered parts of the peninsula, including Mecca and Medina, in the 17th century but was never able to overcome the enormous logistical difficulties posed by the huge desert regions at the center.

The modern history of Saudi Arabia may be said to have begun in the 18th century with the fortuitous alliance of two figures from the Nejd: Muhammad ibn Abd al-Wahhab (1703–92), the founder of the Wahhabist interpretation of Islam that prevails in Saudi Arabia, and Abdul-Aziz ibn Muhammad ibn Saud, the founder of the current ruling al-Saud family. As a young man, al-Wahhab traveled to and studied in the great centers of Islamic learning, including Baghdad, Damascus, Isfahan, Jerusalem, Cairo, and Mecca. He was particularly influenced by the writings of the 14th-century scholar Taqi al-Din ibn Taimiya, who has recently become recognized as one of the leading sources for contemporary Islamist extremism.

Upon his return to Arabia, al-Wahhab began to preach what is often (though controversially) called Wahhabism, an interpretation of the Quran that generally is recognized as the strictest form of Islam. He argued that most Muslims were practicing forms of Islam that contained unacceptable innovations (*bida*) that deviated from the original teachings of the Prophet Muhammad. He relentlessly and often violently attacked the symbols and practices he found offensive. He believed that many Muslims were wrongly paying homage to saints, scholars, the Prophet's companions, and even the Prophet himself—rather than exclusively to Allah.

Al-Wahhab destroyed shrines and tombstones of revered Islamic leaders, including those dedicated to the Prophet's companions. He refused to allow celebration of the Prophet's birthday, a major holiday throughout the Islamic world. He advocated a strict return to the laws of the Quran, including death by stoning for adultery and beheading for other grave offenses. The early followers of these teachings saw their role as that of purifying Islam, a goal that could not help but be offensive to other Muslims, who believed that they were worshiping and practicing correctly. Al-Wahhab's teachings and practices were gradually seen as too extreme for his community, and he was forced to flee his home.

The place to which al-Wahhab fled for safety was only a few miles to the south in Ad Dariyah, a small community under the rule of Muhammad ibn Saud. Ibn Saud, and his son afterward, had the ambition to extend the power of their family throughout the Arabian Peninsula. The arrival of al-Wahhab, with his zealotry, energy, and willingness to use force to achieve his religious goals, was seen as providing a religious impetus that could stimulate holy warriors to further the al-Saud family's political ambitions. In 1745, al-Wahhab and ibn Saud entered into an agreement to join forces to spread both the worldly ambitions of the house of Saud and a strict interpretation of Islam.

Al-Wahhab provided a religious rationale for the al-Saud family to suppress their political opponents. He declared that Islam requires Muslims to obey political authorities; any revolts against the emirs should be punished with violence. Thus the house of Saud could use religiously sanctioned force to suppress opponents to its political ambitions, and the Wahhabist understanding of Islam became the state orthodoxy. This agreement from 1745, renewed in the 20th century, is the basis for Saudi Arabian political legitimacy.

The al-Saud family collapsed in the 19th century, and the Arabian Peninsula fell again into the hands of rival factions and the Ottoman Empire. The Wahhabist interpretation of Islam, however, remained strong.

In January 1902, the young Abdul-Aziz ibn Abdelrahman al-Saud, a descendant of the 18th-century king Ibn Saud, and 15 warriors scaled the walls of Riyadh and captured its fort. This event, which is now widely celebrated in Saudi Arabia as having launched the new state, was the first step in a 30-year campaign that ultimately reacquired the territory of Ibn Saud's ancestors, including the important towns of Mecca, Medina, and Jeddah.

In the early years Abdul-Aziz's campaign to reunite the kingdom lacked broad-based support in the center of the country, where devotion to the teachings and practices of al-Wahhab remained strong. In order to accomplish his political aims, Abdul-Aziz, as his predecessors had, made common cause with a group of religious zealots and warriors, this time with the Ikhwan (Brethren), who were followers of al-Wahhab. One of their principal leaders was Abdallah of the Al al-Shaikh family, a descendant of Abd al-Wahhab. According to one historian, these white-robed Ikhwan became "the white terror" of Arabia. With their support, however, Abdul-Aziz conquered many of the Bedouin tribes, who in turn converted to the teachings of al-Wahhab and became new warriors to assist the ambitions of Abdul-Aziz and the Ikhwan. In 1924, Abdul-Aziz and the Ikhwan decided to liberate and purify the holy cities of Mecca and Medina, then ruled by the Ottoman Turks. In 1932, Abdul-Aziz formally announced the establishment of the Kingdom of Saudi Arabia, a land that was at that time desperately poor.

One of the first and most significant problems Abdul-Aziz faced with his reunited kingdom was the hostile relationship between the newly conquered Ulema of the cultured towns of Mecca and Medina and the warriorlike Wahhabist Ikhwan from the Nejd; one can imagine the resentment of the learned Ulema when being told by the desert Ikhwan that they did not understand true Islam.

Consistently with the teachings of al-Wahab, the Ikhwan destroyed several sites in Mecca and Medina that were considered by other Muslims to be among the holiest shrines of Islam, including the memorial at the Prophet's birthplace, the house of Abu Bakr (the first caliph after Muhammad), and the tombs of the early followers of the Prophet. The tension that such destruction caused was exacerbated by the Ikhwan's treatment of some pilgrims on the hajj, who were insulted and attacked when playing music. Abdul-Aziz tried to mediate such conflicts in order to maintain the support from the Ikhwan but not so strongly as to bring down the wrath of the Islamic world on him. (Before the discovery of oil, tourism in the sense of Muslims' visiting the holy cities was a principal source of Saudi revenue.)

Abdul-Aziz sought to placate his Ikhwan supporters by introducing strict religious laws, but he also sought to rein in the enforcement of the laws by individual Ikhwan. He thereupon created the religious police known as the *mutawwa'in* (Committee for the Propagation of Virtue and Prevention of Vice). Abdul-Aziz placed at the head of this new organization two Ulema from the Al al-Shaikh family, descendants of al-Wahhab.

The 1745 pact between the first Ibn Saud and al-Wahhab, and the understanding between the "second" Ibn Saud (Abdul-Aziz) and the Ikhwan, have had a powerful shaping force on the ethos, laws, and religious positions of the current Saudi state. Although the contemporary "arrangement" of the house of Saud and the Ulema has been variously called sacred, cynical, or hypocritical, it remains of vital importance.

In 1953, on the death of Abdul-Aziz, his son, King Saud, established the Council of Ministers, which acted as both a legislative and an executive body. In 1992, after calls for reform in Saudi Arabia that followed the first Gulf War, King Fahd issued the Basic Law of Governance, which may properly, if loosely, be considered to be the constitution of Saudi Arabia.

FORM AND IMPACT OF THE CONSTITUTION

The 1992 Basic Law of Governance is the legal text that most closely approximates a constitution for Saudi Arabia, even though the law itself declares that the country's constitution is the Quran and *sunnah*. The Basic Law was promulgated by the king and may effectively be amended or repealed on the authority of the king (presumably acting through the Council of Ministers, the members of which he may appoint or terminate at will).

The Basic Law provides that laws, treaties, international agreements, and concessions need to be issued and modified by royal decree to be effective, but that the laws of the kingdom must not violate international agreements. Saudi Arabia has ratified several international conventions, but not the International Convention on Civil and Political Rights or the International Convention on Economic, Social, and Cultural Rights.

BASIC ORGANIZATIONAL STRUCTURE

The Kingdom of Saudi Arabia is a unified central state with 13 regional provinces that are governed by the king. The laws, state officials, and courts are centralized under the ultimate authority of the king. The kingdom is not a democracy, and citizens do not have the general right to vote. In 2003, limited proposals were made to begin a process of allowing some local officials to be elected, and elections to municipal council have been held.

LEADING CONSTITUTIONAL PRINCIPLES

There are three dominant constitutional principles in Saudi Arabia: first, the governing authority of Islamic law and values; second, the political authority of the king; and third, the values of consensus and consultation. In

addition to these dominant principles, several other values are identified in the Basic Law.

1. Islamic law and values: The Basic Law repeatedly identifies Islam, the Quran, *sunnah,* and sharia as forming the underlying values and principles of the Saudi state and the law that must be followed there. Article 1 of the Basic Law identifies the Holy Quran and the *sunnah* as the constitution of Saudi Arabia, and the Basic Law repeatedly speaks of sharia as the law of the state.

   sharia is an Arabic word that referred originally to a path, such as a path one would take to find water. Over time it began to mean "the right path" or "the right guide," including all the divine laws to be followed by Muslims, from prescriptions on prayer, to rules on marriage and divorce, and including criminal prohibitions.

   In addition, the state is required to "protect the Islamic Creed," "enjoin good and forbid evil," and "undertake the duties of the call to Islam." It is responsible for maintaining and guaranteeing the security of the Two Holy Mosques and for promoting Islamic culture. Article 1 identifies the state religion as Islam, declares the religious feasts of Eid Al-Fitr and Eid Al-Ad-ha to be the two national holidays, and identifies its article of faith as "There is no God but Allah, Muhammad is Allah's Messenger."
2. The authority of the king: The Basic Law designates the king as "the point of reference" for all political authorities, effectively giving him the power to control the political and legal system both through his own authority and through the power to name and replace political and judicial officials. Although the king is constrained by principles of Islamic law, he ultimately has a great deal of power to interpret the ways that law shall be applied.
3. Consensus and consultation: The Basic Law also acknowledges, albeit briefly, the importance of consensus and consultation in adopting and enforcing laws. This consensus and consultation, though fundamental to the governance of the Saudi state, are difficult to describe accurately because so much is based upon personal relationships, family connections, and wealth.
4. Other: The Basic Law identifies several other principles of the Saudi state, though informed observers differ on the extent to which they are merely rhetorical or taken seriously by the state and its officials. Among these values are family, the basic needs of individuals, and the unity of the state.

CONSTITUTIONAL BODIES

Under the Basic Law of 1992, there are three authorities in the state: the judicial, executive, and regulatory, though the king is the ultimate source of all these authorities. The major organs are the king, the Council of Ministers, the Consultative Council, the judiciary, and the Ulema.

The King

The king, who is also designated as prime minister, supreme commander of the armed forces, and custodian of the Two Holy Mosques, is the dominant political figure in the Saudi state. According to the Basic Law, the king is the head of state and is responsible for appointing (and replacing at will) all senior government and judicial officials. For example, the king appoints and replaces the members of the Council of Ministers, the body that serves as both the executive cabinet of the king and the lawmaking body of the Saudi state.

Though the king's authority technically is constrained by sharia, he is the person principally responsible for interpreting and applying sharia. There is no constitutional means of appealing a decision of the king.

The second most important constitutional figure is the crown prince, who is selected by the king from among the direct descendants of King Abdul-Aziz. The king may revoke the designation and replace the crown prince with another descendant of Abdul-Aziz. The king may delegate authority to the crown prince, as reportedly happened after King Fahd suffered a stroke in 1995 and effectively delegated his powers to Crown Prince Abdullah, who effectively ruled Saudi Arabia, even before his own accession to the throne in 2005.

The Council of Ministers

The Council of Ministers acts as both the legislative and the executive power under the authority of the king. Any decision of the Council of Ministers becomes law within 30 days unless vetoed by the king. By tradition, most of the members of the Council of Ministers are descendants of King Abdul-Aziz.

The Majlis al-Shura (Consultative Council)

Saudi Arabia also has the Majlis al-Shura (Consultative Council), now consisting of approximately 120 members, to advise the king. The king appoints and replaces members of the Majlis at will.

The Lawmaking Process

The Council of Ministers is the lawmaking body of the Saudi state. The king may veto any law adopted by the Council of Ministers.

The Judiciary

The Basic Law provides that the judiciary shall be independent, though the head of the judiciary is the minister of justice, who traditionally is either a member of the royal family or a descendant of al-Wahhab. The first minister of justice was also the grand mufti. The Ministry of Justice itself handles administrative matters for the court. The Supreme Judicial Council handles appeals and judicial supervision.

Judges are appointed and replaced at will by the king, who is responsible for implementing and enforcing judicial decisions. Courts are required to apply the sharia to the legal disputes brought before them.

The principal court system is known as the sharia courts, which have courts of first instance (limited courts and General Courts), Courts of Appeals (in Riyadh and Mecca), and a Supreme Judicial Council. Although a litigant technically can appeal a decision of the Supreme Judicial Council to the king or crown prince, it is said that as a matter of practice the royal family does not interfere with decisions of the courts. By default, all cases, whether civil or criminal, are handled by the sharia courts unless there is a specific law that directs the subject matter to another type of tribunal. The sharia courts, of course, apply the law of sharia, which consists of the writings of the Quran and *sunnah*. These courts are under the administrative supervision of the Ministry of Justice.

The personnel who serve in the Supreme Judicial Council, Ministry of Justice, and Supreme Council of Ulema often rotate among the positions and sometimes serve concurrently as president of more than one entity. The king always retains the authority to appoint and terminate a judge. The Shia minority is given limited rights to operate its own court system in matters of personal or family law. In addition to the sharia courts, there are parallel courts that are responsible for non-sharia matters, including many commercial and labor disputes. These courts are likely to be involved particularly when international businesses are involved.

Although some argue that the judiciary is in fact constrained by strict interpretations of sharia, others complain that judges are susceptible to political and even financial influence of Saudi officials, the royal family, and other Saudi elites. The courts also appear to be influenced by fatwas (legal opinions) issued by the grand mufti of Saudi Arabia.

The Ulema

Despite the overwhelming authority that the Basic Law grants to the king, the Saudi state to some extent operates on the basis of *ijma* (consensus) and *shura* (consultation). There is a vital but unarticulated religiopolitical understanding between the Ulema (chief religious leaders), the most important of whom are frequently descendants of al-Wahhab, and the descendants of King Abdul-Aziz. The Ulema play a critical role in the operation of the Saudi state, though they are not governmental officials per se. The grand mufti is now the head of all Ulema.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

As noted, Saudi Arabia is not a democracy, and citizens do not have the right to vote. In 2003, the government began limited efforts to establish elections for some positions at the local level. Though this may be the beginning of a significant change in the Saudi political and constitutional system, the proposals thus far are minor. Half of the members of 178 municipal councils in the kingdom's 13 regions were elected in 2005; the other half were appointed by the government.

POLITICAL PARTIES

There are no political parties in Saudi Arabia.

CITIZENSHIP

The Basic Law provides that citizenship rules will be established by law. In 2004, Saudi Arabia enacted a new citizenship law that includes a variety of complex rules on ways citizenship may be obtained and lost. It is noteworthy that a female child born in Saudi Arabia of a Saudi mother and non-Saudi father cannot obtain citizenship unless she marries a Saudi man. A male child born to a Saudi mother and non-Saudi father is a Saudi from birth, as are both males and females of Saudi fathers and non-Saudi mothers (unless they take the citizenship of their mother). Under the Basic Law, citizens are obligated to defend the Islamic faith.

FUNDAMENTAL RIGHTS

The Basic Law provides that the state shall protect human rights, but only in accordance with sharia. It further provides that the law shall be administered with justice, consultation, and equality. Personal dwellings should be inviolate, and privacy is to be respected. Individuals are not to be arrested, tried, or imprisoned except in conformity with sharia. The law also recognizes rights of ownership, private property, and rights of capital and labor.

Impact and Functions of Fundamental Rights

Outside observers are deeply skeptical about the extent to which fundamental rights are in fact recognized and respected by the state, particularly when the interests of the royal family conflict with those of others.

Limitations to Fundamental Rights

Fundamental rights are subject to the limitations imposed by sharia.

ECONOMY

The Basic Law provides that the natural resources that God has deposited underground, above ground, and in

territorial waters are the property of the state. The significance of this provision is immediately apparent with the recognition that Saudi Arabia has the world's largest oil reserve—which is sometimes estimated as one-fourth of all known oil reserves. Once again, however, many outsiders believe that state ownership largely translates to ownership by members of the royal family. The division between the state and the royal family is not clear, and Saudi officials do not make any effort to resolve this potentially blatant conflict of interest.

RELIGIOUS COMMUNITIES

Saudi Arabia is overwhelmingly Islamic and officially follows Sunni Islam and the strict teachings of the school of al-Wahhab. The state is both directly and indirectly involved in matters of religion. Women are required to wear veils covering their faces and bodies. Alcohol is prohibited, and strict punishments are meted out for many offenses. There is active discrimination even against Shia Muslims; non-Islamic religious adherents are prohibited from worshiping in public and can be under threat even for worshiping in private. The United States Department of State, which issues reports on freedom of religion in most countries of the world, states pointedly that freedom of religion does not exist in Saudi Arabia.

MILITARY DEFENSE AND STATE OF EMERGENCY

The king is the supreme commander of the armed forces, and he has the power to declare states of emergency and mobilization for war.

AMENDMENTS TO THE CONSTITUTION

The Basic Law was originally promulgated by the king. Since the legislative body, the Council of Ministers, is effectively under the control of the king, the law can be changed at his will as well (perhaps modified by the requirement of consensus and consultation). Amendments can be made through the will of the king as issued by his Council of Ministers.

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T. Jeremy Gunn

SENEGAL

At-a-Glance

OFFICIAL NAME
Republic of Senegal

CAPITAL
Dakar

POPULATION
11,126,832 (2005 est.)

SIZE
75,749 sq. mi. (196,190 sq. km)

LANGUAGES
French (official), Wolof, Pulaar, Jola, Mandinka, Serer, Soninke (national languages)

RELIGIONS
Muslim 94%, indigenous beliefs 1%, Christian (mostly Roman Catholic) 5%

NATIONAL OR ETHNIC COMPOSITION
Wolof 43.3%, Pular 23.8%, Serer 14.7%, Jola 3.7%, Mandinka 3%, Soninke 1.1%, European and Lebanese 1%, other 9.4%

DATE OF INDEPENDENCE OR CREATION
April 4, 1960

TYPE OF GOVERNMENT
Semipresidential democracy

TYPE OF STATE
Decentralized unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 7, 2001

DATE OF LAST AMENDMENT
June 19, 2003

Senegal has a representative, liberal, and pluralistic form of government. It is based on the rule of law with a clear separation of executive, legislative, and judicial powers. It is also a decentralized unitary state with local communities that have administrative and financial autonomy. The Senegalese constitution proclaims and guarantees human rights. The constitution is respected by all public authorities. An independent judiciary decides cases of violations of its provisions.

The central figure of the state is the president of the republic, who is officially head of state. Free, equal, general, and direct elections of the president and of the parliament are guaranteed. A pluralist system of political parties has a certain impact on the political regime. Freedom of religion is guaranteed and the state and religion are separated. The existing economic system of this underdeveloped country is that of a market economy subject to government interventions. The armed forces are subordinate to the civil government.

CONSTITUTIONAL HISTORY

Senegal was partly or completely integrated in the medieval empires of Ghana, Mali, and Songhaï. On today's territory of Senegal there were at different times numerous kingdoms such as Tekrour, Djolof, Cayor, Sine, and Walo.

Some students of precolonial Wolof society in Senegal have detected a separation between religion and the state, and a separation between the executive and the legislative powers. The king exercised all except religious and legislative functions. Laws were determined by tradition and custom.

The king had a general protective and pacifying function, maintaining internal and external peace by using the armed forces at his disposal. He was the supreme arbiter of the country, administering justice by himself or delegating his authority. He also exercised fiscal functions. He was supported by a government with ministerial

specialization: The grand *jaraaf* played the role of prime minister, the grand *farba* headed the police, the *fara sëf* was minister of defense, and so on.

The king could also summon a superior council for all matters requiring serious decisions (such as defense of the kingdom and declaration of war). A council of grand electors, presided over by the grand *jaraf,* was charged with the election of the king. Despite the important powers of the king there was no endeavor to limit the royal power. The exterior event of colonization deeply disrupted Wolof and other local societies.

In the 15th century the Portuguese became the first Europeans to set foot on Senegalese soil, well before the English and the French. By the middle of the 17th century colonial trading posts were established, as a prelude to full colonial domination.

Senegal did not become a colony until the 18th century, after a struggle among the various colonial powers marked by several military expeditions and the signing of numerous treaties. In 1763, France lost possession of Senegal in the Treaty of Paris but regained the colony in the 1783 Treaty of Versailles. In 1809 Britain seized the colony again, then returned it to France in 1818. From 1854 to 1864, the French undertook several military expeditions and achieved the conquest of most of today's Senegal over the vigorous resistance of the Senegalese at Walo, Fouta, Cayor, and other sites. In 1886, Ziguinchor, today a regional capital in southern Senegal, was ceded to France. In 1889, a treaty between France and Britain drew the territorial borders between Senegal and The Gambia.

The inhabitants of four local communities were granted French citizenship as early as the 19th century, but the status of the colony did not differ significantly from that of other colonies. During the whole colonial period there was but one single power: the colonial state based in Paris.

Under the 1946 French constitution Senegal became an overseas territory, that is, an integral part of France. It was integrated into what at the time was called the French Union. Administrative institutions were created, and in 1946 a territorial assembly replaced the colonial council. The assembly remained under the supervision of the Grand Council of French-Occidental Africa, a superior assembly. On May 7, 1948, the law Lamine Gueye conferred French citizenship on all residents.

On June 23, 1956, a framework law (Gaston Defferre) granted administrative and political autonomy to the colony and installed universal suffrage. A reform modified the distribution of powers among the French state, the federation of French West Africa, and Senegal. With the adoption of the 1958 French constitution by referendum Senegal voted in favor of this project.

Thus, on November 15, 1958, the Territorial Assembly of Senegal adopted a resolution establishing the Republic of Senegal as a member of the French Community. The new state, in accordance with the 1958 French constitution, did not enjoy all the internal or international powers a state normally has.

The first Senegalese constitution dates from January 24, 1959. It provided for a unicameral parliamentary regime with a preponderance of the executive. At that time Senegal supported a federation with three other francophone states: (French) Sudan, Dahomey, and Upper Volta (today's Mali, Benin, and Burkina Faso, respectively), but Dahomey and Upper Volta refused to take part.

The federation of Senegal and Sudan adopted the name of Mali. In September 1959, the federation demanded its independence under Article 78 of the French constitution. On December 13, General de Gaulle promised that France would recognize the Federation of Mali. On April 4, 1960, treaties organizing the transfer of powers were concluded between France and Mali. A federal constitution was adopted on June 18, 1960, and on June 20 the independence of Mali was proclaimed.

On August 20, even before the institutions of government could be set up, the Federation of Mali broke apart, and its two components became independent states. Sudan maintained the name Mali. Senegal adopted a new constitution on August 26, 1960.

Since then, three constitutions have followed each other: one on August 26, 1960, installing a parliamentary system; another on March 7, 1963, installing a presidential regime, which underwent profound evolution; and another on January 22, 2001, which is still in effect.

FORM AND IMPACT OF THE CONSTITUTION

Senegal has a written constitution, codified in a single document that takes precedence over all other national law. International law must be compatible with the constitution to be applicable in Senegal. The law of supranational organizations into which Senegal integrates has precedence over the Senegalese constitution if it does not contradict its basic principles.

BASIC ORGANIZATIONAL STRUCTURE

Senegal is a decentralized unitary state. There is one single center of political decision, but there also are many (441) local communities, of which 320 are rural communities, 110 municipalities, and 11 regions. The local communities are recognized by the constitution of Senegal, which proclaims the principle of citizens' participation in public affairs through decentralized communities and the principle of free administration of local communities through councils elected by universal suffrage.

LEADING CONSTITUTIONAL PRINCIPLES

In the 2001 constitution there is no reference to any ideology. The preamble proclaims respect for and consolida-

tion of the rule of law, in which government and citizens are subject to the same legal provisions under the control of an independent and impartial judiciary.

Article 1 states: "The Republic of Senegal is laïque [secular], democratic, and social. It guarantees the equality before the law for all citizens without distinction of origin, race, gender or religion. It respects all creeds." Article 1 also characterizes the principle of the republic as government of the people, by the people, and for the people.

National sovereignty belongs to the people, who exercise it through their representatives and through referenda (Article 2). The universality, equality, and secrecy of suffrage are guaranteed. The principle of separation of powers is affirmed. The constitution also enshrines the multiparty principle (Article 3).

CONSTITUTIONAL BODIES

The president of the republic, the administration, the National Assembly, the Constitutional Council, the State Council, the Cassation Court, and the courts and tribunals, and also the Council of the Republic for Economic and Social Affairs constitute the institutions of the republic (Article 5). The Council of the Republic for Economic and Social Affairs also plays an important role.

The President of the Republic

The president is elected for a term of five years and can be reelected indefinitely. The office of president of the republic is incompatible with all other public and private functions. The president enjoys penal immunity for any actions performed in the exercise of presidential functions. The president is not responsible to parliament except in the case of high treason (not defined in the constitution). In that case the president can be impeached by the National Assembly after a secret vote with a majority of three-fifth of all members; he or she is then tried by the High Court of Justice. The president enjoys particular protection against insults and disparagement.

If a president dies, becomes definitively incapacitated, or refuses to accept the election results, new elections must be organized within 60 days.

Until a new president is elected, the president of the National Assembly substitutes for him or her for three months. The substitute may not submit any bill to a referendum and may not submit any proposal to amend the constitution.

The president determines the policy of the nation, deciding on the general outlines of national and international policies and activities of the state. The president ensures that the prime minister and the ministers implement directives given to them in their respective domains. The ministers can exercise regulatory powers only if explicitly permitted by law, and only within organizations and functions under their specific authority. The president can delegate certain powers to the prime minister and the ministers, excluding the right to pardon, to call for referendums, or to initiate amendments to the constitution. The president presides over the Council of Ministers, which meets each week to discuss the most important questions, such as proposed bills and decrees, appointments to high office, and general directives.

The president is vested with extensive powers of appointment, covering all officials and state employees, though he or she may delegate this power to the prime minister or other ministers. The president also signs decrees and regulations.

The president of the republic receives the ambassadors and extraordinary envoys of foreign powers. The president directs the diplomatic service of Senegal and appoints all its foreign representatives. It is the president who determines the fundamental options of foreign policy; the minister of foreign affairs only exercises the presidential directives. The president negotiates, ratifies, and approves international engagements; however, treaties involving peace, commerce, or international organizations require ratification by the legislature.

According to the Senegalese constitution the president of the republic is the guarantor of the national independence and territorial integrity. The president is responsible for the national defense and is the commander in chief of the armed forces, which are at his or her disposal. The president appoints all military officers and chairs the Superior Council of the National Defence.

The president of the republic appoints magistrates, with the advice of the Superior Council of the Magistracy, which the president also chairs. The president has the right to pardon.

The president can also appeal to the Constitutional Council in cases of conflict with the parliament, especially in order to seek a declaration of unconstitutionality of a law passed by parliament.

The Executive Administration (Government)

The administration of the Republic of Senegal is directed by the prime minister. The administration coordinates and conducts the national policy determined by the president.

Members of the administration cannot serve in parliament or engage in any other public or private professional activity. They are responsible under criminal law for any acts performed in the exercise of their functions and qualified as crimes or offenses at the moment they are committed. They are charged by the National Assembly and tried by the High Court of Justice.

After his or her nomination, the prime minister presents a general declaration of policy to the National Assembly. The prime minister can ask the National Assembly to express its confidence in him or her.

The prime minister is the head of the executive and the civil servants, and he or she can appoint certain

civil servants according to the law. The prime minister is responsible for the application of the law. The prime minister can delegate certain power to the minister and exercises regulatory powers.

The National Assembly

Currently the National Assembly has 142 members, called deputies. Their term of office is five years. A deputy whose ineligibility becomes apparent after the election or during the course of office is dismissed by the Supreme Court at the request of the National Assembly.

The office of a deputy is incompatible with a cabinet post, or with the exercise of any public or elective function in Senegal or any other state or organization. A deputy may not belong to the Economic and Social Council, except as its president.

A deputy may not help direct any enterprise with financial aims, unless the deputy held this office before being elected. However, members of the teaching staff of the University of Dakar, medical doctors in public hospitals, and persons charged with temporary missions of up to six months by the executive can be deputies.

Deputies cannot be tried for opinions or activities expressed or carried out in the exercise of their office. They cannot be the object of criminal prosecution nor be arrested for crimes and offenses except if caught in the act. Only the National Assembly while in session or its office when the assembly is not in session can authorize criminal prosecution of a deputy and lift parliamentary immunity. If convicted, the deputy loses the parliamentary mandate.

According to the constitution the assembly alone has power to make law; however, it can delegate this power to the commission of delegations that it can form. The domain of the law is limited to a number of matters stated in the constitution (Article 67).

The National Assembly can authorize the president of the republic to take measures that normally have to be passed by an ordinary law. The president can also circumvent the assembly entirely by submitting proposed laws to a referendum. Furthermore, the president can in the case of emergency make laws, which the assembly has the power to ratify or to overturn within 15 days after their adoption.

The assembly must vote on the budget within 60 days of its presentation. If no vote is taken within this time, the president can pass the budget by decree. All bills and proposed amendments proposed by the deputies that entail increases in public expenditure or decreases in public income must be accompanied by suggestions on means to rectify the imbalance.

Only the National Assembly has the power to declare war. Certain international treaties need the ratification or the approval of the assembly, including treaties of peace, commerce, and international organizations, if they are relevant to state finances, modify legal provisions, concern the status of persons, or concern the ceding, exchange, or acquisition of territory.

The National Assembly can pass amnesty laws. It participates extensively in the organization and functioning of the High Court of Justice and appoints the members of that court from among the deputies. It can charge the president of the republic for high treason by a majority of three-fifths of its members.

The Lawmaking Process

Laws can be initiated by the president of the republic (projects of law) or by the deputies (propositions of law). In practice, the vast majority of bills originate from the president.

The bills are prepared by permanent or special committees, who are aided in their work by the state ministers and state secretaries. The committee's report serves as a basis for plenary discussion, which begins with a general debate on the report. Then, there are discussion and vote article by article, including any amendments submitted during the first debate. The assembly may refer suggested modifications back to the committee.

The assembly finally votes the complete project. A relative majority is required except for organic laws, which require an absolute majority. If the president of the republic sends back the bill for reconsideration, a majority of three-fifths is required for renewed passage. The adopted law is promulgated by the president of the republic.

The Judiciary

According to the constitution the judiciary consists of the Constitutional Council, the Council of State, the Cassation Court, the Court of Appeal, and the various courts and tribunals. The judiciary power is the guardian of the rights and freedoms.

The independence of the judiciary is enshrined in the constitution, as are the means of guaranteeing this independence—for example, judges are not removable and there is a superior council of the magistrates. Judges are subject in the exercise of their functions only to the authority of the law.

The Constitutional Council can rule on the constitutionality of laws, at the appeal of the president of the republic or of one-tenth of the members of parliament. The Council of State can make a similar appeal concerning administrative matters; the Cassation Court can make an appeal concerning civil, commercial, and penal matters; and the Court of Appeals can appeal concerning matters of private law and administrative. The Constitutional Council also rules on electoral disputes and questions of the distribution of powers between the executive and the legislature.

The Council of the Republic for Economic and Social Affairs

The 2003 constitutional reform created a new consultative body: the Council of the Republic for Economic

and Social Affairs. It is composed of 100 members: a quarter of them representing societal organizations, another quarter appointed by the president of the republic, and the remaining half elected by local communities. Its task is to give advice to the president of the republic, the administration, and the National Assembly in matters of economic, social, cultural, and institutional development. It can also play a role as mediator in social conflicts. The Council of the Republic ensures the participation of different societal forces and local communities in the development of national economic and social policy.

THE ELECTION PROCESS

The Presidential Elections

According to the constitution the president of the republic is elected by universal and direct suffrage by majority vote in two rounds. The first round takes place between 45 and 30 days before the expiration of the president's term, or within 60 days of a vacancy in the office. Election procedures are determined by law.

Candidates must be citizens of Senegal at least 35 years old and must enjoy civil and political rights. They must be presented by a legally constituted political party, and each party can only present one candidate. The Constitutional Court verifies that the candidates comply with the law and publishes the list of candidates. The election campaign begins 21 days before the first round and ends a day before elections. If there is a second round, the campaign is opened on the day the candidates are announced and ends at midnight before election day.

The Constitutional Council supervises the lawfulness of the electoral campaign and the elections and the acceptability of the candidates' propaganda. It decides on all urgent appeals and takes immediate action if needed to restore equality. It can even issue injunctions to the administrative authorities.

To be elected in the first round the candidate needs the absolute majority of votes. If this requirement is not met, a second round follows two weeks later, between the two candidates with the most votes. In the second round the candidate who has the relative majority succeeds.

The Legislative Elections

Deputies are elected by universal and direct suffrage. Half of them are elected by a majority from lists within each department, and half of them by proportional representation from national lists.

Any voter at least 25 years of age who has complied with the rules of military service is eligible to be a candidate. Naturalized foreigners and those who have obtained citizenship by marriage are not eligible for six years. The election campaign follows rules similar to those that apply to presidential elections.

The Constitutional Council proclaims the results and declares the candidates provisionally elected. Candidates can contest the results within five days before the council. However, any challenge that manifestly cannot influence the results of the election is declared unacceptable. If the court accepts a challenge, a new election is organized within 21 days.

POLITICAL PARTIES

The multiparty system has been a permanent feature of the political life of Senegal, except during a period of one-party rule between 1966 and 1974. The system has always been organized and structured, and is a key to understanding the functioning of the Senegalese political system.

Currently, nearly 80 political parties compete for power. This so-called political opening to a multiplicity of players is a recent phenomenon, but party-based political life has existed since the colonial era.

The political parties must follow certain rules. Respect for the constitution, national sovereignty, and democracy must be enshrined in their statutes. Parties may not conduct activities that endanger the security of the state or territorial integrity. Political parties may not identify themselves with one race, ethnicity, gender, religion, belief, language, or region. The political parties can be freely constituted with a declaration and registration. A decree of dissolution of a political party is an administrative act that can be appealed to the Supreme Court.

CITIZENSHIP

Senegalese citizenship is acquired by birth (*ius sanguinis*) or marriage. A child acquires Senegalese citizenship if one of his or her parents is a Senegalese citizen. The place of birth is irrelevant.

FUNDAMENTAL RIGHTS

The preamble of the Senegalese constitution makes reference to the 1789 Declaration of the Rights of Man and the Citizen, the 1948 Universal Declaration of Human Rights, the 1966 International Pacts Relative to Human Rights, the international instruments adopted by the United Nations relating to the rights of women and children, and the African Charter of Human and Peoples' Rights. The preamble then affirms the nation's respect for the fundamental liberties and rights of citizens and guarantees all citizens, without discrimination, an opportunity to exercise power at all levels, as well as access to public services. All forms of injustice, inequality, and discrimination are explicitly rejected. Title 2 of the constitution explicitly affirms these various rights. Statutory law provides the specific guarantees for and limits of these rights and freedoms.

The constitution recognizes civil and political rights, economic rights, social and cultural rights, and communal rights.

Impact and Functions of Fundamental Rights

Among civil and political rights are the sacred and inviolable character of the human person; the right to life, liberty, and security, and to the free development of the personality; protection for the integrity of the body, especially mutilation (the constitutional basis of prohibition of sexual mutilation). The constitution also guarantees freedom of assembly, freedom of expression, freedom of the press, freedom of association, freedom of opinion, freedom of movement, freedom to demonstrate, freedom of conscience (which includes the right to profess and to practice a religion of one's choice), and the right to privacy of communications and correspondence.

Among economic, social, and cultural rights are the right to own property; the right to work; the freedom to form trade unions; the right to strike; the right to health, education, and pluralist information; and the right to a healthy environment.

The constitution recognizes specific women's rights: the right to own real estate, the right to have and administer one's own property, nondiscrimination in employment, equality in salary and taxes, and prohibition of forced marriage. Family rights include the right to decent living conditions and the right of the young for protection against drugs.

Limitations to Fundamental Rights

All these freedoms and rights must be exercised under the conditions provided for by law. In order to promote and protect these freedoms, the state must punish all attacks against them and against their proper exercise. The rights and freedoms are guaranteed by the national and international judiciary and by independent administrative authorities.

ECONOMY

The Senegalese constitution does not indicate a specific economic system. Certain provisions, however, relate to the economy. There are a fundamental right to own property, a right to free enterprise, a right to work, a right of workers to participate in the determination of working conditions by their representatives, a right to transparency in public matters, and the principle of good governance. The constitution also provides for economic planning laws, which determine the objectives of the government's economic and social activities. The law also determines the rules for nationalization of enterprises, and conversely for the transfer of ownership from the public to the private sector.

RELIGIOUS COMMUNITIES

Despite proclaiming the principle of secularity, the constitution gives a very important place to religious communities, in a nod to national reality. Senegal is home to several important Muslim communities, whose influence extends beyond the spiritual field into temporal matters. Religious institutions and communities have the right to develop without interference, and they are protected by the state. They regulate and administer their affairs autonomously. The constitution also recognizes the right of religious institutions and communities to offer education. Freedom of conscience, freedom of religion and religious practice, and the profession of religious teaching are all recognized within the limits of public order.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the commander in chief of the armed forces and is responsible for the national defense. The president appoints all members of the military. The president of the republic can decree a state of emergency or a state of siege for 12 days for all or part of the national territory, in three cases: dangers resulting from grave attacks on public order, subversive menaces against internal security, and public calamity (natural disaster). During the 12 days the National Assembly must convene if it is out of session. Only the assembly can prolong (through a law) the state of emergency or siege, for a time and territory that it determines itself.

In case of emergency the civil authorities remain in power, but their powers are considerably extended, and they can sharply limit the rights and freedoms of citizens. In a state of siege all powers are transferred to the military authority, which can take the same measures allowed in a state of emergency. A siege can be declared only in case of imminent danger to the internal or external security of the state. The military authority can confine itself to exercise only a part of the powers and leave the other part to the civil authorities.

A state of "exceptional powers" is also provided for in the constitution, in response to a grave and direct menace to public institutions, national independence, territorial integrity, or the execution of international duties, or to an interruption of the regular functioning of public powers. If these conditions are met, the president of the republic informs the nation by a message and starts the procedure.

The president can take all measures aiming at reestablishing the regular functioning of public powers and assuring the protection of the nation, thus exercising quasi-dictatorial powers. However, he or she may not propose a constitutional revision during this period.

During a period of exceptional powers the National Assembly remains in full session. If the president promul-

gates laws, the assembly must decide within 15 days on their ratification. If they are not passed to the office of the assembly in time, these measures become void. Finally, the president, when exercising exceptional powers, cannot prevent the Supreme Court from exercising its constitutional functions.

AMENDMENTS TO THE CONSTITUTION

The president of the republic and the members of the National Assembly have the right to introduce bills amending the constitution. The amendment must be adopted by the assembly and approved by a referendum. The president of the republic can decide not to submit the amendment to a referendum. In that case, the amendment needs the approval of a three-fifths majority in the assembly. The republican form of government cannot be amended.

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Demba Sy

SERBIA AND MONTENEGRO

At-a-Glance

OFFICIAL NAME
State Union of Serbia and Montenegro

CAPITAL
Belgrade

POPULATION
10,600,000 (2005 est.)

SIZE
39,518 sq. mi. (102,350 sq. km)

LANGUAGES
Serbian

RELIGIONS
Christian Orthodox 84.97%, Catholic 5.48%, Muslim 3.19%, Protestant 1.07%, Jewish 0.01%, Asian religions 0.007%, other religions 0.25%, believers of no confession 0.005%, atheists 0.53%, unknown 4.488%

NATIONAL OR ETHNIC COMPOSITION
Serb 64.5%, Montenegrin 6.5%, Hungarian 3.1%, Albanian 14.5%, other 11.4%

DATE OF INDEPENDENCE OR CREATION
July 13, 1878

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
State union of two member states

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
February 4, 2003

DATE OF LAST AMENDMENT
No amendments

Serbia and Montenegro is a state union of two equal states—Serbia and Montenegro, with a unique type of parliamentary system. It is a democratic community, based on fundamental rights and freedoms, rule of law, and social justice, where it is permitted to do anything that is not forbidden by the constitution and laws. The state is neither a federation nor a confederation, but appears closest to a real union. The state union is a contractual creation with a three-year term. With the expiry of that period, member states have the right to initiate proceedings in order to break away from the union. This decision is to be made by a referendum. The Republic of Montenegro declared its independence on June 3, 2006. A new constitution is in the making.

Four institutions that have been established in Serbia and Montenegro are rather atypical of a classic federal state. These, in fact, represent common bodies of the member states, rather than authentic bodies of the state union. They are as follows: Assembly of Serbia and Montenegro, president of Serbia and Montenegro, Council of Ministers, and Court of Serbia and Montenegro.

The Constitutional Charter of Serbia and Montenegro is not a constitution in the typical meaning of the word. Numerous solutions contained in this constitutional act are so specific that they cannot be compared to the provisions of constitutions in other contemporary states. However, a multiparty system has been established in Serbia and Montenegro, freedom of religion is guaranteed, the church is separated from the state, and a market economy and freedom of enterprise have been established as well. The army is placed under democratic and civilian control with defense as its main aim.

CONSTITUTIONAL HISTORY

The nations that form the present states of Serbia and Montenegro formed the feudal states of Raska and Duklja between the late seventh and the early ninth centuries C.E. Raska lived on as feudal Serbia in the period of the Nemanjić dynasty, which joined the former Duklja to their state. Nemanjić Serbia was a powerful monarchy

limited only by its feudal lords. In those times, both rulers and state councils enforced numerous legal acts that regulated the rights and prerogatives of certain classes, the organization of power, courts and their procedures, crime and punishment, and property rights.

When Serbia won independence for its church from the Ecumenical Patriarch in Byzantium (Istanbul) in 1219 C.E., Sava Nemanjić became its first archbishop. Early church legal texts contained secular as well as religious regulations. Among the most famous of these law books is Sava's Nomocanon, also known as Krmchija, used in Russia and Bulgaria as well. The Serbian Orthodox Church was elevated to the level of a patriarchy in 1346 with its seat in Pec, in Kosovo and Metohija, during the rein of Czar Dushan. This Serbian ruler is remembered for the famous law code of 1349. In those times, enactment of a law code for an entire state was rare in Europe.

After the fall of Byzantium in 1453 and the fall of Smederevo, the last independent Serbian city-state, the Serbian state and church fell under Turkish rule for several centuries. The Serbian Church became the main keeper of Serbian identity and Serbian national traditions for several centuries. The liberation process began with the first Serbian uprising in 1804 led by the Serbian hero Karadjordje, founder of the Karadjordjevic dynasty, which ruled under Turkish overlords. The liberation process formally ended with the Treaty of Berlin in 1878 when both Serbia and Montenegro became independent.

Serbia enacted its first constitution in 1835, extracted from the illiterate Prince Milosh. It was influenced by the 1791 French constitution and the 1814 French Constitutional Charter. After opposition from Austria, Russia, and Turkey the constitution was withdrawn before having been applied. It was followed by the 1838 constitution (the Turkish constitution) and the 1869 constitution, considered the start of the "constitutional period." The most important Serbian constitution was enacted in 1888, after full independence was won. It introduced a parliamentary system into Serbia. King Alexander Karadjordjevic suspended this progressive constitution in favor of a new one in 1901, but the resulting turmoil ended in his assassination and the reenactment of the 1888 constitution in 1903.

In Montenegro, constitutional life advanced with the establishment of a central authority by the end of the 19th century. In 1905, under the influence of Montenegrin intellectuals educated abroad and the example of Serbia, Montenegro received its first constitution.

After World War I (1914–18) and the fall of the Austro-Hungarian Empire, a new state of South Slavic peoples was formed on December 1, 1918, called the Kingdom of Serbs, Croats, and Slovenians. It included the former kingdoms of Serbia and Montenegro as well as parts of the former Austro-Hungarian Empire with Slavic populations. The state was proclaimed a constitutional monarchy under the reign of the Serbian Karadjordjevic dynasty. Two constitutions were enacted, in 1921 and 1931, but neither had significant influence. In 1929, this state changed its name to the Kingdom of Yugoslavia.

Yugoslavia was invaded by both Germany and Italy during World War II (1939–45). Two major resistance movements were formed in the country; one supported the monarchy while the other, led by Josip Broz Tito, leaned toward the Soviet Union. Tito acquired stronger international support and gained power in the fall of 1945.

The Federal People's Republic of Yugoslavia was proclaimed. A socialist society started to develop under socialist constitutions. The first, enacted in 1945 under significant influence of the Russian Stalinist constitution, was followed by numerous constitutional documents whose common characteristic was the ideological independence of Yugoslav socialism. With the introduction of the principle of self-governance of economic enterprises in 1950, Yugoslavia broke away from the other socialist countries toward a policy of nonalignment with either of the two powerful political blocs. By the 1963 constitution, Yugoslavia changed its name to Socialist Federal Republic of Yugoslavia; it was the first socialist country to introduce a constitutional court.

The last socialist constitution, proclaimed in 1974, evidenced a profound crisis within the Yugoslav federation and a significant level of independence of its six federal states. Tito died in 1980. His socialist state disappeared in the bloody ethnic conflicts and civil wars, most pitting Serbia, still ruled by a Communist successor party, against the other republics and ethnicities within the old federation.

Serbia and Montenegro were unwilling to abandon the Federal Republic of Yugoslavia, proclaimed in the 1992 constitution. However, the difficulties of living in a federation whose two remaining members differed so immensely in size, population, and material resources prompted Serbia and Montenegro to change the very nature of their union. In February 2003, the Federal Republic of Yugoslavia ended its existence and a new State Union of Serbia and Montenegro was created. The republics, which were until then federal units, became states. The act providing the legal framework does not represent a constitution by either its name or contents, but a constitutional charter with a three-year time limit. The Republic of Montenegro declared its independence on June 3, 2006. Since June 28, 2006, Montenegro has been an independent member of the United Nations.

FORM AND IMPACT OF THE CONSTITUTION

The State Union of Serbia and Montenegro has a written constitutional document called the Constitutional Charter. The text of the Constitutional Charter is largely disproportionate to its significance in both its modest volume and its nonnormative manner of writing. The Charter on Human and Minority Rights and Fundamental Freedoms forms an integral part of the Constitutional Charter. The provisions of international treaties on human and minority rights and civil freedoms that apply

to the territory of Serbia and Montenegro are enforceable directly. The charter stipulates the precedence of international law over the law of Serbia and Montenegro and the laws of the member states.

The charter specifies that the member states shall amend their constitutions or adopt new constitutions in order to harmonize them with the Constitutional Charter within six months of the date of its adoption. The Court of Serbia and Montenegro is competent to adjudicate compatibility of the constitutions of the member states with the Constitutional Charter, compatibility of the laws of Serbia and Montenegro with the Constitutional Charter, as well as compatibility of the laws of the member states with the law of Serbia and Montenegro. Up to the present day, with the six-month period long past, neither Serbia nor Montenegro has carried out the necessary amendments to its constitution.

BASIC ORGANIZATIONAL STRUCTURE

Since the State Union of Serbia and Montenegro was born in 2003, constitutional theorists have discussed the question of its legal nature. The majority believe that it is neither a federation nor a confederation. It is closest to a real union, showing certain similarities to the former Austro-Hungarian Empire (1867–1918). Since the union of states does not itself represent a state, each member state within the union has a complete and independent state organization of its own. The only attribute the union possesses is its international personality, the representation of which is shared by the two member states. The union represents a contractual creation with a three-year duration, after which each member state may vote to break away in a referendum.

The member states are equal. Each member state has its own constitution. Basically, the state union represents a simple sum or connection of its two member states.

LEADING CONSTITUTIONAL PRINCIPLES

In their constitutions of 1990 and 1992, both Serbia and Montenegro introduced hybrid systems of government by including some of the institutions and principles of a presidential system into a parliamentary context. Similarly, the State Union of Serbia and Montenegro allocates limited legislative authority to both the executive and the judicial authorities.

In light of provisions contained in the constitutions of the member states, the state union is a democratic state based on fundamental rights and freedoms, on the rule of law and social justice, where anything not forbidden by law is allowed. Each member of the state union has a republican structure with power belonging to the citizens, who exercise it directly and through freely elected representatives.

One of the basic aims of the state union is to advance respect for the principles and standards of the European Union (EU), with the goal of joining European organizations, particularly the EU.

CONSTITUTIONAL BODIES

Four key institutions exist in the framework of the state union, all of them mutual bodies of the member states rather than bodies of the state union. They are the Assembly of Serbia and Montenegro, the president of Serbia and Montenegro, the Council of Ministers, and the Court of Serbia and Montenegro.

Assembly of Serbia and Montenegro

The Assembly of Serbia and Montenegro is the legislative body of the state union, constrained by the modest reach of the union's authority. Some of its actions are subject to the preliminary approval of the assemblies or other bodies of the member states, such as the declaration and termination of a state of war and the membership of the state union in international organizations. Any decision by the assembly regarding the delimitation of the borders of the state union is subject to the preliminary approval of the assembly of the member state in whose territory the border in question is located.

The assembly elects the president of Serbia and Montenegro as well as its Council of Ministers. According to Article 19 of the charter, it enacts laws and other instruments governing military issues and defense, immigration policy, the granting of asylum, the visa regime, and integrated border management in line with the standards of the European Union. It also approves international treaties and agreements of Serbia and Montenegro.

The Assembly of Serbia and Montenegro is a unicameral body made up of 126 deputies having a four-year term of office. The deputies, among whom 91 are from Serbia and 35 from Montenegro, are elected directly in each member state. From among its deputies, the assembly elects its president and vice president, who may not be from the same member state. Also, the president of the Assembly of Serbia and Montenegro and the president of Serbia and Montenegro may not be from the same member state. The assembly makes decisions by a majority vote—but that must include the majority of the total number of deputies from each member state.

The Lawmaking Process

The legislative initiative is entrusted to the deputies of the Assembly of Serbia and Montenegro, the Council of Ministers, and the assemblies of the member states. Laws are passed by dual majority vote; the president of Serbia and Montenegro then proclaims the laws by a declarative act.

The President of Serbia and Montenegro

The president of Serbia and Montenegro is the head of state of the state union, as well as the head of the executive administration, in his or her capacity as chair of the Council of Ministers. As head of state the president represents Serbia and Montenegro at home and abroad, proclaims the laws passed by the assembly and the regulations passed by the Council of Ministers, receives diplomats' credentials, and recalls the chiefs of diplomatic and consular missions. The president of Serbia and Montenegro is a member of the Supreme Command Council, but not its president ex officio. The president nominates the members of the Council of Ministers (for approval by the Assembly) and can dismiss them.

A candidate for the president of the State Union has to be a citizen of the state union, above 18 years of age, and in possession of full civil capacity. The president and the vice president of the Assembly of Serbia and Montenegro jointly propose the candidate, who is chosen by the deputies by open ballot. A majority of the total number of deputies from each member state is needed. The president has a four-year term of office and may not be from the same member state for two consecutive terms. The president's term of office may cease prematurely by resignation, relief of duty, or the dissolution of the Assembly of Serbia and Montenegro.

The Council of Ministers

The Council of Ministers in the state union performs the duties of the administration in a state. It consists of the president of Serbia and Montenegro and five ministers. The term of office depends on the confidence of the deputies of the assembly and may last up to four years. It has three global executive duties: (1) charting and pursuing the policy of Serbia and Montenegro; (2) passing by-laws, decisions, and other general enactments for enforcement of the laws of Serbia and Montenegro; and (3) coordinating the work of the ministries.

The Court of Serbia and Montenegro

The Court of Serbia and Montenegro adjudicates conflicts of authority between the state union and the member states, between the member states, as well as between the institutions of the state union. It also adjudicates constitutional disputes and administrative disputes.

The Court of Serbia and Montenegro is made up of eight judges, four from each of the member states, elected by the Assembly of Serbia and Montenegro for a period of six years. It was formed only after a significant delay.

THE ELECTION PROCESS

Every citizen of the State Union of Serbia and Montenegro older than 18 has the right to vote and to be elected to local self-governing authorities, member state authorities, and state union institutions.

Parliamentary Elections

After an initial period of two years after the adoption of the Constitutional Charter, the deputies of the Assembly of Serbia and Montenegro are to be elected by direct ballot. Ninety-one Serbian and 35 Montenegrin deputies will be elected on the basis of the laws of the member states. The Assembly of Serbia and Montenegro will in turn elect all the institutions of the state union.

At the first elections for the Assembly of Serbia and Montenegro, deputies were elected indirectly, from among the deputies of the National Assembly of the Republic of Serbia, the Assembly of the Republic of Montenegro, and the Federal Assembly of the former Federal Republic of Yugoslavia.

POLITICAL PARTIES

Citizens of the state union cannot express their will in the union, but only within the member states. Therefore, the Constitutional Charter does not discuss forms of organized expression of the political will of the citizens. Such matters are regulated by the constitutions and laws of the member states, which both have multiparty systems regulated by state laws.

The Charter on Human and Minority Rights and Fundamental Freedoms that is part of the state union's Constitutional Charter guarantees everyone freedom of association, including the right not to be a member of an organization. Political parties, trade unions, and other organizations are formed without prior license, by entry into the register with the competent authority. The right to freedom of association may be restricted by the laws of the member states, only if necessary for the protection of public safety, public health or morals, national security, or the protection of rights of others. Organizations whose activities are aimed at forceful destruction of the constitutional system, or abolition of guaranteed human rights, or creation of racial, national, ethnic, or religious hatred may be prohibited by a court decision.

After living under a one-party system in the long period of socialism, citizens of the state union have expressed considerable interest in political involvement, forming over 300 political parties. Only 10 percent of these parties have any political influence.

CITIZENSHIP

A child born on the territory of Serbia and Montenegro, according to the recognized principle of *ius sanguinis,* has the right to hold its citizenship, unless he or she has another citizenship. A citizen of the State Union of Serbia and Montenegro may not be deprived of citizenship,

expelled from the state union, or extradited outside its territory, save in accordance with international obligations of the state union.

FUNDAMENTAL RIGHTS

A distinct Charter on Human and Minority Rights and Fundamental Freedoms is an integral part of the Constitutional Charter. It not only grants all classic, traditional, and generally accepted human rights, but also accommodates the latest demands for the democratization of society.

Article 1 states that human dignity is inviolable and that every person is obliged to protect it. Every person is granted the right to free development of the personality, provided that it does not violate the rights of others guaranteed by this charter, and every person is obliged to respect the human and minority rights of others. All persons are equal before the law; therefore, any discrimination is prohibited on any ground such as race, color, sex, national or social origin, birth, religion, political or other opinion, property status, culture, language, age, or mental or physical disability.

A particular part of the charter includes rights of persons who are members of national minorities. The State Union of Serbia and Montenegro has thus demonstrated the significance it attributes to the harmonious life of its citizens of various nationalities, providing them with equal living and working conditions. Members of national minorities enjoy the freedom to express their national identity and the right to maintain their particularity, as well as a range of other rights. Discrimination, forcible assimilation, and instigation of racial, ethnic, and religious hatred are prohibited.

Impact and Functions of Fundamental Rights

Human and minority rights guaranteed by the charter are exercisable directly in accordance with the Constitutional Charter and are directly regulated, provided for, and protected by the constitutions, laws, and policies of the member states. The charter lists not only rights but also respectful duties, whose fulfillment guarantees freedom and security to individuals as well as stability and continuity to institutions of the authority.

Limitations to Fundamental Rights

The guaranteed human and minority rights may only be limited by the equal extent of the rights of others. These rights may only be restricted on the basis of the limitations prescribed by the Constitutional Charter of the State Union of Serbia and Montenegro, the Charter on Human and Minority Rights, the constitutions of the member states, or a generally applicable law. Human and minority rights may only be restricted to the extent required in an open and free democratic society for achieving the stated aim. The restrictions shall not be imposed for any other purposes except those for which they have been prescribed and shall in no way infringe upon the essence of the guaranteed right.

ECONOMY

Among the key aims of Serbia and Montenegro, as stated in the Constitutional Charter, are to create a market economy based on free enterprise, competition, and social justice, as well as to establish and ensure the smooth operation of the common market on its territory. This is to be done by coordinating and harmonizing the economic systems of the member states in line with the principles and standards of the European Union.

Eminent economists have raised doubts regarding the economic continuation of the union. The Constitutional Charter attempts to harmonize two distinct economic systems, a goal that seems almost impossible to achieve. They have different currencies, individual central banks, individual customs areas and policies, and individual fiscal systems.

The State Union of Serbia and Montenegro has neither property of its own nor a common economic area. It does not dispose of foreign currency funds or a state budget. There is no national currency or central bank.

The Charter on Human and Minority Rights and Fundamental Freedoms guarantees the right to property and right of inheritance. The right to work is also guaranteed, and the member states are obliged to create the conditions in which everyone can live from his or her work. Everyone has the right to free choice of work, to fair and adequate working conditions, and in particular to fair compensation for his or her work. Employed persons have the right to go on strike in accordance with the law. Every person residing in the State Union of Serbia and Montenegro has the right to social welfare and social security.

RELIGIOUS COMMUNITIES

In the State Union of Serbia and Montenegro, everyone has the right to freedom of religion. This right includes the freedom to change religion at one's own choice and the free expression of one's religion: the freedom to manifest religion in worship, teaching, professing, practicing, and observance. The law may limit these freedoms only in order to protect public safety, morals, health, or the rights of others.

Religious communities are separate from the state and are equal. They are free to regulate their internal organization independently as well as to exercise their religious activities and rites freely. With the purpose of spreading and explaining their teachings, religious communities may establish religious schools or charity organizations in accordance with the law.

The state union recognizes conscientious objection to military service.

MILITARY DEFENSE AND STATE OF EMERGENCY

Serbia and Montenegro has an army whose supreme commander is the Supreme Command Council, which includes the president of the state union and the presidents of the member states. The Supreme Command Council decides on the use of the army and makes decisions by consensus. Military theorists have questioned the practical value of a collective supreme command, which violates the elementary military principle of subordination to a single superior.

The army of Serbia and Montenegro is under democratic and civilian control, and its fundamental duty is to defend Serbia and Montenegro in line with the Constitutional Charter and the principles of international law that regulate the use of force. The Assembly of Serbia and Montenegro has authority to adopt a defense strategy in accordance with the law.

Conscripts perform their military service in the territory of the member state whose citizenship they hold unless they freely decide to do so on the territory of the other member state. The military term lasts nine months and includes all men over 18 years of age. Conscientious objectors may perform civilian service. Women may participate in the professional army as officers, noncommissioned officers, and contract soldiers.

AMENDMENTS TO THE CONSTITUTION

In comparison to the constitutions of the two member states, which belong to the category of rigid, inflexible constitutions and are not easily amended, the Constitutional Charter of the State Union of Serbia and Montenegro is classified as a flexible, fluid constitution.

The charter was introduced under the procedure for a regular law. The draft was adopted by simple majority in the assemblies of the former member republics and delivered for adoption and promulgation by the Federal Assembly of the former Federal Republic of Yugoslavia, which had no power to influence the final text. Article 62 of the Constitutional Charter simply states that the charter can be changed under the procedure and in the manner in which the Constitutional Charter was adopted.

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Olivera Vučić

SEYCHELLES

At-a-Glance

OFFICIAL NAME
Republic of Seychelles

CAPITAL
Victoria

POPULATION
80,832 (2005 est.)

SIZE
455 sq. mi. (1,178 sq. km)

LANGUAGES
Creole, English, French (all official)

RELIGIONS
Catholic 86.6%, Anglican 6.8%, other Christian 2.5%, other 4.1%

NATIONAL OR ETHNIC COMPOSITION
Creole, mix of European, African, and Asian

DATE OF INDEPENDENCE OR CREATION
June 29, 1976

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 18, 1993

DATE OF LAST AMENDMENT
May 31, 2000

Seychelles is a parliamentary democracy based on the rule of law with a division of executive, legislative, and judicial powers. The national government is headed by a president, who is the central figure in political life and has complete control over the security apparatus.

The constitution provides for various guarantees of human rights, which are on the whole respected by the public authorities. There are enforceable remedies if a violation occurs.

Free, equal, general, and direct elections of the president and the members of parliament are guaranteed. A pluralistic system of political parties was established in 1991. Since then, the former ruling party has remained in power by a vast majority in parliament.

Religious freedom is guaranteed, and state and religious communities are separated. The economic system is tending to a free-market economy based on growing tourism.

CONSTITUTIONAL HISTORY

Seychelles is a group of 115 Indian Ocean islands about 1,000 miles east of Kenya. In 1756 the islands were formally claimed by France, which named them in honor of the French finance minister Jean Moeau de Séchelles. The possession of the islands altered several times between France and the United Kingdom between 1794 and 1814, when Britain won exclusive control via the Treaty of Paris. The Seychelles were then administered as a dependency of Mauritius until their separation in 1903, when the islands became a British Crown colony.

Britain granted more political participation to the Seychellois in 1948, mostly to adult male property owners, who were allowed to elect a council of four members to advise the governor.

In the early 1960s, two new political parties emerged to replace the existing parties: One favored integration into the United Kingdom; the other demanded full independence. In 1967, the first universal elections were held, and a new governing council was elected.

In 1970, a new constitution took effect. The United Kingdom allowed almost full self-government of the Seychelles, except in matters of foreign affairs, until independence was achieved in 1975. One year after independence, on June 29, 1976, a one-party system was imposed. It lasted until 1991, when registration of political parties was once

more allowed. With the introduction of the 1993 constitution, the formal transition to a multiparty democratic system was achieved, and general elections were held in 1993.

FORM AND IMPACT OF THE CONSTITUTION

Seychelles has a written constitution, codified in a single document, which takes precedence over all other national law. The 1993 constitution marks a clear break from the former undemocratic, one-party rule; it is regarded as the start of a new political era in Seychelles.

BASIC ORGANIZATIONAL STRUCTURE

Seychelles is a unitary state and a republic. There are an executive administration, a parliament, and a judicial system. The country is divided into 23 administrative districts.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government is a parliamentary democracy. There is a division of the executive, legislative, and judicial powers, enforced by checks and balances. The Seychelles' constitutional system is defined by a number of leading principles: It is a democracy and a republic, and it is based on the rule of law.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the cabinet ministers, and the national parliament.

The President

The president is both the head of state and the head of the executive administration. In addition, the president is the commander in chief of the armed forces. The president is elected directly by popular vote for a five-year term and is not allowed to serve more than three terms. The president has the authority to set the guidelines for governmental policy and thus has generally been the dominant figure in Seychellois politics.

After the amendment of the constitution in 1996, the position of a vice president was established.

The Administration

The executive administration comprises a council of ministers, which serves as a cabinet. The president appoints the members of the cabinet, which consists of a minimum of seven and a maximum of 14 ministers. The ministers' task is to advise the president on policy.

The National Assembly

The National Assembly (L'Assemblée Nationale) is a unicameral body with legislative, supervisory, and political powers. Its members are elected by universal suffrage and hold office for five-year terms. It consists of 34 members, 25 of them elected directly in their constituencies and nine allocated on a representative basis to parties that win at least 10 percent of the votes. The National Assembly can be dissolved by the president under certain circumstances.

The leader of the opposition is elected by those members of the parliament who do not belong to the party that nominated the president.

The Lawmaking Process

One of the main duties of the National Assembly is the passing of legislation. Certain bills can become law only if the president assents. If the assent is refused, the parliament can submit the case to the Constitutional Court for a decision.

The Judiciary

The judicial power of the Seychelles consists of the Court of Appeal (the highest court), the Supreme Court, and other subordinate courts and tribunals. The Supreme Court has original jurisdiction relating to the constitution as well as civil and criminal matters. The Court of Appeal has jurisdiction to decide appeals from a judgment of the Supreme Court. The Court of Appeal is therefore the highest judicial authority to decide on the application, violation, or interpretation of the constitution.

The constitution declares that the judiciary is separated from other governmental powers and independent of the administration. However, the president has the right to appoint judges to the Court of Appeal and the Supreme Court, on the proposal of a three-member Constitutional Appointments Authority. One member is appointed by the president, one by the leader of the opposition, and a third by the president on the recommendations of the first two appointees. This procedure leaves a high risk of patronage and executive interference with judicial independence.

THE ELECTION PROCESS

All Seychellois over the age of 17 have both the right to stand for election and the right to vote in the elections.

POLITICAL PARTIES

Since 1991, Seychelles has had a pluralistic system of political parties. Despite the transition to a multiparty

system, the former ruling party still controls the government and political life. However, there are no longer any legal obstacles restricting opposition parties.

CITIZENSHIP

Seychellois citizenship is primarily acquired by birth. A child acquires Seychellois citizenship if at least one parent is a citizen; place of birth is irrelevant.

FUNDAMENTAL RIGHTS

After the transition to democracy, it was highly important to the Seychelles to create a new constitution with an emphasis on human rights. The constitution of Seychelles explicitly guarantees a large number of fundamental rights to its citizens. Among them are the right to life and dignity, freedom from slavery and compulsory labor, the right to liberty and property, and freedom of expression. In addition, there are a series of social rights, among them the right to health care, work, education, and social security. The right to a clean, healthy, and ecologically balanced environment is guaranteed. Women enjoy the same legal, political, and social rights as men.

Impact and Functions of Fundamental Rights

In general, fundamental rights are respected in Seychelles. There are reported infringements, particularly in the course of fighting crime and in the rights of women or foreigners.

Limitations to Fundamental Rights

The fundamental rights are not without limits. For example, freedom of speech or of the press may be limited "for protecting the reputation, rights and freedoms of private lives of persons" or "in the interest of defense, public order or public morality."

These constitutional provisions may easily be interpreted in a way that allows far-reaching limitations to fundamental rights. However, the constitution also ensures that fundamental rights are not disregarded completely. For example, torture or arbitrary arrest and detention are prohibited without exception. In practice, there is difficulty in enforcing these constitutional provisions.

ECONOMY

Under the new 1993 constitution, the Seychelles has tried to open up the country for business. In legal terms, it is now easy for citizens to establish their own private enterprises, and there is special assistance for small businesses from state and parastate authorities.

After a Marxist economic approach during the 1970s and 1980s, privatization of state-run companies is now at the top of the political agenda. However, the public sector still is the dominant factor in terms of employment.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for religious communities. The government respects these rights in full. There is no state religion. All public authorities must remain strictly neutral in their relations with religious communities. These communities regulate and administer their affairs independently within the limits of the laws that apply to all.

There are tax-free privileges for religious communities. In order to be entitled to these privileges, the communities have to register with a state authority, but there is no obligation to register.

Despite the separation of religions and the state there are areas in which they cooperate. For example, there is program time for the different religious groups on the national television channel.

MILITARY DEFENSE AND STATE OF EMERGENCY

There is a defense force. It includes the presidential protection unit, the coast guard, and a national guard. The armed forces are primarily used for civil purposes, such as dealing with vessel incidents and environmental protection tasks. There is no conscription.

AMENDMENTS TO THE CONSTITUTION

The constitution can be changed by a two-thirds vote of the members of the parliament. Certain fundamental provisions may be changed only when 60 percent of all voters have agreed in a referendum.

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Michael Blumenstock

SIERRA LEONE

At-a-Glance

OFFICIAL NAME
Republic of Sierra Leone

CAPITAL
Freetown

POPULATION
5,883,889 (2005 est.)

SIZE
27,699 sq. mi. (71,740 sq. km)

LANGUAGES
English (official, regular use limited to literate minority), Mende (in the south), Temne (in the north), Krio (English-based Creole, spoken by the descendants of freed Jamaican slaves, spoken by 10% of the population but understood by 95%)

RELIGIONS
Muslim 60%, indigenous beliefs 30%, Christian 10%

NATIONAL OR ETHNIC COMPOSITION
20 native African tribes 89%, Creole 10%, other (refugees from Liberia, small numbers of Europeans, Lebanese, Pakistanis, and Indians) 1%

DATE OF INDEPENDENCE OR CREATION
April 27, 1961

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 1, 1991

DATE OF LAST AMENDMENT
January 25, 2002

Sierra Leone is a centralistic state and a constitutional democracy. The constitution provides a separation of executive, legislative, and judicial powers. The fundamental set of human rights is guaranteed. To ensure that the constitution is respected the Supreme Court of Sierra Leone has jurisdiction over constitutional disputes.

The president of the republic is the head of state, the central political figure, and head of the executive administration. The legislative power lies with the unicameral parliament as the representative body of the people. The elections for parliament and the office of the president are secret, equal, general, and direct. The renewed pluralistic system of political parties has strong political influence.

Religious freedom is assured for the individual as well as religious communities. The economic system outlined in the constitution is that of a market economy with social responsibility.

CONSTITUTIONAL HISTORY

On April 27, 1961, Sierra Leone, the former British colony founded for freed slaves, became an independent state and a member of the Commonwealth. After gaining independence the country suffered years of political instability, with numerous government changes and military coups. In 1978 the dominant party—the All People Congress—set up a one-party system.

A new constitution was enacted in 1991, and with it Sierra Leone restored a multiparty system. The constitution was suspended twice after that, but a civil government was reinstated in 1998.

Between 1991 and 2002 a civil war between the government and the Revolutionary United Front resulted in the death of tens of thousands and the displacement of more than 2 million people, many of whom are still refugees in neighboring countries. With the support of the United Nations (UN) peacekeeping forces, some fight-

ing groups were disarmed. The government has slowly continued to reestablish its authority. Most UN missions ended in early 2005.

FORM AND IMPACT OF THE CONSTITUTION

Sierra Leone has a written constitution, codified in a single document that takes precedence over all other national law. The wide range of customary law may have to be adapted with modifications and exceptions to make it conform with the constitution.

Since the constitution was suspended for many years, its impact in political life still has to grow. Recent developments, however, show a generally stronger commitment to compliance with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Sierra Leone is a centralistic state with four administrative divisions. Alongside the formal political authorities, tribal culture retains great impact. In response, 12 seats in parliament are reserved for tribal chiefs. Tribal influence shows itself especially in the diversity of customary law, which can differ widely in the region.

LEADING CONSTITUTIONAL PRINCIPLES

The governmental system provided for by the constitution is that of a constitutional democracy. Executive, legislative, and judicial powers are separate and bound by the rule of law. The judiciary is independent.

The constitution of Sierra Leone defines political, economic, and social objectives to ensure that Sierra Leone is a democracy, a republic, and a state that respects its social responsibilities.

CONSTITUTIONAL BODIES

The president of the republic with the cabinet, and the unicameral parliament, are the predominant organs provided for in the constitution. Other important constitutional bodies include the Supreme Court of Sierra Leone.

The President of the Republic

The president of the republic of Sierra Leone is the head of state as well as the head of the administration and the dominant figure in politics. The president serves a five-year term and can be reelected only once. Presidential elections are direct, general, and public and by secret vote. The president appoints the cabinet of ministers with the approval of parliament. The cabinet supports the executive functions of the president.

The Cabinet

The cabinet determines the general policy of the administration. It consists of the president, the vice president, and the ministers. The cabinet ministers are collectively responsible before the parliament for any advice given to the president or any action taken by a cabinet minister.

The Parliament

Parliament is the main representative organ of the people and is the supreme legislative power. Most of the at least 60 members of parliament are elected directly for a term of five years in a general and secret balloting process. Alongside the elected members are 12 seats filled by tribal chiefs.

The Lawmaking Process

As the main mode of exercising its legislative powers, parliament passes laws in the form of acts of parliament, which must be signed by the president to go into force.

The president may refuse to sign. He or she must return the unsigned bill to parliament along with the reasons for the refusal. To override a presidential refusal the bill needs the support of at least two-thirds of the members of parliament.

The Judiciary

The independence of the judiciary is granted by the constitution. The highest court is the Supreme Court of Sierra Leone, which performs two functions: It is the final court of appeal for all inferior courts (Court of Appeal, High Court of Justice, and traditional courts). In addition, it has exclusive jurisdiction over constitutional disputes.

THE ELECTION PROCESS

There is universal suffrage for all citizens over the age of 18. Eligibility to run for office depends on proficiency in speaking English; the minimal age is 21 years to stand for parliament and 40 years to stand for the presidency.

POLITICAL PARTIES

Sierra Leone has a pluralistic system of political parties. To participate in political life a party has to apply for registration to the Political Party Registration Commission, and must fulfill certain conditions described in the constitution. No party may be based on exclusive ethnic or tribal support.

Political parties play an important role not only in public life and in parliament but also in the presidential elections, since a presidential candidate must be nominated by a political party, and the president must be a member of that party.

CITIZENSHIP

The requirements for citizenship are set out in the Sierra Leone Citizenship Act 1973. Citizenship is primarily acquired by birth. A child acquires citizenship if his or her father or grandfather is a Sierra Leonean citizen Citizenship can also be acquired by descent through the maternal line, provided that the mother is a Sierra Leonean citizen and that the child did not acquire any other nationality by birth in a foreign country.

FUNDAMENTAL RIGHTS

The constitution guarantees the traditional basic set of human rights and civil liberties. All public forces are bound by these rights and enforcement is guaranteed through the Supreme Court. The rights of accused persons are described very explicitly by the constitution, whereas other rights are mentioned in a general manner.

Impact and Functions of Fundamental Rights

As a result of massive human rights abuses during the civil war the impact of fundamental rights is a work in progress. The pardons granted under the Lomé Peace Accord did not apply to human rights abuses perpetrated during the period of civil conflict. A special court was set up by the United Nations at the request of the Sierra Leonean government to try those most responsible for crimes against humanity, war crimes, and other serious violations of international law committed since November 30, 1996.

Sierra Leone has experienced many forms of discrimination against Liberians and other foreigners and ethnic groups during its long-running wars. Noncitizens cannot stand for public office and cannot own land. Women are governed by customary law, which frequently discriminates against them. But new laws that are under discussion should change these situations for the better.

Limitations to Fundamental Rights

Each fundamental right guaranteed in the constitution has its own catalogue of reasons that could justify its limitation. The most common reasons are the needs of defense, public safety, public order, morality, and health.

All these possible limitations, however, face a limit themselves, since the constitution does not allow a fundamental right to be reduced to an extent that cannot be reasonably justified in a democratic society.

ECONOMY

The constitution of Sierra Leone does not favor a specific economic system. A section on economic objectives calls for control of the economy to ensure maximal welfare and freedom for every citizen. However, these goals are not enforceable before a court.

On the other hand, the right of every person to participate in any economic activity is guaranteed. Likewise, there are fundamental rights such as the freedom of property and the right to form associations, which can be restricted for the greater good. All this adds up to a system of social responsibility in the framework of a relatively free market.

RELIGIOUS COMMUNITIES

Freedom of thought and religion is guaranteed as a human right. This provision includes the religious communities, which have an explicit right to provide religious instruction. Apart from that guarantee they do not enjoy special rights or treatment. The constitution does not regulate or proclaim a specific system for the relationship between the state and the religious communities.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military of Sierra Leone consists only of professional soldiers. There is no general conscription, but all men over the age of 18 are allowed to volunteer.

The purposes of the armed forces are not specifically outlined in the constitution. It is the responsibility of the Defense Council to administer and maintain the military. This council consists of the president, the vice president, the chief of defense staff, the commanders of the armed forces, and two other persons appointed by the president. Final decision lies with the president acting on the advice of the Defense Council. Only in the case of a formal declaration of war does the president need ratification from parliament.

Under Article 29 the president can declare a state of public emergency and can then act without restrictions. The parliament can invalidate such a declaration by a two-thirds vote.

No private person can be forced to participate in a military tribunal.

AMENDMENTS TO THE CONSTITUTION

To alter the existing constitution, a proposed change must undergo three readings in the House of Representatives. In the final reading it must be approved by at least two-thirds of all members. Parts of the constitution specified

in Article 108 (3) can only be changed by a popular referendum, with not less than two-thirds of all valid votes in favor. It is also possible to enact a new constitution under the procedures described previously.

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Anja-Isabel Bohnen

SINGAPORE

At-a-Glance

OFFICIAL NAME
Republic of Singapore

CAPITAL
Not applicable

POPULATION
4,353,900 (resident population, 2004 est.); 3,263,200 (citizens/permanent residents, 2000 est)

SIZE
263 sq. mi. (682 sq. km)

LANGUAGES
Malay (national and official language), English (administrative and official language), Chinese (official language), Tamil (official language)

RELIGIONS
Buddhism (citizens, permanent residents, 2000) 42.5%, Islam 14.9%, Christian 14.6%, Taoism/traditional Chinese beliefs 8.5%, Hinduism 4.0%, unaffiliated or other 15.5%

NATIONAL OR ETHNIC COMPOSITION
Chinese 76.8%, (citizens, permanent residents, 2000) Malay 13.9%, Indian 7.9%, other 1.4%

DATE OF INDEPENDENCE OR CREATION
August 9, 1965

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 22, 1965 (retroactive to August 9, 1965)

DATE OF LAST AMENDMENT
April 19, 2004

CONSTITUTIONAL HISTORY

The modern history of Singapore can be traced to 1819, when Sir Stamford Raffles claimed this small island for the British East India Company. From 1826 Singapore, and Malacca and Penang, in present-day Malaysia, were jointly administered as the Straits Settlements, but when the East India Company was abolished in 1858, the British colonial government in India assumed immediate supervision of the Straits Settlements. This state of affairs lasted until 1867, when the Straits Settlements were transferred to the British Colonial Office. Singapore was administered as part of the Straits Settlements until the onset of World War II (1939–45). In February 1942, the British in Singapore surrendered to the Japanese invading forces, who ruled until their surrender in 1945.

After the British regained control of Singapore, they decided that the Straits Settlement would be dissolved and Singapore administered as a separate Crown colony with its own constitution; that policy took effect in 1948. In 1953, the Rendel Commission was appointed by the British government to recommend changes in the constitution of the colony of Singapore. Recommendations from the commission eventually culminated in the implantation of a new constitution, known popularly as the Rendel Constitution in 1955. Under this constitution, the legislative council was converted into a 32-member assembly, with 25 elected members, of whom six elected members would hold ministerial positions in the Council of Ministers, with the leader of the largest party in the assembly appointed as chief minister. However, British appointed officials would retain the key ministerial portfolios of finance, administration, internal security, and law; this reservation of power in British hands posed a grave obstacle to the advancement of democratic self-rule in Singapore.

In 1956, a constitutional mission led by the first chief minister of Singapore, David Marshall, held discussions

with officials from the colonial office in search of a compromise constitutional model. The negotiations failed and Marshall resigned as chief minister. A second delegation was led by Marshall's successor, Lim Yew Hock. A compromise was reached this time, and the terms of a new constitution were finalized in a subsequent mission in 1958.

The British Parliament then passed the State of Singapore Act in 1958, formally transforming the colony into a self-governing state. A new constitution was now passed in Singapore; the office of the Yang di-Pertuan Negara replaced the governor as the constitutional head of state, and a new legislative assembly was established, composed of 51 elected members and headed by a prime minister. The British government retained control over defense and external affairs.

The People's Action Party (PAP) won 43 of the 51 seats in the first general elections, and its leader, Lee Kuan Yew, became Singapore's first prime minister in 1959. Soon after, the PAP started campaigning for a merger with its immediate northern neighbor, the Federation of Malaya. This move was prompted by the Singapore government's desire to achieve political independence from the British and to anchor Singapore's economic survival to a rich hinterland.

The proposals for a new federation were accepted by the British government on condition that the military bases in Singapore remain under British control and that the citizens of the respective territories vote in favor of the merger. In Singapore, 71 percent of voters supported merger. Under the Malaysia agreement concluded in July 1963, the State of Singapore and the colonies of North Borneo and Sarawak would join the existing states of the Federation of Malaya to form the Federation of Malaysia. The central government in Malaysia would manage Singapore's internal security, defense, and foreign affairs, but its daily administration would be left to its own separate administration and legislature. A new state constitution was granted to Singapore in 1963 to put in effect the changes introduced in the Malaysia Agreement, and Singapore formally joined the federation in September 1963.

The merger proved to be short-lived as relations between Singapore and the central government soon soured over the perceived interference of the People's Action Party in federal politics and Singapore's apparent lack of compliance with federal mandates. Internal politics within the federation were played out against a turbulent background of communist and communalistic threats, which eventually convinced the Malaysian prime minister, Tunku Abdul Rahman, to expel Singapore from the federation in August 1965.

After expulsion and the concurrent proclamation of independence, the Singapore Parliament amended its state constitution to reflect its new sovereign status. The Republic of Singapore Independence Act (RSIA) vested the legislative and executive powers relinquished by Malaysia in Singapore's executive and legislature. It also made certain provisions of the Malaysian Federal Constitution applicable in Singapore.

Singapore has been a member of the British Commonwealth of Nations since independence in 1965 and is a founding member state of the Association of Southeast Asian Nations (ASEAN). Singapore is committed to greater economic integration within the region and is a strong proponent of regional security and stability.

FORM AND IMPACT OF THE CONSTITUTION

Singapore has a written constitution that is currently codified in a single document. A constitutional amendment was passed in 1979 to allow the attorney general of Singapore to consolidate the various preexisting constitutional documents into a single composite form. Customary rules of international law are considered to be part of the laws of Singapore only if they are not inconsistent with any acts of Parliament. Treaties entered into by the Singapore government form part of Singapore's laws only if Parliament subsequently passes enabling legislation.

The Singapore government generally does not engage in activities that lack a formal legal basis in the constitution. This does not imply that the constitution directly constrains government conduct. First of all, the constitution can be amended by a two-thirds parliamentary majority, and the ruling party, the People's Action Party, has enjoyed a much larger majority in Parliament since independence. Second, the courts have exercised great judicial self-restraint in constitutional adjudication and have generally deferred to legislative wisdom when the constitutionality of ordinary legislation is challenged.

More difficult to assess is the indirect impact on government policy of the values set out in the constitution and their implicit connection to the wider discourse of human rights. Some recent policy changes, such as the hiring of gays in the civil service and the extension of medical benefits for married civil servants to women, which in some jurisdictions might have been prompted by constitutional litigation, were initiated by the government without direction from the Singapore courts and, particularly in the former case, in spite of vocal opposition from some communities.

BASIC ORGANIZATIONAL STRUCTURE

Singapore is a unitary state.

LEADING CONSTITUTIONAL PRINCIPLES

Singapore's system of government is a British Westminster style parliamentary democracy. The legislative, executive,

and judicial branches are formally separate, although the cabinet is typically composed of elected members of Parliament.

The constitution is the supreme law, and any law inconsistent with it is void to the extent of the inconsistency. The judicial power is expressly vested in the Supreme Court and subordinate courts. The constitution guarantees the sovereignty of Singapore, enumerates fundamental liberties, and sets out the powers of the three branches of government as well as the public service, the Council of Presidential Advisers, and the Presidential Council for Minority Rights. It contains provisions governing the status of citizenship, public finances, and emergency powers.

Singapore has been described as a quasi-secular state. Although there is no official state religion, the government is required by Article 152 of the constitution "constantly to care for the interests of the racial and religious minorities in Singapore" and to "recognize the special position of the Malays, who are the indigenous people of Singapore." Among its constitutional obligations to the minority Malays is its responsibility "to protect, safeguard, support, foster and promote" their interests, including their religious interests.

CONSTITUTIONAL BODIES

The main constitutional organs are the president, the Council of Presidential Advisers, the prime minister and cabinet, Parliament, the Presidential Council for Minority Rights, and the judiciary.

The President

The president is the head of state of the Republic of Singapore and, by constitutional amendment in 1991, is now an elected official serving a term of six years. The role is largely ceremonial, but the office does carry certain executive powers as safeguards against the abuse of authority. The president may withhold assent to any bill passed by Parliament that draws upon the national financial reserves. He or she may veto key appointments such as Supreme Court judges, the attorney general, the chief of the defense force, and statutory board members. The president's veto is only absolute if it is exercised in tandem with the recommendations of the Council of Presidential Advisers. Otherwise, the veto may be overridden by a two-thirds parliamentary majority.

Council of Presidential Advisers

The function of the Council of Presidential Advisers is to make recommendations to the president on the exercise of the discretionary veto powers conferred under the constitution. The council is composed of six members appointed for a term of six years.

The Prime Minister and Cabinet

The prime minister is the head of the administration in Singapore and is assisted by the cabinet of ministers. All ministers are members of Parliament, and they serve for the legislative period of the current Parliament. The president appoints as prime minister the member of Parliament who in his or her judgment commands the confidence of the majority of the members of Parliament; the prime minister is thus usually the leader of the ruling party in Parliament. The cabinet ministers are appointed by the president on the prime minister's advice.

Parliament

Parliament is the unicameral legislative body of Singapore. Theoretically, it serves as a check on executive authority as ministers can be held accountable to the house in legislative debates. Nevertheless, party leaders can compel their members to vote along party lines by invoking the party whip. Thus, although members may object vigorously to legislative bills introduced in Parliament, they nevertheless have to vote with the party when party discipline is enforced. Thus, in effect, the prime minister and cabinet set the legislative agenda in Parliament by ensuring that the parliamentary majority backbenchers under their control comply with the ruling government's stance.

Aside from the elected members of Parliament, the constitution provides for up to six nonconstituency members, composed of defeated opposition party candidates who garnered the highest percentage of the popular vote (but not less than 15 percent of the total number of votes in the constituency), and up to nine nominated members, who are nonpartisan citizens who have distinguished themselves in various fields and are appointed by the president on the recommendation of a parliamentary Special Select Committee. Both categories were introduced by the administration ruling government to raise the level of parliamentary debates and to entrench wider representation of political views in Parliament. Both groups have voting rights in Parliament, but they may not vote on budget or appropriations bills, bills to amend the constitution, motions of no confidence in the government, or motions to remove the president from office.

The Lawmaking Process

The enactment of legislation falls within the purview of Parliament. A legislative bill may be introduced by either a private member of Parliament or a minister.

The bill has three readings. No questions are posed in the first reading. On the second reading, a vote is taken after a round of debate. If the bill passes the second reading, a parliamentary Select Committee usually peruses the bill in detail and may recommend amendments. At the third reading, the amendments are put to a vote in the house, and if they are accepted, the bill is deemed to be passed.

After a bill has been passed by Parliament, a copy is provided to the Presidential Council for Minority Rights,

which determines whether it contains any discriminatory measures against minority racial groups. If no such adverse ruling is made, the bill is presented to the president for assent. The bill becomes law when the president assents and it is published in the *Parliamentary Gazette*.

Subsidiary legislation consists of regulations, orders, notifications, by-laws, and other instruments made under the authority of an act of Parliament or other lawful authority. Subsidiary legislation must be presented to Parliament, is normally published in the *Gazette,* and unless provided otherwise goes into effect on the date of publication.

Presidential Council for Minority Rights

The Presidential Council for Minority Rights engages in legislative review and highlights parliamentary bills that contain discriminatory measures against minority racial groups. If the council issues an adverse report, the impugned bill may not be presented to the president for assent unless reaffirmed by two-thirds of Parliament. To date, the Presidential Council for Minority Rights has never made an adverse ruling on any parliamentary bill.

The Judiciary

The constitution expressly vests judicial power in the Supreme Court and the subordinate courts of Singapore. The Supreme Court, which comprises a permanent three-member Court of Appeal and a High Court, can invalidate legislation if it is inconsistent with the constitution.

Judicial independence is secured under the constitution to the extent that a Supreme Court judge has tenure until the age of 65, and the judge's remuneration may not be adversely altered post appointment. However, a Supreme Court judge's term may be extended contractually by the government beyond that age. In 2004, the 77-year-old chief justice had a further two-year contract renewal until 2006. The constitution also permits the appointment of temporary judicial commissioners to serve on the Supreme Court bench for short periods, so as to facilitate the disposal of cases. The lower court judges do not have tenure. They may be transferred between appointments in the executive and judicial branches by a Judicial Service Commission headed by the chief justice.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every Singaporean citizen above the age of 21 is generally eligible to vote in both the parliamentary and the presidential elections. Voting is compulsory.

Parliamentary Elections

Generally, a Singapore citizen who attains the age of 21 may stand for parliamentary elections. Since 1963, all electoral campaign periods have been restricted to the statutory minimum of nine days. Electoral boundaries are altered and redrawn before every election by the Electoral Boundaries Review Committee, a body of civil servants, answerable only to the prime minister's office.

Singapore uses the "first-past-the-post" parliamentary electoral system; that is, the political candidate who secures the highest vote in a constituency takes its seat. Thus, even though the opposition has consistently obtained at least 20 percent of the popular vote at every election since the country's independence, they have never won more than 5 percent of the elected seats in Parliament.

In 1988, the government introduced a Group Representation Constituency scheme, under which most members of Parliament are now elected as a slate of four to six members rather than facing off in one-on-one challenges. The stated reason for this change was to entrench minority representation in Parliament by constitutionally mandating that every team has to field at least one minority candidate. The People's Action Party has been astute in reaping collateral benefits from this arrangement by fielding newcomers on slates with strong ministerial candidates, thus securing a renewal of People's Action Party talent in Parliament. However, not all political parties have been able to run a slate of candidates in these super-constituencies, and in the 2001 parliamentary elections, only 29 of the 84 seats in Parliament were contested.

Presidential Elections

The constitution places very stringent limits on the qualifications of a presidential candidate. The candidate must have held key public office appointments such as cabinet minister or chief justice or managed a company with a paid-up capital of at least $100 million. The Presidential Elections Committee may in its discretion make exceptions if it believes that the prospective candidate has occupied comparable positions of responsibility in other organizations.

Because of the stringency of the selection criteria, in the last election of 2005, the incumbent president, S. R. Nathan, a former civil servant benefiting from the endorsement of the People's Action Party, was certified by the Presidential Election Committee as the only candidate qualified to contest the presidency. He was thus elected to office once again without receiving any affirmation at the ballot box.

POLITICAL PARTIES

The incumbent ruling party, the People's Action Party, has enjoyed almost absolute political hegemony in Parliament since 1968. In every election since independence, it has managed to secure at least 95 percent of the elected seats.

Other political parties active in Singapore include the Democratic Progressive Party, the Singapore Democratic Alliance, the Singapore Democratic Party, and

the Workers' Party of Singapore. While there are more than 20 registered political parties in Singapore, few are consistently active in contesting elections. The ineffectiveness of the rival political parties to launch a credible opposition to the incumbent is thought by some to stem from their limited resources and their inability to project a coherent ideological alternative to the People's Action Party's meritocratic but paternalistic vision of good government, thereby restricting the choices available in fact to the electorate.

Under the Societies Act, the government can ban any political party if it believes that it is being used for purposes prejudicial to public peace and good order in Singapore. Political parties that do not confine their membership to Singapore citizens or have affiliations with any organization outside Singapore that is deemed contrary to Singapore's national interest may also be dissolved by the government.

CITIZENSHIP

Generally, a person who is born in Singapore can acquire citizenship unless neither parent is Singaporean. After a recent constitutional amendment in 2004, a person born outside Singapore may acquire Singapore citizenship if either parent is Singaporean. Prior to this amendment, citizenship by descent could only be attained if the child's father were Singaporean.

FUNDAMENTAL RIGHTS

Fundamental rights are set out in Part 4 of the constitution, which guarantees, subject to various limits, such rights as liberty of the person, freedom from slavery or forced labor, the right not to be punished retrospectively, the right to equality before and equal protection of the law, the right not to be banished, as well as freedom of speech, assembly, association, and religion. Most of these rights are guaranteed to "persons," but some are guaranteed only to "citizens," such as the right not to be banished, and the freedom of speech, assembly, and association.

Impact and Function of Fundamental Rights

The Singapore courts have historically been deferential to the legislature in constitutional cases, and there are few cases in which the courts have used the power of judicial review to invalidate legislation. In a rare recent case, the High Court struck down a penal provision in the Prevention of Corruption Act applicable only to citizens for violating the equality provisions in the constitution, but its decision was quickly reversed by the Court of Appeal on a subsequent constitutional reference. The courts have tended to interpret constitutional limitation clauses expansively, allowing the government considerable latitude in lawmaking.

Commentators on Singapore constitutional law observe that the judicial approach to constitutional interpretation is consistent with a communitarian rather than individualist ideology, a formal rather than substantive conception of the rule of law, and a particularistic rather than universal conception of values.

The communitarian strand in the constitutional jurisprudence stresses that the interests of the larger society, which find expression in the legal concepts of public order and morality, generally take precedence over the rights of individuals.

A formal conception of the rule of law, also described as "rule *by* law," can also be found in the constitutional jurisprudence. For instance, in a 1995 judicial pronouncement on the constitutional implications of the "death-row phenomenon" in Singapore, the court declared that any law "which provides for the deprivation of a person's life or liberty, is valid and binding so long as it is validly passed by Parliament," and the court "is not concerned with whether it is also fair, just and reasonable as well."

Finally, the Singapore courts have often held that "conditions local to Singapore" justify departures from the interpretive approach to constitutional rights adopted by foreign constitutional courts. These judicial references to local conditions echo the government's approach to cultural values, as reflected in its 1991 White Paper, "Shared Values." This official policy document maintains that a "major difference between Asian and Western values is the balance each strikes between the individual and the community," and that, on the whole, "Asian societies emphasize the interests of the community while Western societies stress the rights of the individual."

Limitations to Fundamental Rights

Many of the rights such as the rights to speech, assembly, and association are subject to internal limitation clauses. For example, the right to freedom of speech and expression is subject to the ability of Parliament to impose "such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to prevent contempt of court, defamation or incitement to any offence."

ECONOMY

The Singapore constitution does not specify an economic system nor provide for economic or property rights, but the economic system in Singapore can be described as a free-market economy, with some state investment in key sectors, such as transportation, banking and financial services, telecommunications and media, energy and

resources, infrastructure and engineering, and pharmaceuticals and biotechnology.

RELIGIOUS COMMUNITIES

Singapore is a multireligious state with significant proportions of Buddhists, Muslims, Christians, Taoists, and Hindus. Freedom of religion is guaranteed in the constitution and encompasses the right to profess, practice, and propagate one's religion and the right not to be "compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own." Freedom of religion also encompasses the right not to receive instruction in or to take part in any ceremony or act of worship of a religion other than one's own.

Apart from individual rights, the constitution also grants to religious groups the right to manage their own religious affairs; establish and maintain institutions for religious or charitable purposes; acquire, own, and administer property; and establish and maintain institutions for the education and instruction of children in their own religion. As mentioned earlier, the Singapore government is required by the constitution to protect the interests of religious minorities and, in particular, to "protect, safeguard, support, foster" and promote the religious interests of its minority Malay community. The government has actively supported the Muslim community in Singapore, including support for *madrasahs* (religious schools), but it does restrict the wearing of the *tudung* (a headscarf worn by some female Muslim students) in public schools. The constitutionality of this ban has not been considered by the courts.

MILITARY AND DEFENSE AND STATE OF EMERGENCY

Singapore's military forces are subjected to civilian control by the minister of defense, a member of the cabinet. Singapore currently requires all men above the age of 18 to serve 24 months of full-time national service, typically with the armed forces or alternatively with the police or civil defense force. This compulsory national service is expressly exempted from the constitutional prohibition against forced labor. Jehovah's Witnesses, who object to military service, were deregistered as a religious community in 1972 and are considered an unlawful society. The constitutionality of deregistering this group and banning its publications has been upheld by the courts on the ground that the propagation and practice of this religion are deemed prejudicial to national security and thus contrary to public order.

The constitution makes provision for legislation against subversion. In this context, the constitution actually permits Parliament to pass legislation that is inconsistent with constitutionally enshrined fundamental liberties, as long as the law explicitly states that "action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore" that might cause certain enumerated forms of violence or unrest, or which is "prejudicial to the security of Singapore."

One example of such legislation is the Internal Security Act, which can be traced back to colonial legislation passed during the communist insurgency in Malaya in the 1950s and 1960s. Under this legislation, the state may arrest and detain without trial persons suspected of "acting in any manner prejudicial to the security of Singapore." It was used, in the months after the September 11, 2001, terrorist attacks in the United States, against suspected members of Jemaah Islamiyah, a militant group that is alleged to have been plotting to bomb several targets in Singapore and has been linked to terrorist attacks in the region.

Persons detained under the Internal Security Act are accorded some basic due process rights and are permitted to make representations to an advisory board, whose recommendations are nonbinding on the government unless supported by the president. In 1990, in response to a court decision that expanded the scope of judicial view of detentions under the Internal Security Act, the constitution was amended to allow the scope of judicial review to be set by the legislation itself. The Internal Security Act was concurrently amended in an attempt to limit judicial review of acts done and decisions made under its authority, ostensibly in matters of procedural compliance alone.

The constitution also allows the president to issue a Proclamation of Emergency if he or she is satisfied that a grave emergency exists whereby the security or economic life of Singapore is threatened. A proclamation of emergency allows the president, if satisfied that immediate action is required and until such time as Parliament is able to sit, to promulgate ordinances that have the force of law. Once it is able to sit, Parliament can either annul the proclamation or, if it appears necessary by reason of the emergency, use a simplified process to create laws that are inconsistent with the constitution. The emergency measures cannot, however, be inconsistent with constitutional provisions relating to religion, citizenship, or language. Six months after the proclamation of emergency ceases to be in force, any laws made under it that could not otherwise have been made would also cease to have any force.

AMENDMENTS TO THE CONSTITUTION

As a general rule, the constitution can be amended by an act of Parliament supported by not less than two-thirds of the total number of the elected members of Parliament. However, any amendment to Part 3 of the constitution (which requires that any transfer of powers or

relinquishment of control to the police or armed forces must be put before a national referendum) must itself be supported by at least two-thirds of the votes cast in a national referendum.

A 1991 amendment to the constitution, which as of early 2006 was not yet in force, would require that any amendment to fundamental provisions in the constitution, such as the amendment clause itself, fundamental liberties, and certain specified powers of the president, have the support not only of a two-thirds majority in Parliament, but also of at least two-thirds of the votes cast in a national referendum. The government currently has no immediate plans to put this provision in force.

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Victor V. Ramraj and Po-Jen Yap

SLOVAKIA

At-a-Glance

OFFICIAL NAME
Slovak Republic

CAPITAL
Bratislava

POPULATION
5,402,547 (2005 est.)

SIZE
18,932 sq. mi. (49,035 sq. km)

LANGUAGES
Slovak

RELIGIONS
Catholic 73%, Lutheran 6.9%, Calvinist 2%, Orthodox Christian 0.9%, Jehovah's Witnesses 0.4%, Methodist 0.1%, Baptist 0.1%, other (including Jewish) 3.5%, unaffiliated 13%

NATIONAL OR ETHNIC COMPOSITION
Slovak 85.6%, Hungarian 10.8%, other (Roma and Sinti, Czech, Ruthenian, and German) 3.6%

DATE OF INDEPENDENCE OR CREATION
January 1, 1993

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 1, 1992

DATE OF LAST AMENDMENT
May 26, 2004

The Slovak Republic is a parliamentary democracy based on the rule of law with a strict division of executive, legislative, and judicial powers. The head of state is the president, whose functions are mostly representative. The Constitutional Court is an independent judicial authority with a mandate to protect the constitution.

The Slovak Republic is not bound by any official ideology or religion, although the constitution takes into consideration the spiritual heritage of Saint Cyril and Saint Methodius, who introduced Christianity to the Slavonic people in the ninth century. Freedom of thought, conscience, religion, and belief is guaranteed by the constitution.

The legal system of Slovakia is built on a clear division between the rights of citizens and those of the state. Everyone may claim his or her rights by procedures established by law in an independent and impartial process.

Fundamental rights are guaranteed in the Slovak Republic to everyone regardless of sex, race, color, language, belief or religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent, or any other status. Citizens exercise the right to vote through universal, equal, and direct suffrage by secret ballot.

The economy in Slovakia is based on the principles of a socially and ecologically oriented market economy.

CONSTITUTIONAL HISTORY

The favorable natural conditions of Slovakia made early human settlements possible. The remains of many Stone Age settlements have been discovered in Slovakia. During the Bronze Age Slovakia was a crossroads of many tribes and ethnic groups. The Slavic tribes arrived in the fifth and the sixth centuries C.E., when the oldest Slavic national unit—Samo's Empire—appeared. By the end of the eighth century, there were two princedoms on the territory of Slovakia: Pribina's Princedom in Nitra and Mojmir's Princedom in western Slovakia and southern Moravia. The two states were under united rule in the years 813 to 833 C.E., laying the foundations of the Great Moravian Empire, a powerful barrier against Frankish expansionism.

On the invitation of a Great Moravian ruler, Cyril and Methodius traveled from Byzantium in 863 C.E. and translated liturgical books from Latin and Greek into Old Slavonic. They developed the linguistic standard of the language Old Slavonic and devised the first Slavonic alphabet. Saint Cyril and Saint Methodius are considered to be the cornerstone of Slovak Christian identity, as cited in the Slovak constitution.

At the beginning of the 10th century, the Great Moravian Empire disintegrated as a result of the Hun invasion and pressure from the Frankish Empire. Slovakia became part of the early Hungarian state. In the following centuries the country went through very hard times—the Tatar invasion (1241) and the Turkish invasion (1526). The Turkish occupation lasted for 150 years. Nearly four centuries of Habsburg rule were punctuated by antifeudal and anti-Habsburg uprisings. A Slovak national revival in language and culture began in the 19th century. In the revolutionary years of 1848–49, Slovaks joined other suppressed peoples in the struggle for national emancipation from the Austro-Hungarian monarchy, but without any success.

The founding of the Czechoslovak Republic in 1918 after World War I (1914–18) satisfied the common aspirations of Czechs and Slovaks for independence from the Habsburg Empire. Czechoslovakia was the only east-central European country to remain a parliamentary democracy from 1918 to 1938. After the 1938 Treaty of Munich, the Czech regions were partly forcibly absorbed into Germany and partly transformed into a German protectorate. The Slovak region was transformed into a new entity called the Slovak State. It was recognized by a majority of states of the international community.

After the defeat of the Germans and the reunification of Czechoslovakia in 1945 (except a part of eastern Slovakia, annexed to the Soviet Union), the Czechs and Slovaks held elections in 1946. In Slovakia, the Democratic Party won the elections, but the Czechoslovak Communist Party won 38 percent of the total votes in Czechoslovakia and seized power in February 1948. The next four decades were characterized by strict Communist rule. The period was interrupted only briefly in the year 1968 by political, social, and economic reforms in an effort to create "socialism with a human face." The military invasion and occupation of Czechoslovakia on August 21, 1968, by Soviet, Hungarian, Bulgarian, East German, and Polish troops destroyed any hope for democracy in the country for the next 20 years.

The more than 40 years of communism and Soviet domination were years of suffering for many people, many of them clerics and lay supporters of the Catholic Church. Quiet resistance continued, however, often focused around the church.

On November 17, 1989, a series of public protests known as the Velvet Revolution began, leading to the downfall of communist rule in Czechoslovakia. A transitional government was formed in December 1989, and the first free elections since 1948 took place in June 1990. In 1992, negotiations on the new federal constitution deadlocked over the issue of Slovak autonomy, and in the second half of 1992 an agreement was reached to divide Czechoslovakia peacefully. On January 1, 1993, the Czech Republic and the Slovak Republic were simultaneously and peacefully founded. Both states attained immediate recognition from the United States and their European neighbors.

Slovakia was accepted into the United Nations, the Council of Europe, the North Atlantic Treaty Organization (NATO), and other international governmental organizations. Slovakia became a member of the European Union on May 1, 2004.

FORM AND IMPACT OF THE CONSTITUTION

The Slovak constitution is codified in a single written document, called the Constitution of the Slovak Republic. It has priority over all laws and international treaties valid in Slovakia, including European law; however, this legal question has not yet been resolved satisfactorily by juridical doctrine.

Courts, especially the Constitutional Court, implement all laws and treaties in accordance with the constitution, which is also the main legal source of fundamental values of the society.

BASIC ORGANIZATIONAL STRUCTURE

The territory of Slovakia is integral and indivisible. The capital of Slovakia is Bratislava. Only a constitutional law may change the borders of Slovakia. Reacting to new transatlantic and European challenges of recent history, Slovakia may, at its own discretion, enter into a union with other states.

A constitutional law, confirmed by a referendum, is required before entry into or secession from such a union. The constitution does, however, permit Slovakia to transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union have precedence over laws of Slovakia. Slovakia may also join an organization of mutual collective security for the purpose of maintaining peace, security, and democratic order, under conditions established by an international treaty.

As a principle, Slovakia supports the national consciousness and cultural identity of Slovaks living abroad, their institutions established to achieve this goal, and their relations with the homeland. The basic unit of territorial self-administration is the municipality.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government is a parliamentarian democracy with a strong division of the executive, legislative,

and judicial powers, based on checks and balances. The judiciary is independent and includes a Constitutional Court. Slovakia is a sovereign, democratic, and pluralistic state and is governed by the rule of law. It is not bound to any ideology or religion.

Slovakia acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations. The state power derives from the citizens, who exercise it directly or through their elected representatives. Slovakia is a social state, meaning that government is mandated to act to ensure a minimal standard of living to every resident of Slovakia.

State bodies may act solely on the basis of the constitution and within its scope. Their actions are governed by procedures specified by law. Everyone may do what is not forbidden by law, and no one may be forced to do what the law does not enjoin. The Slovak language is the official language of Slovakia.

Protection of the environment is a constitutional principle.

CONSTITUTIONAL BODIES

The executive power is represented by the president of Slovakia and the administration led by its prime minister. The legislative power is represented by the National Council. The judicial power is represented by the Constitutional Court, the office of the public prosecutor, and a system of general courts. The main independent control bodies are the Supreme Audit Office and the public defender of rights (ombudsperson).

The President of the Slovak Republic

The head of the Slovak Republic is the president. The president represents the country externally and internally, and he or she ensures the regular operation of constitutional bodies. The president performs the duties of the office according to his or her conscience and convictions and is not bound by orders from anyone.

The president may ask the Constitutional Court to review the constitutionality of a negotiated international treaty, a process for which the consent of the National Council of Slovakia is also necessary. The president receives, appoints, and recalls heads of diplomatic missions. The president convenes the opening session of the National Council of Slovakia and, in cases stated in the constitution, may dissolve the National Council. The president signs laws and can return laws to the National Council with objections, appoints and removes the prime minister and other members of the cabinet and charges them with the direction of ministries, and appoints and recalls principal officials and judges. The president can remit or mitigate sentences imposed by criminal courts and expunge sentences in the form of individual pardon or amnesty. The president is also the commander in chief of the armed forces and can declare war on the basis of a decision of the National Council. The president can call referenda.

A citizen of Slovakia eligible to vote who has attained 40 years of age may be elected president. The president may not serve more than two consecutive terms.

Citizens of Slovakia choose the president for a five-year term in direct elections by secret ballot. Candidates for president can be nominated by at least 15 members of parliament or by at least 15,000 citizens who have the right to vote for the National Council. A candidate needs an absolute majority of valid votes to win; in an eventual second round the greatest number of valid votes is needed.

The Administration

The administration or cabinet is the supreme executive body of the Slovak Republic. It consists of the prime minister, deputy prime ministers, and ministers. The prime minister is appointed and recalled by the president. The president appoints and recalls other members of the cabinet on the basis of the prime minister's recommendations. The administration is obliged to present itself to the National Council, submit its program, and ask for a vote of confidence. The administration is responsible to the National Council for the exercise of governmental powers and is subject to a vote of no confidence at any time.

Any cabinet resolution requires the consent of an absolute majority of all its members. The cabinet decides as a body on draft laws and regulations, on measures to promote the government's economic and social programs, on the draft budget and the final state budgetary account, and on other fundamental issues of internal and foreign policy.

The National Council

The National Council of the Slovak Republic is the country's sole legislative body. It consists of 150 members of parliament, elected for a four-year term. Members are expected to exercise their mandates individually and according to their conscience and conviction. No party orders can bind them. The members of parliament are elected by universal, equal, and direct suffrage by secret ballot.

The chief powers of the National Council are to adopt the constitution, constitutional laws, and other laws and to supervise their implementation. The National Council can approve or repudiate treaties on the union of Slovakia with other states. It decides on proposals for referenda.

No member of parliament can be prosecuted for any vote in the National Council or in its committees, even after expiration of his or her mandate. Members of parliament cannot be prosecuted for any statements made during their term in the National Council, even after their mandate expires. No member of parliament can be prosecuted, sanctioned by any disciplinary measure, or held

in pretrial detention without approval of the National Council.

The Lawmaking Process

A bill may be introduced directly by the administration, a deputy, or a committee of the parliament.

Certain international treaties have precedence over all other laws. These include treaties on human rights and fundamental freedoms, treaties for whose exercise a law is not necessary, and treaties that directly confer rights or impose duties on natural persons or legal persons (e.g., corporations) and were legally ratified and promulgated.

The president signs and promulgates laws. He or she has the power to refuse to sign and return the bill to the National Council with comments up to 15 days after receiving it. The act must then be approved by parliament a second time in order to become law. The president also declares referendums.

To approve the most important international treaties, and to reconfirm a law returned by the president, an absolute majority of all members of parliament is required. A three-fifths majority vote is required for adopting or amending the constitution, passing a constitutional law, ratifying an international treaty concerning territorial matters or certain EU matters, declaring a plebiscite on the recall of the president, prosecuting the president, or declaring war on another state.

A constitutional law on joining a union with other states or seceding from it must be confirmed by a referendum. A referendum may also be used to decide on other crucial issues of public interest. No issues of fundamental rights and freedoms, taxes, duties, or the state budget may be decided by a referendum.

The Judiciary

The judicial system is composed of the Supreme Court of the Slovak Republic and other courts. The president appoints and recalls judges on the recommendation of the Judiciary Council; they are appointed without time restrictions.

The Constitutional Court is an independent judicial authority with a mandate to review the conformity of laws with the constitution. If the court finds that laws or regulations violate the constitution, they loose effect and the issuing body then has six months to harmonize them with the constitution, with constitutional laws, or with valid international treaties. If they fail to do so, these laws or regulations, or their unconstitutional provisions, cease to be valid.

The Constitutional Court also decides disputes over competency between the central state administrative bodies and complaints of the bodies of territorial self-administration against unconstitutional or unlawful decision. The court also hears claims by natural or legal persons of infringement of their fundamental rights or freedoms.

The Constitutional Court makes final decisions on verifying disputed mandates of members of parliament; validating elections for the president, the National Council, and local self-government bodies; and validating referenda and plebiscites on the recall of the president. It also issues final rulings on whether political parties or movements should be suspended or dissolved on the basis of nonconformity with constitutional and other laws.

When the president has been charged by the National Council with willful infringement of the constitution or treason, the Constitutional Court makes the final verdict. The court can also review the constitutionality of declarations of a state of exception or a state of emergency, and of the measures taken during those states.

The Constitutional Court is composed of 13 judges, who are appointed by the president for 12-year terms on the recommendation of the National Council.

THE ELECTION PROCESS

All Slovaks over the age of 18 have the right to vote. Members of parliament are elected by universal, equal, and direct suffrage by secret ballot. Any citizen who has the right to vote, has attained 21 years of age, and has permanent residency in Slovakia is eligible to be elected to the National Council.

POLITICAL PARTIES

Slovakia has a pluralistic system of political parties as a basic principle of the democratic system described in the constitution. The internal structure and all the activities of political parties are regulated by law. Parties are primarily self-financed.

The party that wins the most seats in parliamentary elections is delegated by the president to constitute the administration. If it fails to do so, the president then turns to the party that finished second.

CITIZENSHIP

Slovak citizenship is primarily acquired by birth (*ius sanguinis*) and may also be acquired by adoption or voluntarily as regulated by laws and international agreements. No one may be deprived of citizenship against his or her will.

FUNDAMENTAL RIGHTS

The constitution distinguishes among fundamental rights and freedoms, political rights, and the rights of national minorities and ethnic groups. It also provides economic, social, and cultural rights, as well as the right to protection of the environment and of one's cultural heritage. Judicial and other legal protections are guaranteed. The right to life is considered the most important human

right. Human life is declared to be worthy of protection even before birth. The death penalty is prohibited.

More specifically, the constitution proclaims that everyone has the right to maintain and protect his or her dignity, honor, reputation, and good name; to be free of unjustified interference in private and family life; and to be protected against unjustified collection, disclosure, and other misuse of personal data. Everyone has the right to own property, and the rights of all property owners must be uniformly construed and equally protected by law. The right of inheritance is guaranteed. Expropriation or other restrictions on property rights may be imposed only to the extent necessary, in the public interest, in a legal fashion, and for just compensation. Secrecy of letters and other communications and of personal data is guaranteed. Freedom of movement and residence is guaranteed. No one can be forced to perform military service if it is contrary to his or her conscience or religion.

Impact and Functions of Fundamental Rights

The Constitution of Slovakia provides that all human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible, irreversible, and covered by the right to judicial protection.

Everyone may claim his or her rights by law at an independent and impartial court or, in cases provided by law, at another public authority. Any person who claims his or her rights have been denied by a decision of a body of public administration may go to court to have the legality of the decision reviewed, save otherwise provided by a law.

Everyone has the right to compensation for damage caused by an unlawful decision of a court or other public authority, or by improper official procedure. Everyone has the right to have his or her case tried publicly without undue delay, to be present at the proceedings, and to comment on any evidence given therein. The public may be excluded only in cases specified by law.

Thus, the Slovak system of human rights provides a classic, wide, and precise constitutional structure based on stable principles, both conservative and liberal in nature, that reflect the impact of Christian culture. Fundamental rights are guaranteed in Slovakia to everyone regardless of sex, race, color, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent, or any other status. Everyone has the right to decide freely of which national group he or she is a member. No injury may be inflicted on anyone because of exercising his or her fundamental rights and freedoms.

Limitations to Fundamental Rights

Limitations of fundamental rights and freedoms have to be based on a law under the conditions set out in the constitution. Legal restrictions of fundamental rights and freedoms are applied equally in all cases fulfilling the specified conditions. When imposing restrictions on fundamental rights and freedoms, respect must be given to the essence and meaning of these rights and freedoms, and such restrictions may be used only for the purpose specified in the law.

Freedom of thought, conscience, religion, and belief is the most sensitive area of possible limitations. According to the constitutional doctrine, these rights have so-called absolute character; only their expressions have relative character and may be limited by law. The exercise of these rights may be restricted only by law, and the restriction must be necessary to any democratic society for the protection of public order, health, and morals or the protection of the rights and freedoms of others.

ECONOMY

The economy in Slovakia is based on the principles of a socially and ecologically oriented market economy. Slovakia protects and encourages economic competition.

The National Bank of Slovakia is an independent central bank. It may, within the scope of its legally endowed powers, issue generally binding legal regulations.

RELIGIOUS COMMUNITIES

There are 16 registered religious communities and churches, all with the right to subvention from the state budget. They are structured and function independently, within the bounds of the law. The relations between the state and religious communities are regulated by the constitution and laws, although bilateral international or national agreements have been in recent years considered to be the most convenient and precise instrument for this purpose. The 2000 Basic Treaty between Slovakia and the Holy See and several connected international or national agreements concluded with the Holy See as well as with other registered churches and religious communities complement a united and effective system of mutual relations between state and church. Of the inhabitants of the republic 72 percent are members of the Roman Catholic Church.

Freedom of thought, conscience, religion, and belief is guaranteed, including the right to change religion or belief and the right to refrain from a religious affiliation. Everyone has the right to express his or her mind publicly and has the right to manifest freely his or her religion or belief either alone or in association with others, privately or publicly, in worship, religious acts, ceremonies, or teaching. Churches and ecclesiastical communities administer their own affairs; in particular, they establish their bodies, appoint clerics, provide for theological education, and establish religious orders and other clerical institutions independently of state authorities.

MILITARY DEFENSE AND STATE OF EMERGENCY

War is declared by the president, subject to the support of a three-fifths majority of all members of parliament. This may take place if the country is attacked or as a result of obligations deriving from international treaties. The president also concludes peace.

The president may, upon the recommendation of the administration, order a mobilization of the military forces or declare a state of exception or a state of emergency. He or she also declares their termination. A constitutional law defines the restrictions to fundamental rights and freedoms, and the extent of citizens' duties, that may be necessary in times of war, a state of war, a state of exception, or a state of emergency.

AMENDMENTS TO THE CONSTITUTION

For the purpose of adopting or amending the constitution or a constitutional law, the consent of a three-fifths majority of all members of parliament is required.

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Marek Šmid

SLOVENIA

At-a-Glance

OFFICIAL NAME
Republic of Slovenia

CAPITAL
Ljubljana

POPULATION
1,964,036 (2005 est.)

SIZE
7,827 sq. mi. (20,273 sq. km)

LANGUAGES
Slovenian

RELIGIONS
Catholic 58%, Muslim 2.4%, Serbian Orthodox 2.3%, unaffiliated or other 37.30%

NATIONAL OR ETHNIC COMPOSITION
Slovenian 83%, Serbian 2%, Croatian 1.8%, Bosnian 1.1%, other (largely Muslim as ethnic entity, Hungarian, Macedonian, Montenegrin, Italian, and Roma) 12.1%

DATE OF INDEPENDENCE OR CREATION
June 25, 1991

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 23, 1991

DATE OF LAST AMENDMENT
June 15, 2004

Slovenia is a parliamentary democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. It is organized as a unitary state; although the 193 communes have local authorities, the country has a strong central government. The constitution provides for far-reaching guarantees of human rights that are widely respected by the public authorities; if a violation of the constitution does occur in individual cases, there are effective remedies enforceable by an independent judiciary, which includes a strong and visible Constitutional Court.

The president of the republic is the head of state, but his or her function is mostly representative. The central political figure is the president of the government. The president of the republic depends on the parliament as the representative body of the people. Free, equal, general, and direct elections of the members of parliament are guaranteed. A pluralistic system of political parties has intense political impact.

Religious freedom is guaranteed and state and religious communities are separate. The economic system can be described as a social market economy. The military is subject to the civil government in terms of law and fact.

CONSTITUTIONAL HISTORY

Slovenians are the westernmost Slavs in Europe. They settled the eastern Alpine area in the second half of the sixth century C.E., covering an area three times larger than today's Slovenia, with its center north of the Karavanken Mountains. Their name indicates close cultural and ethnic links with the peoples of Moravia, Slovakia, and Slavonia.

The Slovenian dukedom of Carantania, the oldest Slavic state entity, appeared in the first half of the seventh century; it was a part of Samo's tribal union to the north, which ended in 658. The Slovenians were included in the missionary activities of Saint Cyril and Saint Methodius. With the arrival of the Magyars and the creation

of their state at the end of the ninth century these links were weakened.

Carantania survived as a significant entity until 1414; its duke was elected and enthroned in a special ceremony performed exclusively in the Slovenian language. This unique ceremony was known to the French legal scholar Jean Bodin and through him to Thomas Jefferson. Carantania fell under the dominance of Bavarians and Franks in the mid-eighth century, and the Slovenians lost their tribal self-government in 828.

The region became divided into provinces under Habsburg rule, each with its own political, legal, military, and even religious life until 1918. Slovenians lived for more than half a millennium divided among the provinces of Styria, Carinthia, Carniola, Gorizia, Istria, and Trieste. Of these provinces, only Carniola and Gorizia were predominantly Slovenian. Instead of an ethnic consciousness, a provincial consciousness that was strongly supported by the nobility developed.

Slovenians were the first Slavs to accept Christianity, undoubtedly the most important cultural legacy of antiquity. It was spread mainly from Aquilea with the help of the Salzburg and Freising dioceses. The Brižinski Monuments testify to the consolidation of Christianity. These Slovenian religious texts were written in a single manuscript before 1000 C.E. and represent the oldest Slavic text in Latin transcription. An important basis for further Slovenian cultural development was the printing of the first Slovenian book in 1550 and a translation of the Bible, both provided by Protestantism. The arrival of the Jesuits during the Counter-Reformation generated the founding of secondary schools and colleges in the capitals of the provinces.

For most of their history, Slovenians were referred to by their non-Slavic neighbors with a variety of names, such as Slavs, Winds, and Wends, or by their province names, such as Carniolians and Styrians. The provincial identification of the Slovenians was newly affirmed in the second half of the 18th century, when a national renaissance based on raising the social status of the Slovenian language and its use in all areas of life emerged.

Unlike the majority of other European nations, Slovenians defended their national rights from the standpoint of natural law. Their national movement reached its peak in the revolutionary year of 1848. A central demand of the revolutionaries was restructure of the old provinces in order to unify the Slovenians into a Kingdom of Slovenia with its own national assembly; it was the most radical of the national demands then put forward within the Austrian Empire. The revolutionaries also demanded that Slovenian be the official language in all fields of public life.

The Slovenians kept these demands alive, reiterating them in particular at the national *tabors* (meetings) in 1868–71, where up to 30,000 people gathered. The political parties that emerged after 1890 supported the claims as well. In this way the basic political principles on which the independent Slovenian state was born in 1991 were established.

Thus, by the time of World War I (1914–18), the Slovenians were a modern European nation, with a national culture comparable to that of other western and central European nations. This was achieved without the financial help or guidance of national or provincial government institutions.

After the war, a short-lived state was formed on the Slovenian, Croat, and Serb territories of the former Austria-Hungary. It soon merged with the Kingdom of Serbia and Montenegro to form the Kingdom of Serbs, Croats, and Slovenians on December 1, 1918, later renamed the Kingdom of Yugoslavia. However, more than one-third of the Slovenian population lived in areas annexed by Italy, where they suffered national persecution under fascism, or were included in the Austrian Republic, where the Carinthian Slovenians also faced a rapid worsening of national conditions. The greatest achievement of the Slovenians in Yugoslavia was undoubtedly the founding of the Slovenian University in Ljubljana in 1919 as well as other major cultural institutions. The language of instruction in all schools was Slovenian.

World War II (1939–45) began with the annexation of all Slovenian territory by Germany, Italy, and Hungary, who all aimed to eliminate the Slovenians as a nation. The Communist Party weakened the national resistance, provoking a civil war. After the end of World War II the democratic opposition was eliminated and half a century of one-party rule followed.

Slovenia became the most developed of the federal republics inside Yugoslavia. Nevertheless, there was growing sentiment to secede from Yugoslavia and establish an independent national state; in economic and social terms the country was lagging behind neighboring Italy and Austria, and Slovenian cultural identity was threatened by Yugoslav centralism. In the end, the predominant factor was a desire for freedom and democracy after the worldwide collapse of communism.

The public desire for independence was first expressed in the plebiscite of December 23, 1990. On June 25, 1991, the Slovenian parliament declared independence and adopted the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. After only 10 days of resistance from the Yugoslav army, a peace agreement was reached, thus paving the way for national sovereignty and international recognition. The constitution of the Republic of Slovenia was adopted on December 23, 1991, by the Assembly of the Republic of Slovenia.

Slovenia is a state of all its citizens based on the right of the Slovenian nation to self-determination. Besides ethnic Slovenians, members of the Italian and Hungarian national communities live as indigenous inhabitants in Slovenia, while Slovenians also live as indigenous inhabitants of Italy, Austria, and Hungary.

Slovenia joined the North Atlantic Treaty Organization (NATO) in 2004 and became a member state of the

European Union on May 1, 2004. As such, Slovenia participates in an increasingly intense integration process of the European nations that seeks to ensure peace, stability, and prosperity across the continent.

FORM AND IMPACT OF THE CONSTITUTION

Slovenia has a written constitution that takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Slovenia. Only the law of the European Union has precedence over the Slovenian constitution—and only as long as it does not contradict the constitution's basic principles.

The constitution of Slovenia is significant not only for the legal system of the country, but also as a source of fundamental values for the functioning of society. All law must comply with the provisions of the constitution. The Constitutional Court is strict and powerful in implementing constitutional law.

BASIC ORGANIZATIONAL STRUCTURE

Administratively, the state is structured into 60 administrative units, linked directly with the central government. There are no independent regions in Slovenia, but local government is widespread. The citizens of the local communities elect mayors and other members of local political bodies. There are 193 local communities, which vary considerably in size—the smallest with fewer than 1,000 inhabitants and the largest, Slovenia's capital, Ljubljana, with 270,000 inhabitants. The local communities can make their own decisions on quite a number of issues, among which local urban and land planning is the most important.

LEADING CONSTITUTIONAL PRINCIPLES

Slovenia's system of government is a parliamentary democracy. There is a strong division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent and includes a Constitutional Court. On the national level, political participation is rather strictly shaped as an indirect, representative democracy. Direct democracy, whereby people decide directly on the relevant issues by means of a referendum, is also used.

The Slovenian constitutional system is defined by a number of leading principles: Slovenia is a democracy, a republic, and a social state, and it is based on the rule of law. The principle of republican government simply means that there shall be no monarchy. The principle of a social state means that government must take action to ensure a minimal standard of living to every citizen. Rule of law is of decisive impact. All state actions impairing the rights of the people must have a basis in parliamentary law, and the judiciary must be independent and effective.

Further structural principles are implicitly contained in the constitution: Religious freedom, separation of the state and religion, a commitment to protecting human rights and fundamental freedoms, protection of the human person and its dignity, the right to privacy and personality rights, the right to private property and inheritance, and the protection of a healthy living environment and of the natural and cultural heritage are all constitutional principles.

The constitution mandates direct application of ratified and published international agreements such as the European Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic; the administration; the parliament, which includes the National Assembly (Državni Zbor) and the National Council (Državni Svet); and the judiciary, which includes the Constitutional Court, the Supreme Court, and the judicial council. A number of other bodies complete this list, such as the court of audit and the ombudsperson.

The President of the Republic

The president of the republic is the head of state and represents the republic in international affairs; he or she is the commander in chief of its defense forces. The president issues the call for elections to the National Assembly and proposes to the National Assembly a candidate for president of the administration. The president of the republic promulgates laws. The president also appoints and recalls ambassadors and other state officials where provided for by law. The president of the republic has the right to grant clemency.

The political position of the president of the republic is limited, as most of these duties are largely representative. The impact depends largely on the president's personal charisma. This relative lack of political power enables the president to be representative of the whole of the Slovenian nation.

The president of the republic is chosen by direct elections for a five-year term and may be elected for a maximum of two consecutive terms.

The Federal Administration

The administration (cabinet) is the political nerve center of Slovenia. It consists of the president of the administration and the cabinet ministers. The president of the administration is the head of the executive branch of government. The candidate is proposed by the president of the republic and needs to be endorsed by parliament (National Assembly).

The president of the cabinet and the cabinet ministers serve for the legislative period of the National Assembly (i.e., four years), unless dismissed early in a vote of no confidence. Each newly elected National Assembly must go through the process of electing a president of the cabinet by majority vote.

The constitutional powers of the office generally make the president of the cabinet the dominant figure in Slovenian politics. Once elected, the president of the cabinet can only be dismissed if a majority of the assembly chooses a replacement. This provision tends to weaken parliament somewhat; the general political fact is that the majority in parliament backs the administration and stands against the parliamentary minority.

The National Assembly

The Slovenian National Assembly (Državni Zbor) is the central representative organ of the people at the state level. As a legislative body, it cooperates with a number of other constitutional organs, especially the National Council (Državni Svet), in which the social, economic, professional, and local interests are represented. In terms of the legislative process, the National Assembly and the National Council can be regarded as two chambers of parliament; however, the position of the first is far more influential.

The National Assembly also elects the president of the cabinet and its other members and monitors the administration. The members of the National Assembly have the right to put questions to the cabinet and any cabinet minister can be cited to appear before parliament. The National Assembly also elects the members of the Constitutional Court and the judges of all other courts, the state prosecutor, the members of the court of audit, and the ombudsperson.

An important right of the deputies that helps to ensure their independence is parliamentary privilege. This gives them far-reaching protection against legal action or other negative consequences arising from their votes or statements in parliament. Only with the permission of the National Assembly may a member of parliament be arrested, be subjected to any criminal prosecution, or have his or her personal freedom limited—unless the deputy is arrested in the course of committing a crime that has a penalty of five years or more.

The National Assembly consists of 88 deputies, plus one deputy each allocated to the indigenous Italian and Hungarian national communities. Its period of office, the legislative term, is four years. The deputies are elected in a general, equal, direct, free, and secret balloting process.

The National Council

The 40 members of the National Council represent the diverse social, economic, professional, and local interests of the country. Local interests choose 22 of the members; the others represent employers, employees, farmers, independent professionals, and noncommercial interests.

Members are elected indirectly by various communities and chambers for a term of five years. The council participates in legislation at the national level. It may propose laws to the National Assembly and can force the National Assembly to reconsider a law it has already passed.

The Lawmaking Process

The right to introduce a bill belongs to the cabinet, every member of the National Assembly, and the National Council. When the National Assembly passes a bill, it is sent to the National Council. The council may raise objections, but if these are rejected by the National Assembly, the bill can pass into law without its consent. For the law to take effect, the president of the republic must promulgate it.

The Judiciary

The judiciary in Slovenia is independent of the executive and legislative branches and is a powerful factor in legal life. Judges are elected to permanent office by the National Assembly on the recommendation of the Judicial Council.

There are three different branches of courts according to the legal nature of the matter. There are courts of general jurisdiction (mainly for civil and criminal cases), specialized courts for administrative matters, and specialized courts for social and labor law. The single national Supreme Court sits at the apex of all three branches.

The court of ultimate appeal is the Constitutional Court, which ranks above the Supreme Court and deals exclusively with constitutional disputes. It consists of nine judges, who elect a president from among their own number for a term of three years.

The importance of this court arises from the requirement that all exercise of state power must be in compliance with the constitution. The court can declare acts of parliament void on the basis that they are unconstitutional. A complaint can be taken before the court by any person on the basis of an allegation that the state has infringed one of his or her fundamental rights.

THE ELECTION PROCESS

All citizens of Slovenia over the age of 18 have both the right to stand for election and the right to vote in the elections.

Parliamentary Elections

The members of parliament (the National Assembly) are elected on the basis of proportional representation. Subject to certain exceptions (for example, to provide for indigenous national minorities), a party must win at least 4 percent of all votes to gain seats in the National Assembly. In 2004, eight national political parties were represented.

POLITICAL PARTIES

Slovenia has a pluralistic system of political parties. The multiparty system is a basic structure of the constitutional order. The parties constitute a fundamental element of public life that helps to form the political will of the people. Their internal structure must be in accordance with democratic principles and is subject to review by the Constitutional Court. They must be primarily self-financing, relying on membership fees and donations. Limited additional financing from public funds is guaranteed, in proportion to the parties' votes in national and local elections.

The Constitutional Court has not banned any parties in the short history of the Republic of Slovenia. A political party can be deemed unconstitutional only if it or its adherents try to impair or eliminate the free democratic basis of the country or threaten the existence of the republic.

CITIZENSHIP

Slovenian citizenship is primarily acquired by birth, based on *ius sanguinis*. A child acquires Slovenian citizenship if one of his or her parents is a Slovenian citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights in its second chapter and emphasizes the fundamental importance of the rights of the individual. Fundamental rights are of foundational importance for the state and constitution. The Slovenian constitution guarantees the traditional classic set of human rights and includes social human rights, such as the right to work and the right to education.

The starting point is the guarantee to protect human rights and fundamental freedoms in Article 5. Numerous specific rights are enumerated. These rights have binding force for the legislature, the executive, and the judiciary as directly applicable law.

The rights guaranteed by the constitution can be classified either as freedom rights or as equality rights. Article 35 protects the right to privacy and personality rights including the free development of the personality. This fundamental right functions as a general freedom right.

The general equal treatment clause is contained in Article 14, which guarantees that all persons are equal before the law. This fundamental right is a catchall for a number of specific equality provisions such as the guarantee of equality of men and women and the equality of voting rights. Another special equality right is provided in Article 14: "In Slovenia everyone shall be guaranteed equal human rights irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, or any other personal circumstance."

The constitution distinguishes between general human rights and a much smaller number of rights reserved for Slovenians only, the so-called Slovenians' rights. Examples of general human rights are freedom of belief, freedom of opinion, equality rights, protection of human personality and dignity, rights of children, freedom of education, the right to assembly and association, and protection of property. Slovenians' rights include the right to vote in national elections, to participate either directly or through elected representatives in the management of public affairs, to file petitions, and to pursue other initiatives of general significance. Slovenians have a right to social security, and no Slovenian citizen may be extradited to a foreign country.

Impact and Functions of Fundamental Rights

Human rights are of fundamental importance and permeate all areas of the law. In the interpretation and application of all law, the value judgments contained in the fundamental rights must be given effect. Thus, even in relations between individuals, human dignity may not be violated, and freedom and equality must be respected in all circumstances.

The functions that are ascribed to the rights are correspondingly numerous. Fundamental rights are first of all defensive rights. This means that the state may not interfere with the legal position of the individual unless there is special reason to do so.

Apart from their defensive function, fundamental rights also traditionally involve the right to participate in the democratic political process. To a carefully limited extent, a certain positive dimension entitling an individual to services from the state is also recognized. Insofar as this is practical, the state has a duty to ensure that circumstances conducive to the exercise of the fundamental rights are created.

Finally, fundamental rights are also a guarantee of organization and due process. The state must provide appropriate organizational and procedural structures to ensure the prompt and effective protection of fundamental rights.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. The Slovenian constitution specifies such possible limits, which are based on specific needs of the public and the rights of others. On the other hand, no fundamental right may be disregarded completely. Each limit to a fundamental right faces limits itself. One of the most important of the "limitation limits" is the principle of proportionality, which gives expression to the idea that all laws must be reasonable, and that any limitation must be in proportion to the goal of the state action in question. The principle of proportionality permeates the entire legal order.

Article 15 provides that the fundamental rights shall be limited by the rights of others only in such cases as are provided for by the constitution. Judicial protection of fundamental rights and the right to obtain redress for the violation of such rights and freedoms shall be guaranteed. No fundamental right granted by laws currently in effect may be restricted on the grounds that the constitution itself does not recognize that right or recognizes it to a lesser extent.

Specially protected fundamental rights (human life and dignity, prohibition of torture, presumption of innocence, fair trial in criminal proceedings, and freedom of belief) can never be suspended, even temporarily and even in wartime. Other constitutional rights may be suspended or restricted temporarily during a state of war or emergency. These lesser constitutional rights can only be suspended in a nondiscriminatory way for the duration of the state of emergency or war and to the minimal extent required.

ECONOMY

The Slovenian constitution does not specify an economic system. On the other hand, certain basic provisions of the constitution provide a set of conditions that have to be met while structuring the economic system.

The constitution protects freedom of property and the right of inheritance. Also protected are freedom of occupation or profession, general personal freedom, and the right to form associations, partnerships, and corporations. The right to form associations in order to safeguard and improve working and economic conditions is guaranteed to every individual and all corporations and professions. This right guarantees autonomy of trade unions and employer associations in labor bargaining.

Slovenia is also defined by the constitution as a social state, providing for minimal social standards. The constitution allows ownership rights to real estate to be revoked or limited in the public interest with the provision of compensation under conditions established by law.

Taken as a whole, the Slovenian economic system can be described as a social market economy. It combines aspects of social responsibility with market freedom.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for the religious communities. There is no established state church, and all public authorities must remain strictly neutral in relations with religious communities. Religions must be treated equally. Nonreligious philosophies of life are accorded the same status as religious views. All churches and religious communities are corporations under private law.

The relations between the state and churches and the legal position of religious communities are based on the following constitutional principles: (1) separation of the state and religious communities, (2) equality of religious communities, and (3) free activity of religious communities within the framework of the laws. Freedom of conscience and belief is provided for under Article 41 with three provisions: the assurance of freedom of conscience (and the right to profess freely one's religion and other self-definitions in private and public) as a positive entitlement; the right for a person not to have any religious or other beliefs or not to manifest such, as a negative entitlement; and the right of parents to determine their children's religious and moral upbringing in accordance with their beliefs.

As a special aspect of freedom of conscience, the constitution provides for the right of parents to give their children a moral and religious upbringing in accordance with their beliefs. Religious and moral guidance given to a child must be appropriate to his or her age and maturity. The guidance must also be consistent with the child's free conscience and religious and other beliefs or convictions.

The right of conscientious objection is also protected by the constitution, in such circumstances as are determined by statute. This right can be limited only by the rights of others and in certain situations enumerated in the constitution. Today, conscientious objection is allowed only in two areas: state defense and medical operations. Two constitutional provisions regulate religious relations among individuals: It is prohibited to incite religious discrimination and inflame religious hatred and intolerance, or to discriminate on the basis of religion or other belief.

Separation and neutrality do not preclude the state from cooperating in common endeavors with churches and religious communities as it does with other organizations of civil society. The modern state actively participates in various social fields in which religious communities perform a variety of tasks; the state, in supporting and promoting various activities in society, cannot ignore or exclude religion.

The tension between the demands of state neutrality in religious affairs and the need to recognize the positive social contributions of religious communities is particularly acute in Slovenia, where the law relating to freedom of religion is still developing. Although the 1991 constitution assures religious freedom, the constitutional interpretations and legislation affecting religious communities

are not always in line with modern trends in church-state separation.

Although the 1991 constitution was initially interpreted to favor religion, it has been more recently interpreted under principles of an ultrastrict regime of church-state separation. However, a new Religious Freedom Act acknowledges religious needs of both society and individuals and provides detailed regulations that are accordant to the principle of tolerance toward religion that can be drawn from the constitution. Church and state can be separated, yet they may at the same time cooperate in many ways in order to realize a welfare state principle.

MILITARY DEFENSE AND STATE OF EMERGENCY

The administration is responsible for creating and maintaining the national defense. The state maintains a policy of peace and an ethic of nonaggression. The Republic of Slovenia has obliged itself by international treaties not to produce nuclear, biological, or chemical weapons.

Citizens who because of their religious, philosophical, or humanitarian beliefs are not willing to perform military duty are assured the opportunity of participating in the defense of the state in some other manner. In Slovenia, general conscription was abandoned in 2002 and replaced by a professional military who serve for fixed periods or for life.

The military always remains subject to civil government. The National Assembly decides on the use of the defense forces. The commander in chief is the president of the republic.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be changed if two-thirds of the members of the National Assembly vote in favor.

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Lovro Šturm

SOLOMON ISLANDS

At-a-Glance

OFFICIAL NAME
Solomon Islands

CAPITAL
Honiara

POPULATION
409,000 (2005 est.)

SIZE
Land area of 10,954 sq. mi. (28,370 sq. km), on 26 islands and several hundred small islets spread over a sea area of 517,377 sq. mi. (1,340,000 sq. km)

LANGUAGES
Official: English and Pidgin, about 65 vernacular languages and dialects

RELIGIONS
Church of Melanesia or Anglican 35%, Roman Catholic 20%, South Seas Evangelical Church 18%, United Church 11%, Seventh-Day Adventist Church 10%, other religions (traditional religion, Bahá'í, Jehovah's Witnesses) 6%

NATIONAL OR ETHNIC COMPOSITION
Melanesian 94.2%, Polynesian 4%, Micronesian 1.4%, European 0.4%, Chinese 0.1%

DATE OF INDEPENDENCE OR CREATION
July 7, 1978

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Sovereign democratic state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 31, 1978

DATE OF LAST AMENDMENT
May 23, 2001

In 1978 Solomon Islands emerged from a period of dependency on the United Kingdom to become a sovereign state. Independence was achieved peaceably, as part of the decolonization process in the southwest Pacific. The independence constitution was appended to the Solomon Islands Independence Order 1978 (UK) rather than enacted locally. The constitution established a parliamentary democracy based on universal suffrage, a British Westminster style system of responsible government, and a separation of powers. The constitution is the supreme law and of great importance at a national level, but it has little relevance outside the capital and provincial centers. In rural areas, society still operates on a traditional basis and customary beliefs and practices remain strong.

CONSTITUTIONAL HISTORY

Solomon Islands was probably settled by explorers from Southeast Asia and New Guinea some time before 200 B.C.E. The islands were "rediscovered" by the Spanish in 1568 and European exploration continued until the 1800s. There was no concept of central or regional government at this time. The inhabitants were grouped together in small communities under the control of local "big men" or chiefs. In 1843 the southern islands of the Solomon chain became a British protectorate. In 1885, Germany declared a protectorate over the northern islands. About five years later, the German protectorate, except Buka and Bougainville, was transferred to Britain in exchange for recognition of German interests in Western Samoa. The Pacific Order in Council 1893 (UK) provided the basis of government. In 1960, the country's first constitution was put in force by a British order, which established a legislative council. This council was presided over by the high commissioner for the Western Pacific. Elected members were introduced in 1965, and in 1967 a legislative council and an executive council were introduced. In 1970, a new constitution, replacing the two councils with a single governing council, took force. Legislative functions were vested in the council,

while executive functions were shared among committees, responsible to the council. For the first time, the majority of members were elected. In 1974 the British Solomon Islands Order 1974 (UK) introduced a Westminster style constitution, replacing the governing council with a council of ministers and a legislative assembly.

In 1975, a constitutional committee was appointed to seek local views on a draft independence constitution, based on the framework of the 1974 constitution. The committee's report was completed in March 1976, but its approval was frustrated by a change of government. Amended proposals were eventually approved by the legislative assembly. In September 1977, a delegation from Solomon Islands traveled to England for a constitutional conference to agree on the final provisions. Independence was finally achieved in 1978, when the Constitution of Solomon Islands, 1978, repealed and replaced the 1974 constitution. The constitution was appended to the Solomon Islands Independence Order 1978 (UK).

The constitution is currently under review and is likely to be replaced by a federal constitution within the near future.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is contained in a single instrument, the Constitution of Solomon Islands, 1978. However, the Westminster system that it introduced is surrounded by a number of practices and conventions that are largely unwritten, such as party politics and the principle of responsible government. It is doubtful whether these concepts have translated well into the context of Solomon Islands society. Although the constitution is the supreme law and of great importance at a national level, it has little relevance outside a few urban centers. In rural areas, allegiance is owed to a clan or tribes made of family groups sharing a common language and culture.

In July 2003, an Australian-led armed intervention force arrived in Solomon Islands at the request of the government, after armed conflict between competing rebel groups—the Malaita Eagle Force and the Isatabu Freedom Movement. A reduced force remains. A reform program has been created as part of the peace process. This includes constitutional, legislative, political, and structural reform. The intention is to introduce a "homegrown" federal system of government. The new federal constitution is to be based on five principles, namely, inclusive development, the rule of law, transparency, accountability, and fiscal responsibility.

BASIC ORGANIZATIONAL STRUCTURE

The constitution provides for the division of the country into Honiara City and Provinces for the purpose of local government, which is limited to a list of matters specified by legislation. The local government system is governed by the Provincial Government Act 1997. The limited devolution provided for by the existing system of provincial government is inadequate to cater to the large numbers of people who live in remote areas. The central government has been accused of neglecting rural areas. In remote villages, the churches have provided the only link between the remote and unfamiliar Western style of government and the traditional authority of chiefs. In many areas they are the only provider of basic services, such as clinics and schools. In this way, the churches have become a surrogate local authority in some areas and a powerful political force in the country as a whole.

LEADING CONSTITUTIONAL PRINCIPLES

Solomon Islands is a sovereign democratic state with Queen Elizabeth II of England and her successors as head of state, acting through the governor-general. The Westminster system, including the separation of powers among the legislature, executive, and judiciary, is embedded in the constitution. The constitution establishes a central system of parliamentary democracy based on universal suffrage. Solomon Islands is a secular state, but it is founded on Christian principles, reflected in the reference to God in the preamble to the constitution. There is no one dominant church, and, although some religions have regional strongholds, Christianity seems to have acted as a uniting force. Solomon Islands is an independent member of the Commonwealth.

CONSTITUTIONAL BODIES

The most important constitutional bodies and offices are the National Parliament, the governor-general, the prime minister and cabinet, the judiciary, and the ombudsperson.

The National Parliament

The constitution establishes a single-chamber National Parliament, consisting of one member elected from each constituency. Parliament has a life of four years from the date of the first sitting after any general election, after which it stands dissolved. A general election must be held within four months of every dissolution of the National Parliament. Parliament may make laws for the peace, order, and good government of Solomon Islands.

The Governor-General

Executive authority is vested in the governor-general as representative of the head of state, who is the queen of England. The governor-general is appointed for a term of five years by the head of state on the advice of Parliament, from among persons qualified for election as a member of the National Parliament. The governor-general may be removed from office only by the head of state, acting on

the advice of Parliament supported by the votes of at least two-thirds of all the members. The governor-general acts on the advice of the cabinet and is kept informed of the general conduct of government by the prime minister.

The Prime Minister

The prime minister is elected as head of the government from and by the members of the National Parliament. The office becomes vacant if a motion of no confidence is passed; after a general election, when the members of Parliament meet to elect a new prime minister; if the prime minister ceases to be a member of Parliament; if he or she is elected as speaker or deputy speaker; or upon resignation.

The Cabinet

The cabinet consists of the prime minister and other ministers. It is collectively responsible to the National Parliament. Ministers are appointed by the governor-general, on the advice of the prime minister, from among members of Parliament. The constitution provides for a maximum of 11 ministers in addition to the prime minister. This number may be increased by Parliament and this power has been exercised to increase the maximal number to 20. The number of ministers was reduced to 10 in 2002 in an attempt to reduce costs.

The Judiciary

The judiciary is independent of the executive and legislature and plays an important role in making, interpreting, and applying the law. The constitution establishes a high court with unlimited original jurisdiction and a court of appeal. Judicial independence is buttressed by appointment's being made on the advice of the judicial and legal services commission, which is established under the constitution, and by conferring of tenure until the age of 60. Removal is by the governor-general and is only permitted on the grounds of inability to discharge the functions of office or misbehavior, on the recommendation of a tribunal made up of current or former holders of high judicial office within the Commonwealth.

The judiciary exercises a power of judicial review of governmental action. The courts' authority to intervene on the grounds of lack of jurisdiction or breach of the principles of natural justice has been held by the courts to override any provisions in legislation meant to prevent such intervention.

The Ombudsman

The ombudsperson's office is established by the constitution and supplementary legislation—the Ombudsman (Further Provision) Act 1980. The ombudsperson's jurisdiction extends to investigation of conduct of government departments, statutory bodies, and provincial and local government, subject to specific exceptions. The ombudsperson is appointed for a maximal term of five years by the governor-general after consultation with the speaker of the National Parliament and the chairs of the public service commission and the judicial and legal services commission. Removal is by the governor-general and subject to the same restrictions that apply to judges.

The Lawmaking Process

The sources of law provided by the constitution are, in descending order of importance, acts of Solomon Islands' Parliament; United Kingdom acts of general application in force on January 1, 1961 (if there is no local legislation on point); customary law (on an equal footing with United Kingdom acts); the principles of common law and equity in force in England on July 7, 1978 (if they are appropriate to the circumstances of Solomon Islands and are not inconsistent with written laws or custom), and as subsequently developed by the courts of Solomon Islands.

Acts take the form of bills, which are required to pass through three readings in the National Parliament. After a bill has been passed, it must be presented to the governor-general for assent on behalf of the head of state, before becoming law. Laws must then be published in the government gazette before they begin operation. Parliament may postpone the going into operation of any law and may make laws, other than criminal laws, with retrospective effect.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All citizens aged 18 or over are entitled to register to vote in the constituency in which they ordinarily reside. Voting is not compulsory. Only citizens over 21 are eligible to stand for election.

POLITICAL PARTIES

The introduced system includes party politics, but it is doubtful whether this concept has translated well into the context of Solomon Islands society. Generally, the weakness of the party system has resulted in government by unstable parliamentary coalitions. Party allegiances and government leadership often change, and frequent votes of no confidence merely highlight the lack of confidence in the system as a whole.

CITIZENSHIP

At independence, all indigenous Solomon Islanders automatically became citizens, as did any person born in Solomon Islands before independence who had two grandparents indigenous to Papua New Guinea or Vanuatu. Any child of a Solomon Islands citizen automatically becomes a citizen on birth. Dual citizenship is not permitted and any citizen of Solomon Islands who is a national of some other country automatically ceases to be a Solomon Islands citizen unless he or she renounces the other citizenship

within a specified period. Noncitizens may not reside or work in Solomon Islands without a permit. Some professions and trades are reserved for Solomon Islands citizens.

FUNDAMENTAL RIGHTS

The constitution of Solomon Islands incorporates a bill of rights based on the United Nations Universal Declaration of Human Rights 1948 and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. The bill of rights recognizes the following fundamental rights and freedoms: the right to life, liberty, and protection from slavery and forced labor; the right to protection from inhuman treatment; the right to protection from deprivation of property; the right to protection of privacy of the home and other property; the right to protection from the law for persons charged with a criminal offense and, in more limited terms, to persons involved in civil cases; the right to freedom of conscience, of expression, of assembly and association, and of movement; and the right to protection from discrimination on the grounds of race, place of origin, political opinions, color, creed, or sex.

Fundamental rights are subject to a number of detailed exceptions. A provision exempts any laws that provide for the application of customary law from challenges based on discrimination.

ECONOMY

The constitution does not specify a particular economic system.

RELIGIOUS COMMUNITIES

The constitution contains a guarantee of freedom of religion, under the banner of "protection of freedom of conscience." Freedom of expression, which includes the right to express religious views, is also constitutionally protected.

In theory, 96% of Solomon Islanders are Christian, mostly organized into five major churches. The Baha'i faith and Jehovah's Witnesses also have a visible presence in Solomon Islands. There are a small number of Hindus and Muslims in the country, but neither group has an established place of worship. Traditional religion is still practiced and customary rituals often take place alongside or in combination with Christian worship.

MILITARY DEFENSE AND STATE OF EMERGENCY

Solomon Islands does not have its own military force, but relies on the police force and prison service to assist in the enforcement of law and order. The absence of a military presence was very significant during the recent armed conflict and the government was eventually forced to ask its neighbors for assistance.

AMENDMENTS TO THE CONSTITUTION

The constitution may be amended by the National Parliament provided that notice of the amending bill has been given to the speaker at least four weeks before its first reading, and that the bill is clearly represented as a bill to alter the constitution. Generally, a special majority of two-thirds of the members is required. However, three-quarters of the members' votes are required to amend many provisions, including those governing amendment of the constitution, protection of fundamental rights and freedoms, the legal system, the ombudsperson, the establishment and composition of the National Parliament and electoral issues, the auditor-general, and miscellaneous provisions that relate to any of the preceding matters. The constitution may also be suspended or repealed by the same process.

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Jennifer Corrin Care

SOMALIA

At-a-Glance

OFFICIAL NAME
Somalia

CAPITAL
Mogadishu

POPULATION
8,304,601 (July 2004 est.)

SIZE
246,201 sq. mi. (637,657 sq. km)

LANGUAGES
Somali (official), Arabic, Italian, English

RELIGIONS
Sunni Muslim

NATIONAL OR ETHNIC COMPOSITION
Somali 85%, Bantu and other non-Somali (including Arabs, 30,000) 15%

DATE OF INDEPENDENCE OR CREATION
July 1, 1960

TYPE OF GOVERNMENT
Transitional parliamentary government

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral National Assembly

DATE OF CONSTITUTION
1960 and 2004 (Somaliland 2001)

DATE OF LAST AMENDMENT
No amendment

Somalia is often described as a failed state. At the time of writing the Transitional Government does not control the country. The inauguration of the new Somali president in October 2004 took place in Nairobi, the capital of Kenya, not in Mogadishu, the capital of Somalia.

The northern part of the country, Somaliland, has existed as a de facto independent state, with its own constitution, since Somalia collapsed in 1991 but has not been recognized by the outside world. To the extent that the Transitional Government is not in control of the rest of the country, power rests with local clans.

A new transitional charter, building on the 1960 constitution, was adopted by the feuding clans in February 2004 after peace talks that started in Kenya in 2002. It provides for a Federal Republic of Somalia. At the time of writing it seemed unlikely that Somaliland would join such a federation.

CONSTITUTIONAL HISTORY

Somalia was formed as a merger of the newly independent British and Italian Somaliland colonies in 1960. A constitution adopted the same year provided for a unitary state. In 1979, Siad Barre took over power and a new constitution was adopted. He was ousted in 1991, when the 1979 constitution was suspended. With the exception of the northern part of the country (former British Somaliland), the country descended into chaos.

In 2000, a transitional administration was appointed by a 245-member transitional parliament made up of clan representatives who had met for peace negotiations in Djibouti. The Transitional Federal Charter of the Somali Republic (the Charter) was adopted in February 2004. The 1960 constitution is applicable to issues not covered by and not inconsistent with the Charter. The Charter will remain in force until the adoption of a new constitution.

The constitution of the Republic of Somaliland was adopted in a referendum on May 31, 2001.

FORM AND IMPACT OF THE CONSTITUTION

As the government is not in full control of the country, the impact of the constitutional framework is at the time of writing very limited.

BASIC ORGANIZATIONAL STRUCTURE

The Charter provides for a federal state. Somalia is historically divided into 18 regions (*gobolka*). A state comprises a number of regions that have voluntarily joined to form a state. The Somali Republic shall comprise the transitional federal government, state governments, and regional administrations.

LEADING CONSTITUTIONAL PRINCIPLES

A new constitution will be adopted at the end of the transitional period. It is at the time of writing unclear whether the latest attempt with a transitional government will prove successful. A parliamentary system has been put in place, but no direct elections have been held. The constitutional calls for protection of human rights, but the judicial system that would be needed to enforce these rights remains in tatters.

CONSTITUTIONAL BODIES

The Charter provides for the following main federal bodies: the parliament, the president, the council of ministers led by the prime minister, and the Supreme Court.

The Parliament

The single-chamber 275-member parliament represents the legislative power of the transitional federal government. The Charter mandates that at least 12 percent of the members must be women. The current members were selected by the various clans in Somalia present at the negotiations in Kenya. Representatives of Somaliland refused to participate in this process. The parliament was inaugurated in Nairobi in August 2004, although only 214 members of parliament had been selected at the time.

A member of parliament must be a Somali citizen over 25 years old, of good character and sound mind. The term of the transitional federal parliament is five years, after which elections will be held for a new parliament under a new constitution.

Among the functions of the parliament are adopting legislation and the annual budget.

The Lawmaking Process

According to the charter, a law that is passed by parliament is presented to the president for assent. When the president refuses to assent, parliament reconsiders the law and takes into account the comments of the president. It either approves the recommendations or resubmits the law to the president without doing so. However, approval of the law in its original form requires a vote of 65 percent of all members of parliament. A law goes into operation once it is published in the official bulletin.

The President

The president is elected by parliament. The president is the head of state, commander in chief of the armed forces, and a symbol of national unity. The president must be a Muslim Somali citizen over 40 years old, the child of Somali citizens, and cannot be married to a foreigner. The president must be of sound mind and good character. The term of office is four years.

The Council of Ministers

The Council of Ministers is led by the prime minister, who is appointed by the president. The ministers are appointed from among the members of parliament. The Council of Ministers develops government policy and implements national budgets, prepares and initiates government legislation for introduction to the parliament, implements and administers acts of parliament, and coordinates the functions of government ministries.

The Judiciary

When the state collapsed in 1991, the courts closed as well. Conflict resolution has thereafter taken the form of either clan-based arbitration or the application of Islamic law (sharia).

The Charter provides for a judiciary independent of the legislative and executive branches of government. Judges are to be appointed by the president acting on the advice of the Judicial Service Council. The Charter provides for a Supreme Court, a Court of Appeal, and other courts established by law. No extraordinary or special tribunals shall be established, with the exception of military tribunals, with the competence to try military offenses committed by members of the armed forces.

THE ELECTION PROCESS

Every citizen over the age of 18 has the right to vote. Elections are not envisaged until after the end of the five-year

transition period and the adoption of a new constitution. The Charter details the requirements for standing for the various state offices.

POLITICAL PARTIES

The Charter states that the transitional government shall encourage the formation of political parties. Political parties of a military or tribal nature are prohibited.

CITIZENSHIP

To acquire Somali citizenship a person must be of Somali origin and have been born in Somalia or have a father who is a citizen of Somalia.

FUNDAMENTAL RIGHTS

Chapter 5 of the Charter (Articles 14–27) is entitled Protection of the Fundamental Rights and Freedoms of the People. The rights protected mainly relate to civil and political rights, but labor rights are also protected.

Impact and Functions of Fundamental Rights

It will take time to establish a functioning court system that will be able to enforce the rights enshrined in the Charter. A state that is in full control of the country is a first requirement in guaranteeing the quite extensive rights protection that exists in the Charter read together with the 1960 constitution.

Limitations to Fundamental Rights

Freedom of expression may be proscribed by law for the purpose of safeguarding public morals and public security.

ECONOMY

The Charter states that the economy shall be based on free enterprise.

RELIGIOUS COMMUNITIES

Islam is the state religion. All Somali citizens have the right to equal protection and equal benefit of the law without distinction of religion. This entails the full and equal enjoyment of all rights and freedoms.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Charter provides that the Somali Republic shall have a national armed force consisting of the army and the police. The armed forces have the duty to abide by and preserve the Charter, the laws of the land, and the unity of the country. As the Charter defines the territory of Somalia to include Somaliland and this entity at the time of writing refuses to join the federation, future armed conflict is highly probable.

AMENDMENTS TO THE CONSTITUTION

Amendments to the Charter can be made after a motion in parliament supported by at least one-third and passed by at least two-thirds of the members of parliament.

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Magnus Killander

SOUTH AFRICA

At-a-Glance

OFFICIAL NAME
Republic of South Africa

CAPITAL
Cape Town (legislative), Tshwane (administrative)

POPULATION
44,819,778 (2005 est.)

SIZE
470,606 sq. mi. (1,219,090 sq. km)

LANGUAGES
Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga

RELIGIONS
Protestant (including Pentecostal and charismatic churches) 51.7%, African Independent Churches 23%, Catholic 7.1%, Islam 1.5%, Hindu 1.2%, African traditional beliefs 0.3%, Judaism 0.2%, no affiliation or affiliation not stated (majority probably traditional, indigenous religions) 15%

NATIONAL OR ETHNIC COMPOSITION
Black African 79.02%, Colored 8.91%, Indian or Asian 2.49%, white 9.58%

DATE OF INDEPENDENCE OR CREATION
April 27, 1994

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Cooperative federation

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 4, 1997

DATE OF LAST AMENDMENT
March 19, 2003

The Republic of South Africa is one sovereign democratic state, unitary in its conception, but with appreciable devolution of power to nine provinces and to local governments. It operates as a multiparty, parliamentary democracy, adhering to practices associated with regular, free, and fair elections.

The constitution states that human dignity, the achievement of equality, the advancement of human rights and freedoms, nonracism, nonsexism, supremacy of the constitution, and the rule of law are all founding values of the South African state. Extensive constitutional guarantees back these values and vouch for the division of executive, legislative, and judicial powers. Public authorities widely respect the constitution, and violations can effectively be remedied by an independent judiciary (spearheaded by a strong and visible Constitutional Court) and by a number of state institutions supporting and strengthening constitutional democracy. A president is the executive head of state, elected by and accountable to (but after election not a member of) the National Assembly.

The constitution guarantees freedom of religion, belief, and opinion, and religious communities operate independently of the organs of state. The economic system can best be described as a social market economy. National security is subject to civil legislative and executive authority and is designed to pursue and promote national and world peace.

CONSTITUTIONAL HISTORY

Homo sapiens and their immediate predecessors began to live in the south of Africa about 4 million years ago. The rudiments of the modern-day state were introduced in the mid-17th century.

On April 6, 1652, 175 officials and employees of the Dutch East Indian Company, mainly Dutch and German men, set foot at the Cape of Good Hope to establish a replenishment post for ships sailing back and forth between Europe and the East. This business venture was not in-

tended to be a conventional colonial conquest, although in the end the company's regime at the Cape, characterized by minimalist and inefficient governance, lasted 143 years.

In 1795 Britain occupied the Cape as part of its tactics in the Napoleonic Wars. In 1803 the British handed the Cape back to the Batavian Republic, heir to a no-longer-extant Dutch East Indian Company. Three years of efficient administration followed. In 1806 the British finally occupied what henceforth became the Cape Colony.

The influx of Europeans caused a large-scale displacement of the indigenous Khoikhoi and San people, who had lived all over southern Africa for at least 10,000 years, and their traditional social organization was severely disrupted. From the late 1650s the import of slaves, mainly from the East, boosted the numbers of the colored population at the Cape.

During the last half of the 18th century white migrant farmers started moving inland, and over time the eastern frontier, about 500 miles from Cape Town, became a site of incessant conflict involving whites, Khoikhoi and San people, and black Africans (mainly Xhosa who had moved in from the north).

British rule in the Cape Colony introduced elements of a Westminster style of government, but Roman-Dutch law that entered with the initial arrivals from Europe remained the common law of the colony. The Cape's first elected parliament was inaugurated in 1853 and accountable government followed in 1872.

During the latter part of the 1830s white farmers on the eastern frontier, mainly descendants of the first European settlers, embarked on an organized migration to the north, accompanied by numbers of their colored laborers. These migrants or *voor-trekkers,* determined to free themselves of British rule, entered into conflict with powerful black African nations, such as the Ndebele and Zulu, who had previously subjugated many smaller black tribes in the interior. In the end the white migrants prevailed. The English, however, persisted in their efforts to exercise authority over the *trekkers,* and in 1843 Britain annexed the first republic established in Natal by the *trekkers*. The two other republics, the Transvaal and the Orange Free State, negotiated recognition of their independence in 1852 and 1854, respectively, and adopted constitutions. The benefits of these "progressive constitutions" remained restricted to white men, and political power was exclusively in the hands of the white, Dutch/Afrikaans-speaking population, known initially as *boers* (literally farmers) and later as Afrikaners.

The discovery of gold in the South African Republic in the 1880s rekindled the colonial interest of the British, and the South African, or Anglo-Boer, War of 1899–1902 resulted. The Free State joined forces with Transvaal, and when the English finally won the war, both *boer* republics became British colonies. On May 31, 1910, these two colonies, together with the Cape Colony and Natal, became the four provinces of a new Union of South Africa. The 1909 South Africa Act of the British Parliament served as the nonjusticiable constitution of this new Westminster type of state with its own sovereign parliament. In the two former *boer* republics the franchise was restricted to white men only, while in the Cape Colony and Natal limited numbers of black and colored men could vote, too.

Perennial tension between the English (imperialist) and Afrikaans (nationalist) segments of the white population in the political life of the 19th and early 20th centuries was second only to their shared condescension toward the non-European population. Since 1910 this latter section of the population has consisted primarily of blacks, constituting the vast majority of the overall population and made up of seven major ethnic groups. Another major group are the "coloreds," made up of descendants of the Khoikhoi and San, slaves, and people of mixed blood. Finally, the Asian section of the population consists mainly of Indians whose forebears entered Natal during the 19th century to work on the sugar plantations.

The union provided whites with an opportunity to assert their hegemony in a unitary state in which the sovereign will of Parliament would trump all law, including the constitution. The union government adopted legislation that discriminated against blacks and coloreds in various ways. For example, blacks' access to land was severely curtailed, as was their ability to hold their own in economic and social life. The limited black and colored vote in two provinces, which was entrenched in the constitution, was rescinded in 1936 and 1955, respectively.

The National Party government that took power in 1948 engineered a grand scheme of racial segregation, relying on its legislative and bureaucratic capacity. What the government called "separate development" was meant to provide each black ethnic group with its own independent homeland in which each group could rule itself. Among the majority of the population and in the rest of the world, however, this scheme earned the name *apartheid* (separation) and a reputation of racial discrimination and oppression.

During the late 1940s and 1950s liberation groups launched a campaign of defiance in which the African National Congress (ANC) played a major role. The ANC, founded in 1912 to voice black aspirations, had been transformed into a nonracial and activist liberation movement by the 1950s.

The defiance campaign met with severe repressive action from the authorities. In the early 1960s all the major liberation movements were banned and their leaders went either underground, into prison, or into exile. Without consulting the vast majority of the population, a constitution was adopted, turning South Africa into a republic on May 31, 1961, and retaining crucial features of the 1909 constitution, such as parliamentary sovereignty, nonjusticiability of the constitution, and the restriction of political rights to whites.

In the wake of this development, the liberation movements formed Umkhonto we Sizwe (Spear of the Nation) to wage a low-key armed struggle against the regime, mainly sabotaging government property. At the Rivonia

trial in 1964 eight prominent leaders of Umkhonto, including Nelson Mandela, were sentenced to life imprisonment for sabotage and conspiracy to overthrow the government.

In 1976 thousands of schoolchildren took to the streets in Soweto, near Johannesburg, introducing a spate of unrest that spilled over into the 1980s. This turbulent decade saw local resistance movements join forces in the United Democratic Front and soldiers of Umkhonto we Sizwe, who had trained abroad, launch attacks in the country. International boycott campaigns designed to isolate the apartheid state were waged. The regime reacted harshly to this "total onslaught," and it transformed South Africa into a state essentially ruled by its security forces. At the same time the regime tried to win the goodwill of the Colored and Asian populations by including them in a tricameral parliament with racially separate chambers. The nonjusticiable constitution adopted in 1983 to effect this change retained the essentials of Westminster government with a few modest innovations. The majority of Coloreds and Asians rejected the new system.

Some blacks did accept the government's policy of "separate development," and four homelands opted for an "independence" recognized only by South Africa and the four homelands themselves. Some other homelands progressed to a fairly advanced stage of self-government.

On February 2, 1990, the then state president, F. W. de Klerk, announced that the liberation movements would no longer be banned and that political prisoners would be released. This policy paved the way for political negotiations. A multiparty negotiation process produced a transitional constitution late in 1993. This justiciable constitution was passed as a law of the then-existing Parliament, and it entered into force on April 27, 1994, the day when the first fully democratic elections in the history of South Africa began. The ANC achieved a resounding victory and Nelson Mandela became president.

The transitional or interim constitution provided for a bicameral parliament, the two houses of which, in joint session, constituted a Constitutional Assembly. It was charged with adopting, by a two-thirds majority, a final constitution in accordance with 34 principles contained in the interim constitution. The Constitutional Court established by the transitional constitution had to certify compliance with these principles. The court found instances of noncompliance, and the Constitutional Assembly redrafted the deficient provisions. The court thereupon certified what became the Constitution of the Republic of South Africa, 1996, which entered into force on February 4, 1997.

FORM AND IMPACT OF THE CONSTITUTION

South Africa has a written constitution, which in Section 2 proclaims that it is "the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled." International law must be consistent with the constitution to be applicable in South Africa.

The constitution is significant both for the legal system and as a source of fundamental values for the functioning of society. Under the judicial leadership of a powerful Constitutional Court, the implementation of the constitution over the short period of 10 years reshaped crucial facets of the legal system. It also had a considerable impact on social, economic, and political life. The court nonetheless heeds the exigencies of judicial self-restraint.

In short, the constitution plays a decisive role in the self-definition of an emerging nation.

BASIC ORGANIZATIONAL STRUCTURE

South Africa is a cooperative federation of nine provinces. The provincial borders do not always reflect historical actualities, and a sense of shared destiny is lacking in a number of instances. Moreover, the provinces differ considerably in geographic area, population size, and economic strength; however, their legislative and administrative powers are identical, and they are thus political equals.

South Africa's political history has not been conducive to federalism. In the quest to affirm white hegemony, the 1910 constitution created a unitary state with only modestly federalist features. In the heyday of apartheid, however, the regime resorted to a divide-and-rule strategy to balkanize the country, consigning blacks to homelands. Liberation movements thus began to regard territorially decentralized government with skepticism, claiming that only an undivided, nonracial South Africa would transcend the effects of apartheid's "divide-and-rule" tactics.

In the spirit of political compromise during the early 1990s, liberation movements, including the ANC, cautiously accepted some federalist arrangements. This compromise yielded a cooperative federation with constitutional arrangements sufficiently flexible to realize the key objectives of federalism in day-to-day political life.

Chapter 3 of the constitution states principles of "cooperative government," by which all national, provincial, and local government organs must work to preserve the integrity or "wholeness" of the republic. The constitution refers to the various tiers of government as *spheres* to emphasize that they are not hierarchical levels of authority.

The constitution authorizes each province to adopt its own constitution, subject to restrictions that prevent provincial constitutions from overriding the national constitution. The Constitutional Court must certify provincial constitutions' compliance with these restrictions. So far only one province has successfully adopted its own constitution.

The national constitution reserves certain legislative areas to the legislative competence of the province. Matters included in these areas are not particularly weighty,

and in exceptional cases the national Parliament may overrule the provinces even in these areas. Other functional areas are within the legislative authority of both national and provincial legislatures, for example, education, health services, housing, and trade. Should there be a conflict in these latter areas, national legislation will override provincial legislation on certain conditions. These conditions are not very difficult to meet, but if they are not met, provincial legislation will prevail over national legislation.

Parliament has exclusive legislative competence in many areas. The National Council of Provinces, a second chamber of Parliament, gives the provinces a say in the enactment of national legislation.

The administrative competencies of the provinces are commensurate with their legislative powers. They have no judicial competencies.

The constitution provides a framework for local government. There are various types and categories of local governments elected by popular vote. Executive mayors who preside over local governments are elected indirectly.

LEADING CONSTITUTIONAL PRINCIPLES

South Africa is a parliamentary democracy. Its constitutional system is premised on certain leading principles such as supremacy of the constitution and cooperative federalism. Other principles are the separation of powers, the rule of law, democracy, and accountability.

Executive, legislative, and judicial powers are separated with checks and balances holding the various branches of government accountable to one another. The judiciary is independent and includes a Constitutional Court.

In a founding provision of the constitution, the rule of law is said to be a value on which the South African state is founded. So far *rule of law* has mostly been understood as a synonym for *legality:* The exercise of a public power is only legitimate when lawful. State powers can thus only be derived from the law, and their exercise is subject to control by the courts. Arbitrary decision making by authorities and self-help of citizens in violation of the law are forbidden. It remains for the Constitutional Court to explore other more substantive meanings of *rule of law*.

There are provisions for three kinds of democracy. First, representative democracy is manifested in constitutional guarantees that citizens can elect representatives in all three spheres of government. Second, popular participation in lawmaking, administrative decision making, and constitutional adjudication is possible. Third, entrenchment in the constitution of the right to assemble, picket, and petition paves the way for citizens to engage directly with authorities in the exercise of their democratic rights. Provision for referenda in the national and provincial spheres is a further example of direct democracy.

National security is subject to civil authority, and the pursuit and promotion of national and world peace are explicit constitutional objectives. The constitution also contains a set of basic values and principles that are to govern public administration. Finally, by entrenching, for example, religious and environmental rights, the constitution implicitly supports the principles of religious neutrality and protection of the environment, respectively.

CONSTITUTIONAL BODIES

The most prominent organs of state are the president and cabinet, Parliament, the Constitutional Court, and a number of institutions that support constitutional democracy.

The President

The president, elected by the National Assembly from among its members for a term of five years, is South Africa's head of state and head of the national executive branch. He or she will almost invariably be the leader of the majority party in the assembly. The president is enjoined to uphold, defend, and respect the constitution and to promote national unity.

Upon election, the president ceases to be a member of the National Assembly. No person may hold office as president for more than two terms. The National Assembly, with a two-thirds majority, may remove the president from office for a serious violation of the constitution or the law, serious misconduct, or inability to perform the functions of office.

The president is responsible for assenting to and signing into law legislation passed by Parliament, or for referring it back to the National Assembly for reconsideration of its constitutionality, or for referring it to the Constitutional Court for a decision on its constitutionality.

The president makes key appointments, such as a deputy president, cabinet ministers, deputy ministers, and judges. Other typical presidential tasks include receiving foreign diplomats, appointing South African diplomatic representatives, and pardoning or reprieving offenders.

The Executive Administration

The president exercises executive authority together with a cabinet that includes a deputy president and ministers whom the president appoints and can dismiss. The ministers' powers and functions are assigned by the president. The president may also appoint and dismiss deputy ministers. The executive powers include initiating and implementing legislation and developing and executing national policy.

Members of the cabinet, including deputy ministers, are accountable collectively and individually to Parliament for the exercise of their powers and the performance

of their functions. Strict rules of conduct, contained in the constitution and in a code of ethics, apply to ministers and deputy ministers.

If, by majority vote, the National Assembly passes a motion of no confidence in the cabinet excluding the president, the president must reconstitute the cabinet. If the motion includes the president, the president, all other members of the cabinet, and all deputy ministers must resign.

Executive authority in a province is vested in a premier, who exercises this authority together with other members of an executive council. A municipality's executive authority pertains to local government matters listed in the constitution. A cabinet member can assign any of his or her powers or functions to a member of a provincial executive council or to a municipal council. When a province cannot or does not fulfill an executive obligation in terms of legislation or the constitution, the national executive may, on certain conditions, intervene.

Chapter 10 of the constitution lists values and principles that must govern public administration. A public service commission monitors and oversees the realization of these values.

Parliament

Parliament, consisting of a National Assembly and a National Council of Provinces, is the central representative organ of the people at the national level. It is the highest lawmaker in the republic. It is one of the three lawmaking bodies whose legislative authority is specified in the constitution; the other two are provincial legislatures and municipal councils.

Parliament's legislative authority enables it to amend the constitution, to pass legislation with regard to any matter except those within exclusive provincial competence, to intervene in provincial legislative processes, and to assign any of its lawmaking (but not constitution-making) powers to any legislative body in another sphere of government.

The National Assembly, elected for a period of five years, consists of no fewer than 350 and no more than 400 women and men. Every citizen qualified to vote for the National Assembly is eligible to be a member of the assembly, with some exceptions, such as paid public servants, unrehabilitated insolvents, people of unsound mind, and anyone sentenced to a term of imprisonment of more than 12 months without the option of a fine. A speaker and deputy speaker, both elected from among the members, preside over the National Assembly.

Most questions before the National Assembly are decided by a majority of the votes cast. In some instances, such as amending the constitution, enhanced majorities are required. A majority of the members must be present before a vote can be taken to pass or amend legislation. At least one-third of the members must be present before a vote can be taken on any other question.

The National Assembly may consider, pass, amend, or reject any legislation and initiate or prepare any legislation except money bills, which are initiated by the cabinet. The assembly is mandated to provide mechanisms to ensure that organs of the national executive branch are accountable to it, and to oversee the functioning of such organs. The president, cabinet ministers, and deputy ministers may speak in the assembly, but they have no vote.

The assembly determines and controls its internal arrangements, proceedings, and procedures. The constitution explicitly enjoins the National Assembly to ensure public access to and participation in its proceedings.

Cabinet members, deputy ministers, and members of the National Assembly enjoy parliamentary privilege. They are therefore not liable for what they say in, produce before, or submit to the assembly or any of its committees.

Members of the assembly are not legally bound to follow instructions from their parties, but political realities compel most members to do so. Legislation passed under the 1996 constitution provides limited opportunity for a member to defect to another party without compromising his or her membership of the assembly.

The National Council of Provinces represents the provinces, mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces. It is composed of 10 delegates from each province, or 90 members in all. A delegation is headed by the premier of a province or someone designated by him or her, three other special delegates, and six permanent delegates of parties represented in the provincial legislature. The National Council of Provinces elects a chairperson and deputy chairperson from among the permanent delegates for a five-year term and one deputy chairperson for a one-year term. This latter deputy chairpersonship rotates among the provinces.

Organized local governments may designate part-time representatives of the different categories of municipalities in the National Council of Provinces. As many as 10 such representatives may participate when necessary in council proceedings, but none of them may vote.

The Lawmaking Process

A prospective law is introduced in the form of a bill and is usually accompanied by an explanatory memorandum. A cabinet member, a deputy minister, or a member or committee of the National Assembly may introduce a bill in the assembly, but only the cabinet member responsible for national financial matters may introduce money bills. Only a member or committee of the National Council of Provinces may introduce a bill in the National Council of Provinces.

Ordinary bills that do not affect the provinces must be passed by both houses of Parliament and then submitted to the president for his or her assent and signature. The same applies to money bills, but the procedures for passing them differ from those for ordinary bills. If the National Council of Provinces proposes amendments to

or rejects a bill passed by the National Assembly, the bill is referred back to the assembly to adopt it with or without amendments or to allow it to lapse.

A parliamentary bill affecting the provinces or provincial interests may be introduced in either the National Assembly or in the National Council of Provinces. If the National Assembly passes such a bill, it must be referred to the National Council of Provinces. Should the two chambers be unable to agree on a bill, reconciliatory procedures involving a mediation committee follow. Ultimately, however, the National Assembly can pass the bill on its own, but then only with a two-thirds majority. Special procedures apply when a bill to amend the constitution is introduced.

A bill assented to and signed by the president becomes an act of Parliament, must be published promptly, and takes effect when published or on a date determined in terms of the act. In multilingual South Africa there may be versions of an act in different languages. However, only one version is signed by the president, and that copy is conclusive evidence of the provisions of an act.

A third of the members of the National Assembly may apply to the Constitutional Court for the abstract review of all or part of an act of Parliament. The court then tests the constitutionality of the impugned legislation with no reference to a particular event or set of facts.

Lawmaking procedures in provincial legislatures are akin to those in Parliament. The 1996 constitution treats municipal councils as original lawmakers. This means that municipal legislation is not subject to a substantially more far-reaching and intensive form of judicial review than national and provincial legislation, as was the case before 1994. Local legislation is nonetheless still subordinate to parliamentary and provincial legislation.

The Judiciary

The judicial authority of the republic is vested in independent courts subject only to the constitution and the law. Court orders and decisions are binding on all persons and organs of state.

A distinction of significance in the South African court structure is between high courts and lower or magistrates' courts. The various divisions of the high court function as courts of both first instance and appeal, and they have jurisdiction in geographical areas that more or less coincide with provincial borders. Magistrates' courts are only courts of first instance, with jurisdiction in districts and regions. The jurisdiction of magistrates' courts is restricted to less serious cases, and is rather limited as far as constitutional issues are concerned. There are also high and lower specialist courts for matters such as land claims, labor issues, and children's affairs.

The Supreme Court of Appeal handles only appeals and is the highest court in the country in all but constitutional matters. The Constitutional Court is the highest court in constitutional matters, and its president is the chief justice of the country. Generally speaking the Supreme Court of Appeal and high courts have jurisdiction in constitutional matters, but the Constitutional Court must confirm findings of these courts that legislation or conduct of the president is unconstitutional.

In some matters, only the Constitutional Court has jurisdiction. For example, disputes between organs of state, the abstract review of parliamentary and provincial legislation, and the constitutionality of amendments to the constitution must be determined by the Constitutional Court.

When judicial officers are appointed, the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered. A Judicial Service Commission, representative of the different parties in Parliament, together with the judiciary and the various echelons of the legal profession, is actively involved in the appointment of judges.

The president, after consultation with the Judicial Service Commission, appoints both the chief justice and deputy chief justice as well as the president and deputy president of the Supreme Court of Appeal. The leaders of the parties in the National Assembly must be consulted about the appointment of a chief justice or deputy chief justice. All other judges of the Constitutional Court are appointed by the president (after consultation with the chief justice and the leaders of the parties represented in the National Assembly) from a list prepared by the Judicial Service Commission after public interviews of candidates. The list must contain three more names than the number of judges to be appointed. The president, acting on the advice of the Judicial Service Commission, appoints all other judges.

A judge must be a "fit and proper person." No academic or professional qualifications are required, but a judge must be "appropriately qualified." Constitutional judges must be South African citizens. Judges normally retire at a prescribed age (70 for Constitutional Court judges and 75 for others). A judge can, however, also be removed from office by the president on the grounds of gross misconduct, incapacity, or gross incompetence, after an investigation by the Judicial Service Commission and a request by two-thirds of the National Assembly.

A magistrate is appointed for a specific district or region by the minister of justice at the recommendation of a magistrates' commission representative of political and professional interest groups.

Institutions Supporting Constitutional Democracy

Chapter 9 of the constitution institutes six specialist institutions in support of constitutional democracy. These are the public protector, known elsewhere as ombudsperson; the South African Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; and the Electoral Commission. These

institutions all became operational after national legislation put them in place, and they have made their influence felt to varying degrees.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The constitution entrenches the right to free, fair, and regular elections for all legislative bodies. The right to vote may be qualified in exceptional circumstances, but applicable legislation has to be specific. In the absence of specific restrictions, all prisoners, for example, were found to have the right to vote in South Africa's 1999 elections.

Alluding to the disenfranchisement of the vast majority of the South African population in the past, the constitution mentions in three sections the significance of a common voter roll and highlights in its founding provisions the need for universal adult suffrage. The minimum voting age is 18 years.

The Election Process

Elections are called by the president and take place every five years. The members of the National Assembly, provincial legislatures, and municipal councils must all be elected in terms of a proportional representation system prescribed by national legislation. There are no individual constituencies except in the case of municipal councils, where provision is made for electoral wards.

General elections for the National Assembly and provincial legislatures usually take place on the same day. A voter casts separate votes for the National Assembly and the legislature of her or his province. There can be national as well as provincial party lists of candidates for the National Assembly.

A party need not win any minimal percentage of votes to gain seats in any legislative body. In 2004, 12 parties were represented in the National Assembly. All elections are managed and overseen by an Electoral Commission.

POLITICAL PARTIES

South Africa has a pluralistic system of political parties. Since 1994, there have been quite a number of different parties competing for the votes of the electorate. The constitution proclaims the multiparty system of democratic government one of the founding values of the South African state.

Incidentally to the freedom to make political choices, the constitution entrenches a package of rights particularly conducive to multiparty democracy. They are the rights to form and join a political party; to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause. Moreover, the constitution mandates national legislation to help fund political parties that participate in national and provincial legislatures on an equitable and proportional basis.

No employee of the public service may be favored or prejudiced solely because that person supports a particular political party or cause. The security services are moreover forbidden to prejudice a political party interest that is legitimate in terms of the constitution or to further, in a partisan manner, any interest of a political party.

Since 1994, the ruling ANC has enjoyed a dominant position in South African politics. This dominance has not, however, thwarted or fatally inhibited free competition in the political arena or regular resort to compromise politics, which has become a feature of political life in South Africa since the constitutional negotiations of the 1990s.

CITIZENSHIP

The constitution lays the foundation for a common South African citizenship regulated in detail by national legislation. Citizenship is acquired, first, by birth in the country. Second, someone born outside South Africa can become a citizen by descent if either her or his parents is a South African citizen and the birth is registered according to South African law. Third, citizenship can be acquired by naturalization granted by the minister of home affairs on application. Marriage as such does not affect the citizenship of a person. A minor foreigner can be naturalized on application by a parent or guardian if the latter permanently and lawfully resides in South Africa.

The constitution entrenches a right not to be deprived of citizenship; however, this right is limited, and loss of citizenship is thus possible in certain circumstances. Acquiring citizenship of another state by voluntary and formal action while outside South Africa results in a loss of South African citizenship, as does service in the armed forces of an enemy state of which the person in question is also a citizen. Finally, there are certain instances in which the minister of home affairs can deprive a naturalized citizen or a South African citizen who is also a citizen of another country of South African citizenship.

FUNDAMENTAL RIGHTS

The advancement of human rights and freedoms is a founding value of the South African state. The constitution describes its bill of rights (Chapter 2), which enshrines a full catalogue of fundamental rights, as a cornerstone of democracy in South Africa. The basic values informing the bill of rights are human dignity, equality, and freedom, always mentioned in that sequence.

The South African constitution guarantees certain standard fundamental or human rights, such as the rights to life and privacy; freedom from slavery, servitude, and forced labor; and equality before, as well as equal protection and benefit of, the law. A number of classical freedom

rights are also included, as are political rights, rights of association, and rights to demonstrate approval or disapproval of policies or of political and other action. Because of its contemporary origin, the bill of rights explicitly guarantees the rights to make decisions concerning reproduction and not to be subjected to medical experimentation. It also includes environmental rights, a right of access to information held by the state, and rights to just administrative action.

There is a guarantee for the "haves" against the arbitrary deprivation of property, while, for the "have nots" there are rights of access to socioeconomic benefits, such as adequate housing, health care, and sufficient food, water, and social security. Children's rights and certain rights to education have also been included.

The bill of rights applies to all law and binds the legislature, the executive, the judiciary, and all organs of state. It can also bind any natural or juristic person (other than an organ of state), taking into account the nature of a right and the nature of any duty imposed by the right. Direct horizontal application of the bill of rights is, in other words, possible in circumstances that are not explicitly defined in the constitution. A juristic person is entitled to fundamental rights to the extent required by the nature of the rights and the nature of that juristic person.

The right to equality enjoys extensive protection and includes entitlement to "measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination." The constitution explicitly mentions 17 nonexhaustive grounds on which discrimination is forbidden, and included in these is "sexual orientation." This makes the South African constitution the first in the world to provide explicit protection for gays and lesbians.

Another feature of the bill of rights, apart from the fullness of the catalogue of rights it includes, is its detailed treatment of due process in criminal matters. In one of its earliest judgments, not applauded by the majority of South Africans, the Constitutional Court held that a law authorizing capital punishment was unconstitutional. As a result of constitutional review other aspects of criminal due process have also been refurbished, reformed, and aligned with internationally accepted standards and the latest developments in the field.

In general, fundamental rights are to benefit all who are in the country; certain rights, however, such as political rights, benefit citizens only. The Constitutional Court has, however, held that aliens who are permanent residents in South Africa are, under certain conditions, entitled to socioeconomic benefits derived from guarantees in the constitution.

Impact and Functions of Fundamental Rights

The state must respect, protect, promote, and fulfill the fundamental rights enshrined in the bill of rights. This provision places quite a far-reaching responsibility on the state that includes, but also extends well beyond, simply refraining from the overuse of state power. The promotion and fulfillment of some rights indeed require state intervention and the constructive use of state power.

When interpreting the bill of rights, a court, tribunal, or forum must promote the values that underlie an open and democratic society based on human dignity, equality, and freedom; must consider international law; and may consider foreign law. When interpreting legislation and developing the common law or customary law, every court, tribunal, or forum must promote the spirit, purport, and objects of the bill of rights. This latter requirement has opened the door for considerable judicial reforms of the existing law, in particular common law, through the mechanism of case law. The common law dealing with the scope of the state's duty to provide proactive protection to all whose safety has been entrusted to it has, for example, been transformed in this manner.

The constitution makes generous provision for standing to bring court actions for alleged infringements of or threats to fundamental rights. Any person whose rights have allegedly been infringed may seek appropriate relief, and so can anyone who is acting on behalf of such a person, who cannot act in her or his own name. Also eligible to bring a rights action are people who are acting as a member of, or in the interest of, a group or class of persons; any individual who is acting in the public interest; and any association that is acting in the interest of its members.

The Constitutional Court understands the bill of rights not merely as a catalogue of the "subjective" entitlements of the persons and institutions whose rights it enshrines, but also as an objective order of values informing an understanding and definition of various facets of constitutional democracy.

Limitations to Fundamental Rights

The fundamental rights enshrined in the bill of rights may all be limited, but may not be taken away completely. First, a right can be inherently limited. The rights to assemble, demonstrate, picket, and petition are, for example, only guaranteed for someone participating in these actions peacefully and unarmed. Similarly, the right to freedom of speech does not extend to hate speech. Second, rights can limit each other reciprocally. In the case of *crimen iniuria* (criminal insult), for example, the victim's right to the protection of human dignity limits the perpetrator's right to freedom of speech. Third, constitutional provisions that are not part of the bill of rights can limit rights. The right to be a candidate for public office is, for example, limited by minimal requirements for various offices.

Last, there is a general limitation clause in the bill of rights (Section 36) that authorizes limitations of rights by ordinary, "nonconstitutional," law provided that the following criteria are met: The law must be applicable to all similar cases in the same way; the limitation must

be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, and the principle of proportionality must be heeded. The latter requirement takes into account the nature of the right, the importance of the purpose for which the right is limited, the nature and extent of the limitation, the relation between the limitation and its purpose, and the possibility that less restrictive means might achieve the stated purpose.

Rights may be suspended, that is, taken away temporarily, only during a state of emergency, which can be declared only when stringent requirements are met. Some rights cannot be suspended at all, namely, the rights to equality, life, and human dignity; the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment; the right not to be subjected to slavery, servitude, and forced labor; some of the rights of children; and some of the rights of detained, arrested, and accused persons. Exceptional due process rights accrue to those detained under a state of emergency to compensate for the normal rights they lose.

ECONOMY

An economic system is not constitutionally specified, but crucial provisions of the constitution inevitably help shape the structure of the economy. The constitutional property clause in the bill of rights does not out-and-out guarantee a right to property but states that no one may be deprived of property except in terms of a law of general application, and that no law may permit arbitrary deprivation of property. Expropriation must be for a public purpose or in the public interest and must be subject to compensation.

The wording of the property clause has informed land reform legislation. This entails rectifying the consequences of past racial discrimination that resulted in the loss of or severely restricted access to land for many black and colored people.

Fundamental rights to freedom of association and to freedom of trade, occupation, and profession are entrenched in the bill of rights, as are basic rights of workers and employers.

Constitutional guarantees of access to adequate housing, health care, food, water, and social security charge South Africa with the responsibilities of a social state. Legislation and administrative action designed to realize minimal social standards are therefore justiciable. There are examples of cases in which the Constitutional Court has gone to some length to order executive state organs to fulfill rudimentary constitutional obligations in the socioeconomic arena. In one instance, organs of the executive branch were ordered to design and implement minimal standards for the provision of basic shelter to homeless people. In another instance the court ordered the national department of health to provide the drug Nevirapine to all pregnant women who had human immunodeficiency virus (HIV) and their babies at state hospitals in order to reduce the risk of mother-to-child transmission of HIV. The court thought that this was the minimum the department owed this category of people in order to comply with its constitutional duty to provide access to health care.

The South African economic system is best described as a social market economy. It combines accepted wisdom about both social responsibility of the state and a free-market economy.

RELIGIOUS COMMUNITIES

In South Africa "Everyone has the right to freedom of conscience, religion, thought, belief, and opinion" (Section 15). This guarantee is backed by a prohibition on unfair discrimination by the state against anyone on the grounds of religion, conscience, and belief. Constitutional protection of the freedom of speech does not extend to advocacy of hatred based on religion and incitement to cause harm.

There is no established state church in South Africa, and public authorities must remain neutral in their relations with religious communities. These communities regulate and administer their affairs independently within the limits of laws that apply to all. Nevertheless, there is no wall of separation between the state and these communities. The constitution envisages ways of protecting religion that advance the well-being of religious communities. The Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, one of the constitution's state institutions supporting constitutional democracy, is enjoined to promote respect for the rights of religious communities. The commission is furthermore enjoined to promote and develop peace, friendship, humanity, tolerance, and national unity among religious communities, on the basis of equality, nondiscrimination, and free association.

Second, religious observances may be conducted at state or state-aided institutions in accordance with rules made by the appropriate public authorities, provided that these observances are conducted on an equitable basis and attendance at them is free and voluntary. Finally, the constitution caters to concerns of minority religious communities, Muslims and Hindus in particular, by envisaging statutory recognition of marriages concluded under a system of religious personal or family law.

MILITARY DEFENSE AND STATE OF EMERGENCY

The security services of the Republic of South Africa consist of a single defense force, a single police service, and intelligence services established in terms described by the constitution. National security, according to the constitution, must reflect the resolve of South Africans to live as

equals and in peace and harmony, to be free of fear and want, and to seek a better life. A South African citizen is precluded from participating in any armed conflict other than that provided for in the constitution and in legislation. National security must be pursued in compliance with law, including international law, and is subject to the authority of Parliament and the national executive, in other words, civil government. Multiparty parliamentary committees oversee all security services.

The defense force is the only lawful military force in the republic. Other armed organizations or services may be established, but then only in terms of national legislation. The primary object of the force is to defend the country in accordance with the constitution and the principles of international law regulating the use of force. The president, as head of the national executive branch, is commander in chief of the defense force and appoints the military command; however, there is also a cabinet member responsible for defense, who directs a civilian secretariat for defense established by national legislation.

Only the president may authorize the deployment of the defense force, in cooperation with the police service, in defense of the republic or in fulfillment of an international obligation. The president must inform Parliament, promptly and in appropriate detail, of the reasons for employing the force, all places where it is being employed, the number of people involved, and the period for which the force is expected to be employed. If Parliament does not sit during the first seven days after the defense force is employed, the president must provide the specified information to an oversight committee.

The president is also the only one who may declare a state of national defense; once again, Parliament must be given information similar to that described. A declaration of a state of national defense lapses unless it is approved by Parliament within seven days. Such approval can also be obtained at an extraordinary sitting if need be.

A state of emergency, which is to be distinguished from a state of defense, may be declared only by an act of Parliament, and only when the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency. The declaration must be necessary to restore peace and order. Parliament has no right to indemnify the state or any person against any unlawful action taken in connection with the state of emergency.

In 1994 the system of conscription for white males ended. The defense force now consists of full-time professional members and voluntary civilians. The Republic of South Africa, through international treaties, has undertaken not to produce or use atomic, biological, or chemical weapons.

AMENDMENTS TO THE CONSTITUTION

The constitution is more difficult to amend than ordinary acts of Parliament. The National Assembly can amend most sections of the constitution with a two-thirds majority. Amendments to the bill of rights (Chapter 2) require the support of at least six provinces in the National Council of Provinces, in addition to the two-thirds majority. The same applies to amendments of constitutional provisions that relate to the provinces or provincial matters. An amendment of the founding provisions in Section 1 of the constitution requires a 75 percent majority in the National Assembly and the support of six provinces in the National Council of Provinces.

In the first eight years of its existence there were 11 amendments to the constitution.

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Lourens du Plessis

SPAIN

At-a-Glance

OFFICIAL NAME
Kingdom of Spain

CAPITAL
Madrid

POPULATION
42,717,068 (2005 est.)

SIZE
194,897 sq. mi. (504,782 sq. km)

LANGUAGES
Spanish (in some regions, second language, e.g., Catalan, Basque, Galician)

RELIGIONS
Catholic 80.3%, other Christian or other denominations 1.9%, nonbelievers 10.5%, atheists 5.2%, no details 2.1%

NATIONAL OR ETHNIC COMPOSITION
Spanish 93.7%, Latin American 1.9%, other (mostly Moroccan, British, Romanian, German, French, Italian, Portuguese) 4.4%

DATE OF INDEPENDENCE OR CREATION
Middle Ages

TYPE OF GOVERNMENT
Parliamentary monarchy

TYPE OF STATE
Quasi-federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 27, 1978

DATE OF LAST (AND ONLY) AMENDMENT
August 27, 1992

Spain is a parliamentary monarchy based on the rule of law with a clear separation of the executive, legislative, and judicial powers. Over the course of the last three decades a process of rationalization has resulted in a move away from a centralist model toward a federal model. The constitution establishes a wide range of fundamental rights with highly sophisticated systems of jurisdictional protection. The Constitutional Court, apart from other functions, undertakes to protect these rights. After a period of authoritarian rule, the implementation of a constitution symbolizes the arrival of a fully democratic system.

The monarch is the head of state. He or she has no explicit political power but does, in addition to his or her symbolic function, exercise influence through advisory activities. The central figure of the political system is the prime minister. The prime minister is elected and removed from office by the lower house of parliament (Congreso de los Diputados). Free, egalitarian, general, and direct elections are held for the members of the lower house and for the majority of the upper house (Senado); some members of the upper house are elected by the regional parliaments. The political parties are fully independent and are essential for the political life of the country.

Religious liberty is guaranteed. There is no official state religion, and there is a clear division between the church and the state. Public authorities cooperate with religious groupings. The economic system can be described as a social market economy. The armed forces are subject to civil control at all times.

CONSTITUTIONAL HISTORY

The Roman invasion of Spain began in 206 B.C.E. Complete integration into the empire took place in the year 212 C.E., when Roman citizenship was granted to all Hispanics. Although Spain officially remained part of the empire until the fall of Rome in 476, German tribes began to invade in 415; they eventually gained independence from Rome under the Visigoths. For over two centuries, Hispano-Romans and Visigoths coexisted under two distinct legal systems.

After 476 the Visigothic kings wielded undisputed rule over the entire territory, which increased or decreased with the fortunes of war. Although it did not encompass the entire Iberian Peninsula, the Visigothic Kingdom could be characterized as the Spanish kingdom in the sixth century. Power was held by a king, who was elected by a group of nobles and ecclesiastics. Numerous kings were deposed as a result of conspiracies or assassinations. A political institution of notable importance was that of the councils. In principle, they were ecclesiastical assemblies, but as the king convened them and participated in them, they functioned to limit royal power.

From a legal point of view, a key date was 654, when the *Liber Iudiciorum* (a book of legal rules) was applied to all residents. As of this date a somewhat unitarian legal system, which established a somewhat identifiable political entity, existed. Unification suffered a serious blow at the start of the eighth century, when the Moors took control of practically the entire Iberian territory. Soon afterward, the Spanish Reconquista movement began, not to end until 1492. The political organization of the Moors is unimportant to this history, as it bears no relation to the political-legal structure of the last several centuries. The small part of Iberia that was never subdued managed to reconquer the entire peninsula and impose its culture and legal ideas.

In Asturias in the north of Spain, Pelayo's proclamation as king in 718 can be seen as the beginning of the current dynastic succession. In other territories of northern Spain, kingdoms or independent counties arose.

As these entities grew at the expense of the Moors, a process of consolidation took gradual shape, via marriage and other dynastic manipulation. However, this did not necessarily produce a unification of legal systems or of political entities. One monarch may have ruled two kingdoms.

Throughout this period the monarchy was far from absolute. In general terms the monarch respected local laws, which were of common indigenous origin, with additional Roman and Germanic elements.

The culmination of this process occurred in the 15th century. The marriage of Isabel and Ferdinand united the Crowns of Castile and Aragon, which comprised practically all of the preexisting kingdoms and Crowns. Nevertheless, the final expulsion of the Moors in 1492 left behind a plurality of kingdoms, which were enlarged as Spain gained control of other land throughout Europe, such as Naples and Portugal. In addition, vast territories in America were integrated into the country in the following century by the descendents of Isabel and Ferdinand: their grandson, Carlos (Charles) V, and his son, Felipe (Philip) II. By this point Spain had become an independent political entity that controlled the entire Iberian Peninsula.

Although there was not yet an official Crown of Spain, because Isabel and Ferdinand, as well as their successors, maintained the individual titles (Castile, Leon, Aragon, Sicily, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, etc.), unification did indeed occur. Although over the course of the centuries since the pinnacle of Hispanic power during the times of Carlos V and Felipe II territories have been lost in Europe, America, Asia, Oceania, Africa, and even Iberia, the Spanish base has remained unchanged.

With notable changes over the course of the following centuries, including a change of dynasty from the Austrians to the Bourbons that did not alter the line of succession, a process of centralization and concentration of power in the monarch, known as absolutism, ensued. A most radical transition took place at the start of the 19th century, when Spanish constitutionalism emerged.

The system of absolute monarchy ceased in 1808 when the Spanish monarchs abdicated to Napoléon. The majority of the population refused to recognize Napoléon's brother as king and fought a guerrilla war supported by British forces against the French occupation. King Ferdinand VII, who had been exiled by the French in 1808, returned to the throne in 1814. He replaced the liberal 1812 constitution of Cádiz and introduced an absolute monarchy, which he was forced by military sedition to modify to more constitutional rule in 1820. Rising liberalism and interventions of the military in politics led to the proclamation of the republic in 1873 by the Cortes (parliament). It lasted only until 1975, when the monarchy was restored. It also remained in place when the general José Antonio Primo de Rivera in a coup d'état established a dictatorship in 1923. After Primo de Rivera's forced resignation in 1930, King Alfonso XIII, who had lost popularity because of his early support of the dictator, abdicated in 1931 and gave way to the Second Republic.

The Second Republic of Spain (1931–39) passed Spain's first modern constitution, which effected profound change in the legislative framework. Radical changes were imposed on economic and religious life, and political decentralization was furthered, all in an attempt to modernize Spain. These sudden changes, often poorly controlled, antagonized large sectors of the middle classes, the Roman Catholic Church, and the armed forces. A failed military coup d'etat triggered the outbreak of a bloody civil war (1936–39).

The conclusion of the civil war, with the victory of the military faction that had taken up arms against republican legality, was followed by the establishment of a unique political system. It would be simplistic to classify General Franco's regime as a one-man dictatorship.

Franco turned to nonmilitary factions to provide legitimacy, since he lacked a clear program of his own. He aligned himself with both the most reactionary Catholic attitudes, thus gaining the support of a large part of the Spanish Catholic hierarchy, as well as a radical political party that was clearly inspired by Nazism and fascism. The system that resulted, guided by a strong survival instinct, was at first undemocratic and unfree, but became more liberal in time. No single constitution as such was ever issued, but over the years a series of fundamental laws that were passed fulfilled that role and reflect this gradual liberalization, especially after the strong economic development in the 1950s.

Franco's constitutional framework did not outlast his death in 1975, when Juan Carlos de Bourbon, the person designated by Franco to be his successor with the title of king, began to make changes. He undertook to transform the autocratic system into a fully democratic one. This resulted in the renunciation by the monarch of the hereditary powers of the previous Franco regime and culminated in the ratification of the 1978 constitution, which established a parliamentary monarchy fully comparable with the most advanced systems in the world.

Spain is a member of both the United Nations and the North Atlantic Treaty Organization (NATO). It is also a member of the European Union and thus regards itself as subject to a process of the transfer of sovereignty to the union.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is the sole text officially designated as such. No international agreements may be contrary to the constitution; should such an agreement be signed, the constitution would have to be amended. However, in relation to fundamental rights, the constitution itself establishes that it shall be interpreted in accordance with the Universal Declaration of Human Rights and other international treaties and declarations relating to them.

The constitution is the supreme source of law and takes precedence over other forms of legislation; no other legislation may contradict it. It establishes the system of the sources of law as well as the organization of the state, in addition to specifying a series of fundamental rights and establishing the mechanisms for their protection.

In addition to these strictly technical functions, the constitution fulfills a symbolic role in current society. It demonstrates the end of political confrontation among Spaniards and their dedication to maintaining a democratic system.

BASIC ORGANIZATIONAL STRUCTURE

The current constitution, starting as a centralized system of a Napoleonic nature that was the mainstay of Spanish constitutionalism for two centuries, lays the foundation for a process that will probably conclude with the establishment of a federal or quasi-federal system. It is an unfinished process and one that will therefore foreseeably change in the future.

On the basis of the constitution, 17 regions (Autonomous Communities), which in some cases correspond to former sovereign entities, were created. Their size and number of inhabitants vary greatly. Their jurisdictional powers reside in their statute of autonomy, which must be approved by the national parliament. Therefore, the powers held by the regions differ. Each region has its own parliament, which can legislate on matters within its competence.

The constitution reserves some areas as the exclusive concern of the central state, such as nationality, international relations, defense, administration of justice, and commercial, criminal, and employment legislation. Other matters, also stated in the constitution, may fall within the powers of the regions: for example, urban development, ports, agriculture, and fishing.

According to the constitution, regionalization is not obligatory; furthermore, it can be established in certain territories but not in others. For political reasons, however, the system was generalized and the entire national territory is split into regions. At first, the statutes of autonomy varied among regions, as did the powers they assumed. In 2004 the administration announced the start of a process to reform the statutes in order to increase the powers of the regions. However far the ongoing process extends, implementing it will not be easy. Given the complexity of today's society, everything is interrelated; even powers exclusive to the central state need the cooperation of the self-governing regions to translate them into practice.

Ironically, the decentralization process has proceeded hand in hand with a new kind of centralism based on the regions, as the smaller local entities have lost status. Although the system of 50 provinces established in the 19th century survives in the constitution, these entities have lost importance compared with the regions, which are usually made up of several provinces. With regard to municipal power, the situation is not very diverse. There are a little over 8,000 municipalities in Spain, each governed by a town council elected by the inhabitants and a mayor chosen by the council.

LEADING CONSTITUTIONAL PRINCIPLES

The first article of the constitution precisely establishes the basic constitutional principles: "1. Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system; 2. National sovereignty belongs to the Spanish people, from whom all state powers emanate; 3. The political form of the Spanish State is the parliamentary monarchy."

In practice this means that Spain is governed by a system of parliamentary democracy with freely created political parties, in which there is a clear separation of legislative, executive, and judicial powers. There is a Constitutional Court with power to determine the constitutionality of laws and to protect fundamental rights.

The monarchical system entails that a king or queen fulfills the role of head of state. The monarch serves during his or her entire lifetime, unless the monarch renounces the throne, and is succeeded by his direct heir (generally his oldest son, but female succession is possible) according to strict rules contained in the constitution itself. The

power of the monarch is limited to functions that are little more than symbolic.

The constitution's approach to human rights departs from the liberal model. It calls on public authorities to promote true liberty and equality by actively removing any obstacles to these goals.

CONSTITUTIONAL BODIES

The principal constitutional bodies are the Crown; the parliament, known as the Cortes Generales; the administration; and the judiciary, including the Constitutional Court.

The Crown

The monarch is the head of state. In constitutional terms the monarch "arbitrates and moderates the regular functioning of the institutions," but the monarch lacks real political power. Article 62 lists the monarch's functions as including but not limited to the following: to promulgate the laws, to dissolve parliament, to call elections, to propose a candidate for president of the government, to appoint governmental ministers, to make civil and military appointments, to exercise supreme command over the armed forces, and to exercise the right of clemency.

In all these functions, the monarch's powers are in fact limited, as he or she can perform them only at the initiative of other bodies. For example, the monarch appoints only ministers proposed by the president of the cabinet, promulgates only laws that are approved by parliament, and always proposes the leader of the party that receives the most votes in elections to be president of the cabinet. These other bodies bear the political responsibility for these actions.

In reality, the importance of the monarch, besides the representative function, lies in the way he or she exercises the functions of arbitration and moderation. The high-level experience and information available to the monarch frequently make his or her advice important to those in power.

The current monarch, Juan Carlos I de Bourbon, belongs to the dynasty that has reigned for many centuries. His oldest son, Felipe, will succeed him, unless judged unfit by parliament.

The Administration

The administration comprises the president of the cabinet (officially Council of Ministers), the vice presidents, and the cabinet ministers. Its responsibilities include managing domestic and foreign policy, civil and military administration, the exercise of the executive role, and legislative approval.

Although these responsibilities are exercised collectively by the cabinet, its president (equivalent to a prime minister) is the key figure in political life. The president of the cabinet is appointed by the king on the recommendation of a majority in the Congress, the lower house of parliament. The president nominates the vice presidents and governmental ministers who make up the cabinet; they are formally appointed by the monarch. The president may replace the cabinet with absolute freedom. The president can be any Spanish citizen of legal age, although traditionally he or she is a member of parliament.

The administration formally leaves office after the general elections or the resignation or death of the president, although it continues to function until the appointment of a new one. The president and cabinet can also be removed from office by a vote of no confidence, proposed by one-tenth of the Congress and supported by an appropriate majority. Any vote of no confidence must include the name of an alternative candidate for president, who is appointed by the monarch if the motion passes.

The Cortes Generales (Parliament)

Parliament (Cortes Generales or "General Courts" or National Assembly) exercises the legislative function and controls the actions of the government. It is made up of two houses, the Congress and the Senate.

Congress is composed of 350 members of parliament, who are elected through general, direct, free, and secret elections. The provinces constitute the electoral constituencies, and several members are elected from each on the basis of party lists.

A quorum is required before any important work can be done in the Congress. Some decisions are approved by simple majority and others by special majorities.

Both the president and the ministers may be required to appear and answer questions from members of parliament. Members are not formally required to follow instructions from their party or their electorate. In practice they tend to respect instructions from their parliamentary group, made up of members of the same party; the group has become the principal actor on the parliamentary stage. Select parliamentary committees can be set up to investigate any matter of public interest.

The Senate, or upper house, is intended to provide territorial representation. Currently, it is made up of four representatives from each province elected through general, free, direct, and secret elections by its citizens, as well as other representatives who are elected from among the members of the regional parliaments.

The function of the Senate is to provide additional control over the administration and the legislature. In the legislative sphere, the Senate may only propose amendments to laws approved by the Congress, which can accept or reject them at its discretion.

Both members of parliament and senators are elected for a period of four years, although they lose this status if the houses are dissolved by the king at the request of the president. Those senators chosen by the regional parliaments serve only until the next regional government election.

The Lawmaking Process

One of the essential functions of parliament is to create new laws. The initiative can originate in the cabinet, the Congress, the Senate, or, in certain cases, the regional parliaments.

A law can also be initiated through a petition that has at least 500,000 duly accredited signatures of citizens, although this procedure cannot be used in matters related to taxes, the Crown, and fundamental rights. In any case, it has never been used. In practice, the majority of laws are initiated by the cabinet.

Once proposed, the bill is debated at a plenary session of the Congress. If it is not rejected at that stage, a subcommittee is appointed to prepare a report, which is then debated by a committee. Upon approval by the committee, it is sent back to the plenary session, which submits it to the Senate if it is finally approved. During all these phases changes are made via the drafting of amendments. The process is repeated in a similar way in the Senate. If the text approved by the Senate is identical to that of the Congress then the law can be promulgated. If this is not the case, then it returns to the Congress in which a final decision on the language is made.

Approval of a law requires a simple majority with the sole exception of constitutional reforms and the so-called organic laws, which require an absolute majority—more than half of all members of each house. Organic laws are defined by the constitution as relating to fundamental rights, regional statutes of autonomy, and the general electoral system.

The Judiciary

The judiciary is independent of the legislative and executive branches. The constitution provides for a General Council of the Judicial Power, with authority in such areas as appointments, inspections, and discipline. Its members are appointed by parliament, but the majority of them must be judges or official state lawyers. Strictly speaking, the council does not form part of the judicial power, but rather is a governing body.

Jurisdiction is generally assigned according to subject matter and territory. There are specialized courts that deal with civil law, criminal law, administrative law, and company law. There are also various levels of courts that can review decisions made by lower courts in cases established by law.

The Supreme Court holds the highest position in the court system with jurisdiction over the entire national territory and over all matters, although it is composed of specialized divisions. The decisions of the Supreme Court not only apply to the case at hand; they also serve as precedents for any analogous cases that may arise in the future.

The Audiencia Nacional also has jurisdiction over the entire national territory, but at a lower level than the Supreme Court. It specializes in criminal matters that affect the whole country, such as terrorism, drug trafficking, and major economic offenses.

The Constitutional Court is not part of the judicial branch, yet it is of key importance in shaping some elements of Spanish law. It is the only body authorized to determine the constitutionality of laws. If the Constitutional Court decides that a law is unconstitutional, it cannot be applied. It also resolves disputes over territorial jurisdiction, between the central state and a region, or between two regions. Finally, it has a role in the protection of fundamental rights, given that any citizen who believes the ordinary courts of justice have not adequately protected him or her may appeal to it.

The Constitutional Court has 12 members, who are appointed for a nonrenewable period of nine years. Four are appointed by the Congress, four by the Senate, two by the General Council of the Judicial Power, and two by the administration.

THE ELECTION PROCESS

All Spanish citizens 18 years of age or older can vote and be candidates. In the case of municipal elections, a citizen of any member country of the European Union resident in Spain can vote or be a candidate. In any event, voters must be registered on the corresponding electoral roll.

The right to vote can be suspended by judicial ruling in certain cases, such as certain criminal convictions or mental imbalance. Members of certain professions, such as military personnel or judges, may not stand as candidates for election unless they leave their profession.

Parliamentary Elections

Elections to both houses of parliament—the Congress and the Senate—are held on the same date. Both are based on the provinces as the electoral constituency.

Each province has a constitutional minimal number of seats in the Congress and additional seats based on population. Each party presents a list of candidates; voters must choose the entire list. The electoral system is organized in order to make formation of parliamentary majorities easier; lists that receive most votes in each province take precedence.

Nearly all the provinces have four seats in the Senate. Voters choose three candidates from among all those on the ballot, presented in alphabetical (not party) order. The remainder of the senators are chosen by the regional parliaments from among their own members.

In practice, since the promulgation of the current constitution there has been a plurality of parties present in both houses. One of these had an absolute majority, another a simple majority that allowed it to form a government with the support of other groups. One center Right party, one center Left party, a minority Left party, and some regional parties account for nearly all the seats in both houses.

Regional and Local Elections

Each regional parliament has only one house. The electoral system is comparable to that for the Congress. With

the exception of four regions, municipal elections are held on the same date as provincial elections. The two largest national parties are represented in all the regional parliaments, alongside regional parties in many cases. In some provinces, regional parties hold the majority.

POLITICAL PARTIES

The constitution establishes that "political parties are the expression of political pluralism; they contribute to the development and expression of the will of the people and are an essential instrument for political participation." They are a vital element of the political life of Spain. The constitution states that they must be organized on a democratic basis.

The number of registered parties is high, but only a few have a parliamentary presence, be it national or regional. Only such parties receive generous public financing, which is essential for their existence.

No party had been declared illegal in the recent history of Spain until 2004. That year a group was outlawed on charges of supporting the Basque terrorist network, which used violence and assassination to achieve Basque independence.

The importance of the political parties within the system is reflected in the voting behavior of members of parliament. Although members are legally free to vote as they wish, in fact rigid party discipline prevails, because parliamentary groups that usually identify themselves with political parties are the real actors on the parliamentary stage.

CITIZENSHIP

The criteria for the acquisition of nationality are not specified in the constitution, but rather in the Civil Code. Those persons whose father or mother is Spanish are considered to be Spanish, as are those born in Spain who lack any other nationality or whose father or mother was also born in Spain. The acquisition of nationality is also possible by governmental ruling. Dual nationality is an option, in some cases regulated by international treaties, particularly in the case of Latin Americans.

The constitution establishes that those who are Spaniards by origin, that is, by birth, cannot be deprived of their nationality.

FUNDAMENTAL RIGHTS

The constitution devotes almost 50 articles to the subject of fundamental rights and duties. The starting point is the definition of the dignity of the individual as "the foundation of political order and social harmony." Equality before the law is established, and the constitution expressly states that there can be no discrimination on grounds of birth, race, sex, religion, or ideas.

There is a wide-ranging list of rights, composed of traditionally held rights and those that have been incorporated in more recent times. Among those rights considered to be fundamental are religious liberty, freedom of movement and safety, inviolability of the home, secrecy of communications, free expression, the right to education, the right to form unions, and freedom of profession, association, and protest.

There is a constitutional obligation for the public authorities to "promote conditions so that the freedom and equality of the individual and of the groups in which he integrates himself are real and effective; and to remove those obstacles which may impede or complicate their fulfillment." In other words, we find ourselves in a promotional and not merely liberal state. The state must work proactively in order to allow equality and freedom to exist in good measure to allow the exercise of these fundamental rights.

Even more important are the mechanisms carefully designed to protect such rights. These mechanisms begin with the so-called organic laws, which regulate rights. Such laws require a special parliamentary majority for their approval, to ensure widespread agreement among the various political parties, thus impeding restrictive regulations.

The protection of rights in the courts is regulated by means of a specific procedure that is intended to be particularly fast and reliable, along with the option of appeal to the Constitutional Court. In addition, the constitution places rights among the items that are particularly complicated to amend. The constitution also establishes the office of ombudsperson (Defensor del Pueblo), who can supervise the activities of the administration and make sure it protects the exercise of human rights.

Apart from fundamental rights, the constitution refers to "guiding principles for social and economic policies." Among these are the protection of the family, social progress, equal distribution of income, and protection of health, the environment, and the artistic heritage. However, these principles merely act as a guide for the public authorities. There are no specific mechanisms to protect them, except those established by ordinary legislation.

Historically, fundamental rights were of an individual nature. However, the Constitutional Court has established with absolute clarity that groups of individuals can also be holders of such rights.

ECONOMY

The constitution recognizes a free-market economy, limited by the demands of the general economy and the general interest. State initiative in economic activities is also recognized, and the state may legally reserve the right to perform certain economic activities under a monopoly within the public sector, as well as to participate in private companies.

The state may also engage in economic planning. Private property and the right to inheritance are constitutionally recognized, but they may be regulated with an eye to their social function.

The idea of participation that is present in the whole constitutional text also appears in the specific field of economic activity. There is an Economic and Social Council composed of unions and professional and business organizations, among others.

In general, Spain's economy is typical of the social free-market model.

RELIGIOUS COMMUNITIES

Religious liberty is considered a fundamental right. There is no room for discrimination on grounds of religion. The constitution expressly states that no religion shall have national status; at the same time, it states that the state must establish a relationship of cooperation with the religious denominations.

The Roman Catholic Church is by far the predominant church. It has signed numerous agreements with the state, some with the status of international treaties (*concordats*). Three groups of minority denominations, Evangelicals, Jews, and Muslims, have also signed agreements with the state.

The Roman Catholic Church receives direct financing from the state, although of little significance. The church, as well as the other denominations that have signed agreements with the state, is entitled to tax allowances similar to those of other nonprofit organizations.

Religious education is taught as an optional subject in state schools. The Catholic Church is entitled to this teaching and to financing from the state; three minority religions may only receive financing in this respect if more than nine students at the same educational institution request such teaching.

The country's markedly Catholic past, and the numerical predominance of its followers today, means that the Catholic Church continues to receive favorable treatment in relation to other denominations. It is clear, however, that through scrupulous respect for religious liberty, a slow approximation to equal treatment is under way.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution gives supreme command of the armed forces to the king, but the administration presides over the military; therefore, the function of the monarch is purely symbolic. Any declaration of war must be approved by parliament. The missions of the armed forces are stated in Article 8.3: "To guarantee the sovereignty and independence of Spain, to defend its territorial integrity and the constitutional order." This article means that, as a general rule, the armed forces do not intervene in the maintenance of domestic public order. This is the duty of a separate group, the security forces.

Military service is not obligatory; therefore, the armed forces are made up of volunteers. The members of the armed forces have a limited right of association and to membership in unions and are under no obligation to follow orders that are contrary to the constitution.

Aside from any declaration of war, the constitution allows for a state of emergency, which is probably intended to pertain to situations arising in wartime. This may be proposed only by the administration and must be approved by an absolute majority of the lower house of parliament. A state of emergency allows certain limitations in the exercise of specific rights, as specified in the constitution, and results in a form of militarization of the activity of the public authorities, although always subject to the control of the administration.

AMENDMENTS TO THE CONSTITUTION

Since the promulgation of the constitution, there has only been one amendment, to allow citizens of other European Union member states resident in Spain to stand as candidates in municipal elections.

A full revision of the constitution, or any amendment of articles that affect fundamental rights, the Crown, or the essential values of the constitution, is especially complicated. Such changes require approval by a two-thirds majority of each house of parliament, followed by new elections, followed by renewed two-thirds votes in each house. Finally, they must be approved in a national referendum. Obviously, this provision is meant to prevent any serious change that lacks widespread political and social support.

The remaining articles may be amended by three-fifths of each house of parliament. If one-tenth the members of either house request a referendum on the matter, it must be held.

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Iván C. Ibán

SRI LANKA

At-a-Glance

OFFICIAL NAME
The Democratic Socialist Republic of Sri Lanka

CAPITAL
Sri Jayewardenepura Kotte (legislative and administrative capital), Colombo (commercial)

POPULATION
20,064,776 (2005 est.)

SIZE
25,332 sq. mi. (65,610 sq. km)

LANGUAGES
Sinhala (official and national) 74%, Tamil (national) 18%, other (including English) 8%

RELIGIONS
Buddhist 69.1%, Sunni Muslim 7.6%, Hindu 7.1%, Christian (predominantly Roman Catholic) 6.2%, unspecified 10% (2001)

NATIONAL OR ETHNIC COMPOSITION
Sinhalese 73.8%, Sri Lankan Moors 7.2%, Indian Tamil 4.6%, Sri Lankan Tamil 3.9%, other (including Eurasians, Malay, Burgher descendants of union of Dutch and the local people, Veddha indigenous inhabitants) 0.5%, unspecified 10% (2001)

DATE OF INDEPENDENCE OR CREATION
February 4, 1948

TYPE OF GOVERNMENT
Mixed parliamentary/presidential democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
August 16, 1978

DATE OF LAST AMENDMENT
September 25, 2001

Sri Lanka has a mixed presidential and parliamentary system of government. According to the constitution, there is a division of executive, legislative, and judicial powers.

Organized as a unitary state, Sri Lanka is made up of nine provinces and 25 administrative districts. The constitution prohibits the establishment of a separate state within the territory of Sri Lanka. Human rights, including specific language rights, are provided for by the constitution. There is a Supreme Court.

The powerful president is the head of state and the chief of the executive, but he or she can be reelected only once. The president appoints and dismisses the prime minister and the other cabinet ministers. The president and the cabinet of ministers are responsible to parliament.

Sri Lanka has had high levels of political violence since its independence, largely the result of ethnic clashes. The government has declared numerous states of emergency. Nevertheless, there is a multiparty system and the country enjoys relative political stability. The Sri Lankan electoral system enables voters to express preferences among candidates.

The constitution accords Buddhism "foremost place"; however, it is not recognized as the state religion. The economic system can be described as a social market economy. The military is subject to the civil government.

CONSTITUTIONAL HISTORY

Sri Lanka was known as Ceylon until 1972. From its earliest recorded history, the island had a multiethnic society. By the fifth century B.C.E. Sinhalese and Tamils had immigrated from different parts of India. The early political history of the territory is largely a chronicle of the rise

and fall of individual kingdoms such as those at Anuradhapura and Polunaruwa.

The island was primarily inhabited by Sinhalese, Tamils, Veddha, and descendants of Arab seafarers when the Portuguese arrived in 1505, followed by the Dutch in 1658. The king of Kandy was the last of the native rulers of the territory. In 1815, the British defeated the king and created the Crown Colony of Ceylon. In 1931, the British granted limited self-rule and a universal franchise to the colony. Ceylon became independent in 1948.

The first constitution since independence, the 1948 Soulbery Constitution, was contained in several documents and included a governor-general. The first republican constitution was promulgated in 1972. In 1978, a presidential system was established as part of the second republican constitution. This constitution was amended several times and is still in force today.

In 1983, the Tamil United Liberation Front members of parliament were asked to renounce their objective for a separate Tamil state; however, they refused. Militant Tamils, including the Liberation Tigers of Tamil Eelam (LTTE), then started armed action, which developed into a civil war.

During the 1990s, several attempts were made to create a new constitution and to resolve the ethnic conflict. In 2000, the president presented a constitutional bill to parliament. The bill was not put for vote as it was clear that it would not muster the two-thirds majority. Instead, the 1978 constitution was amended and a Constitutional Council established.

In 2002, the government and Tamil Tiger leaders agreed on an internationally monitored cease-fire. The ban on the Tamil Tigers was formally lifted and they subsequently abandoned their ambitions for a separate state, settling instead for regional autonomy.

FORM AND IMPACT OF THE CONSTITUTION

Sri Lanka has a written constitution called the Constitution of the Democratic Socialist Republic of Sri Lanka. It consists of 172 articles and nine schedules; it has been amended several times.

The constitution takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Sri Lanka. The state is obliged to "endeavor to foster respect for international law and treaty obligations in dealings among nations."

BASIC ORGANIZATIONAL STRUCTURE

Sri Lanka is a unitary state made up of nine provinces, 25 administrative districts, and territorial waters. For each province there are an elected provincial council and a governor, who is appointed by the president.

Article 157A reads: "No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate state within the territory of Sri Lanka."

LEADING CONSTITUTIONAL PRINCIPLES

Sri Lanka's system of government is a mixed parliamentary and presidential democracy. According to the constitution, there is a division of the executive, legislative, and judicial powers. The judiciary is independent.

Sri Lanka is defined as a free, sovereign, independent, and democratic socialist republic. The constitutional bodies are "pledged" by a large number of directive principles of state policy in Chapter 6, such as the general policy to establish a democratic socialist society. This includes the "full realization" of fundamental rights and freedoms and the "complete eradication of illiteracy." The provisions of this chapter, however, do not confer rights or obligations. They are not enforceable in any court.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the cabinet ministers, parliament, and the Supreme Court. A number of other bodies complete this list, such as a parliamentary ombudsperson and a Constitutional Council.

The President

Executive power is vested in the president of the republic, who is both the chief of state and the head of the executive branch of government.

The president appoints and dismisses the prime minister and the other cabinet ministers. Major public officeholders such as the attorney-general and the heads of the armed forces, are appointed by the president. However, candidates for certain commissions may only be appointed with the approval of the Constitutional Council. The president summons and prorogues (adjourns) parliament. She or he may also dissolve parliament at any time except during the first year of its term.

The president is responsible to parliament and can be impeached by the legislature. The president holds office for a term of six years and can be reelected only once.

The Cabinet of Ministers

The president as the chief executive appoints as prime minister the member of parliament most likely to have the confidence of parliament. The huge cabinet is collectively responsible and answerable to parliament. Political

tensions between the powerful president and the prime minister may arise, especially if they are members of different political camps.

The Parliament

Parliament has the power to make laws, including laws amending the constitution. It consists of 225 members and is elected for a term of six years.

If parliament rejects the official statement of government policy, rejects the budget, or passes a vote of no confidence in the cabinet, the latter is dismissed by the president, who then appoints another cabinet.

The Lawmaking Process

Every bill has to be published in the official gazette before it is placed on the parliament's agenda. A bill becomes a law when the certificate of the parliament's speaker is endorsed thereon. When the cabinet submits a bill for a referendum, it becomes a law when the president has certified that it was approved by the people.

Bills judged "inconsistent with the constitution" by the Supreme Court cannot become law unless they are approved by a two-thirds majority in parliament.

The Judiciary

The judicial power is exercised through courts, tribunals, and institutions established by the constitution. There are a Supreme Court, a Court of Appeal, and a number of regional high courts and courts of the first instance. The constitution underlines the independence of the judiciary.

Constitutional jurisdiction is exercised by the Supreme Court, which enjoys limited power to review the constitutionality of bills and acts of parliament. The Supreme Court also has the sole and exclusive jurisdiction over alleged violations of fundamental rights by state actions.

The Constitutional Council

The Constitutional Council is not a body of the judiciary, but approves candidates who are recommended by the president for independent commissions on such matters as elections, police, and the public service. The council is composed of 10 people, including the prime minister, the Speaker, and the leader of the opposition in parliament. The other seven members are appointed by the president. Five of these members need to be nominated by the prime minister and the leader of the opposition. Three of these five members should be representatives of the ethnic minorities.

In practice, the council often remains dysfunctional because of the way candidates are chosen. Even if the president and the prime minister should belong to the same political camp, there may be a disagreement between the president and the leader of the opposition. One side accuses the other of uncooperativeness and the process becomes deadlocked.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Sri Lankans over the age of 18 have the right to vote in the elections or a referendum and to stand for elections. A referendum can be held on matters of national importance; one must be held for certain bills that amend the constitution. Elections are free, equal, and secret.

Parliamentary Elections

Voters cast their vote (1) for a party and (2) for up to three candidates listed by that party in their electoral district. This means that voters cannot vote for candidates of another party, once they have endorsed a party. The seats won by each party are distributed among their candidates according to the number of preferences they receive. Proportional representation is diluted by a constitutional provision that grants the first seat to the party that receives the largest percentage of votes in that district. It is diluted, because the party gets this "bonus" seat in addition to those gained through proportional representation. Some seats are allocated on a proportional basis from national party lists.

Presidential Elections

A presidential candidate needs to be 30 years of age. Voters cast multiple votes in order of preference. If no candidate has an absolute majority of first preferences, all candidates except the two leaders are eliminated, and second or third preferences are distributed to these candidates to ensure a majority winner.

POLITICAL PARTIES

Sri Lanka has a multiparty democracy. It enjoys considerable stability despite relatively high levels of political violence. Two major parties, the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), have generally alternated rule.

CITIZENSHIP

Sri Lankan citizenship is primarily acquired by birth; that is, a child acquires Sri Lankan citizenship if the parents are Sri Lankan citizens. If the child is born in wedlock, the father must be Sri Lankan; otherwise it is the mother who must be Sri Lankan.

FUNDAMENTAL RIGHTS

The Sri Lankan constitution guarantees a set of liberal human rights. This set does not include the right to life;

however, this right is listed in the 2000 draft constitution. The 1978 constitution also acknowledges the existence of language rights in Chapter 4.

The chapter on fundamental rights takes freedom of thought, conscience, and religion as a starting point. The general equal treatment clause is contained in Article 12, which guarantees that all persons are equal before the law. No citizen can be subject to discrimination on the grounds of race, religion, language, caste, sex, political opinion, or place of birth. In practice, caste-based factions still exist in all modern institutions, including political parties.

Social human rights are somewhat underrepresented. However, social issues are addressed in the chapter on directive principles of state policy.

Impact and Functions of Fundamental Rights

The preamble promises "freedom, equality, justice, [and] fundamental human rights" to everybody. The constitution primarily entrusts the Supreme Court with the legal protection of fundamental rights. The Supreme Court has at times used international treaties as interpretive guides when there was ambiguity in statutory or constitutional provisions. For example, in the case of *Mrs. W. M. K. de Silva v. Chairman, Ceylon Fertilizer Corporation* (1989), the court referred to the definition of *torture* as adopted by the General Assembly of the United Nations in Resolution 3452 (XXX) of December 9, 1975, to assist in the interpretation of Article 11 of the Sri Lankan constitution, which prohibits torture.

Other mechanisms aim at strengthening fundamental rights such as a parliamentary ombudsperson. However, human rights violations by public authorities continue to be reported.

Limitations to Fundamental Rights

There are a variety of limitation clauses in Article 15. Besides the common restrictions in the interests of "public order" or "respect for the rights and freedoms of others," some rights may also be restricted in the interests of "national security," "racial and religious harmony," or "national economy."

ECONOMY

Some of the directive principles of state policy address economic issues. According to the constitution, the democratic socialist state pursues an economic system that does not result in the concentration of wealth, but in social security and welfare. In practice, Sri Lanka has abandoned socialist economic policies in exchange for market-oriented ones. Taken as a whole, the Sri Lankan economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

Although the constitution accords Buddhism the "foremost place," it is not recognized as the state religion. Every person is entitled to freedom of thought, conscience, and religion, and this right is generally respected in practice.

MILITARY DEFENSE AND STATE OF EMERGENCY

Recruitment to the ministry is solely on a voluntary basis and the minimal age for entry into the armed forces is 18 years.

Article 155 empowers the president of the republic to make emergency regulations under the Public Security Ordinance or under any other law relating to public security in force at the time. Such regulations may override all existing law except provisions of the constitution. The constitution provides for parliamentary monitoring of emergency powers. A proclamation of emergency would lapse after a period of 14 days unless approved by parliament. Sri Lanka has declared numerous states of emergency since its independence.

AMENDMENTS TO THE CONSTITUTION

An amendment bill needs to fulfill a number of formal requirements. The constitution can only be amended if two-thirds of all the members of parliament vote in favor of the change.

Some fundamental provisions, such as those regulating the president's and the parliament's term of office, require a popular referendum. The same applies to the very first chapters of the constitution ("The people, the state and sovereignty" and "Buddhism"), some fundamental rights (freedom of thought, conscience, and religion and freedom from torture), and the provision on amendments itself.

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SUDAN

At-a-Glance

OFFICIAL NAME
Republic of the Sudan

CAPITAL
Khartoum

POPULATION
39,148,162 (July 2004 est.)

SIZE
967,499 sq. mi. (2,505,810 sq. km)

LANGUAGES
Arabic (official), Nubian, Ta Bedawie, diverse Nilotic dialects, Nilo-Hamitic, Sudanic languages, English

RELIGIONS
Sunni Muslim 70% (in north), indigenous beliefs 25%, Christian 5% (mostly in south and Khartoum)

NATIONAL OR ETHNIC COMPOSITION
Black 52%, Arab 39%, Beja 6%, foreigners 2%, other 1%

DATE OF INDEPENDENCE OR CREATION
January 1, 1956

TYPE OF GOVERNMENT
Authoritarian regime, military junta in power from 1989

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
Current constitution in force July 1, 1998; partially suspended December 12, 1999, by President Bashir

DATE OF LAST AMENDMENT
No amendment

Sudan is ruled by an authoritarian regime. A military junta took power in 1989; the current government is an alliance between the military and the National Congress Party (NCP) (formerly the National Islamic Front [NIF]). The constitution of Sudan proclaims it a federal state—it is in fact divided into 26 states—but the central government is very strong.

The constitution declares Islam to be the religion of the majority of Sudanese, and Islamic law (sharia) is recognized and enforced, but religious freedom is proclaimed nonetheless. The constitution provides for protection of human rights, but there are widespread human rights violations, as reported by international human rights groups, and public authorities do not always respect constitutional provisions. In theory, the courts are independent, but in reality there is executive interference in the judiciary.

The powers, duties, and terms of office of the president are defined in the constitution. The current president, Lieutenant General Umar Hassan Ahmad al Bashir, is the central political figure in Sudan. The constitution allows for formation of political parties, but the country has never had a free and fair election.

The constitution allows for a free-market economy. The military is under the command of the president.

CONSTITUTIONAL HISTORY

Sudan gained independence from Britain in 1956 under a provisional constitution, which paid little attention to the rights of the individual. Attempts were made to achieve a permanent constitution in the late 1950s, but these failed.

In 1964, the transitional constitution was reenacted with a few changes. In 1967, a Constituent Assembly attempted to draft a new constitution based on Islam, until Jaafar Mohamed Nimeiri seized power and issued a new constitution providing for a one-party state in 1969; this constitution provided for a few civil liberties.

After Nimeiri gained power, there was a move toward adoption of sharia. Nimeiri was overthrown in 1985 and the transitional government that took over adopted the

1964 constitution but did not make provision that it was the highest law in the country. A constituent assembly was established, and a multiparty system was established. Then, in 1989, a military coup d'etat put General al Bashir in office, where he has remained for over 15 years.

A national commission was formed in 1997 but was boycotted by some parties who were of the view that the government was undemocratic and a constitution would not be of much use. The national commission drafted a constitution that was adopted through a questionable referendum in 1998.

From the time of independence there has been tension between the Muslim, mainly Arab, north and the Christian and animist south, which is mainly black. This tension led to brutal wars between 1955 and 1972 and again since 1983; the death toll has been estimated at 1–3 million. Numerous attempts are being made to end this long-running conflict.

FORM AND IMPACT OF THE CONSTITUTION

Sudan has a written constitution that was adopted in 1998. The constitution sets out 18 guiding principles of the state. These principles are meant to guide state officials and lawmakers in performing their duties. The principles also address human rights. They are designed to shape the course of public life. The constitution guarantees judicial independence and separation of powers. Unfortunately, many of these principles have not been implemented in practice, and the constitution remains an ideal rather than a reality.

BASIC ORGANIZATIONAL STRUCTURE

Sudan is composed of 26 states known as *wilayat.* They differ in geographic size and population. All *wilayat* have identical legislative, administrative, and judicial powers, and each has its own state assembly. These assemblies have similar powers to those of the National Assembly, except that they may not ratify international agreements or treaties or make constitutional amendments. Members of the state assemblies are elected to office by procedures similar to those used in the election of National Assembly members; if the situation in a particular region of a *wilayat* precludes holding an election, the governor of the *wilayat* in question appoints a representative for that region.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution of Sudan provides for a presidential system of government. There is a separation of powers of the executive, legislature, and judiciary.

The constitution has set out 18 principles that are to direct institutions and employees of government in the execution of their duties. These include that Sudan is a federal state, that God is supreme, that the country has a free-market economy, that all natural resources are public property, and that Islam is the religion of the majority and thus Muslims in public life should worship God and observe the Quran. Religion is therefore supposed to affect all the workings of government, including planning, laws, policies, politics, economics, and social and cultural activities.

CONSTITUTIONAL BODIES

The main constitutional bodies are the president, Council of Ministers, federal legislature (National Assembly), state legislature (state assemblies), and the judiciary, which has a Constitutional Court.

The President

The president is the highest sovereign authority of Sudan. The president is responsible for the armed forces; ensures the country's security; supervises foreign relations, the judiciary, and constitutional institutions; and mobilizes the country for development. The president is also responsible for appointing personnel in the federal offices created by the constitution. The president presides over the Council of Ministers, declares war, initiates amendments to the constitution, and represents Sudan in foreign relations. The president is elected for a five-year term by popular vote and can be reelected only once.

The Council of Ministers (Federal Administration)

The federal administration is formed under supervision of the president, who appoints the ministers. The ministers form the Council of Ministers, the highest federal authority in Sudan, whose decisions prevail over all other executive decisions. The president is the dominant figure in Sudan.

The National Assembly (Parliament)

The National Assembly is the representative body for the Sudanese people at the federal level. It is the legislative organ. Among other powers, it is supposed to represent the popular will in legislation, planning, and supervision of the executive. Its period of office is four years.

Seventy-five percent of the members of the National Assembly are supposed to be elected in direct general elections. The remaining 25 percent are elected in special or indirect elections by women and scientific and professional communities. If elections cannot be held in a particular region, then the president of Sudan can appoint a person to represent the region in question.

The State Assemblies

Every *wilayat* has a state assembly, wielding its legislative authority. The state assemblies have similar powers to those of the National Assembly, except that they may not ratify international agreements or treaties or make constitutional amendments. Members of the state assemblies are elected to office by the same procedures used to elect the National Assembly. If elections cannot be held in a region, the governor of the *wilayat* appoints the representative of that region.

The Lawmaking Process

One of the chief duties of the National Assembly is to pass legislation. The sources of the legislation are supposed to be sharia law, the constitution, and custom, which must all be taken into consideration when enacting any law. The lawmakers must also take into consideration public opinion and the work of scientists, intellectuals, and leaders.

Legislation may be initiated by the president, Council of Ministers, an individual minister, or an individual member of the National Assembly. Generally a bill has to go through four readings to be adopted. During this process amendments can be made, and the bill can be referred to specialized committees. Bills must be signed by the president to become law. If the president refuses, the National Assembly can override these objections by a two-thirds majority.

The Judiciary

The judiciary is in theory independent from the other arms of government, but in reality the executive exercises control. The judiciary is vested in a Judicial Authority. This body is supposed to undertake the administration of justice through adjudicating disputes and giving judgments in accordance with the constitution and the law. The Judicial Authority has a chief justice, who is the president of the highest federal court and of the Supreme Judicial Council. There are a high court, courts of appeal, and courts of first instance. The president of Sudan appoints the chief justice.

The highest court in Sudan is the Constitutional Court; it is independent of other courts. The chief justice and other judges of the Constitutional Court are appointed by the president and approved by the National Assembly. The court has power to review and rule on any matter concerning the execution of the constitution. It can interpret the constitution or other legal texts presented by the president. It can deal with cases involving protection of rights and with conflicts between state and federal authorities over their respective powers.

THE ELECTION PROCESS

The constitution provides for the establishment of an election commission to conduct both elections and referendums. The constitution does not specifically state the age at which Sudanese citizens become eligible voters.

POLITICAL PARTIES

The constitution of Sudan provides for the right of individuals to organize political activity, but it has no specific provision on the formation or the role of political parties.

CITIZENSHIP

Sudanese nationality is acquired by birth. Anyone born of a Sudanese mother or father has the inalienable right to Sudanese nationality. Also, anyone who has lived in Sudan during his or her youth has a right to Sudanese citizenship. The constitution has a vague provision that states that anyone who has lived in Sudan for several years has the right to Sudanese citizenship.

FUNDAMENTAL RIGHTS

Chapter 1 of the constitution sets out the rights of the individual; Chapter 2 sets out the responsibilities of the individual. The constitution guarantees a number of human rights that are internationally recognized.

Some of the rights that are protected under the constitution are the rights to life, liberty, equality, nationality, freedom of movement, freedom of religion and conscience, freedom of opinion and expression, freedom of association, right to property, and security of person. Any individual whose rights are violated and who has exhausted executive and administrative remedies may appeal to the Constitutional Court for protection. The Constitutional Court can annul any law or order that contravenes the constitution and order that the victim be compensated for the damage suffered.

The responsibilities of the citizens include the duty to be loyal to Sudan, defend the country, respect the constitution, protect public funds and property, and participate in economic activities and public development. These duties are general obligations governed by conscience, but in certain defined cases there can be penalties for noncompliance.

Impact and Functions of Fundamental Rights

Even though the constitution has set out fundamental human rights, the Sudanese authorities have often been accused of violating many of them, sometimes on a large scale.

Limitations to Fundamental Rights

Some of the fundamental rights stipulated in the constitution have limitations. For instance, the right to liberty and life has to be in accordance with the law. The right to life is further limited by allowing for the imposition of the death penalty. The right to religion and conscience has to

be exercised in a manner that does not harm public order and must be carried out in accordance with the law. The freedoms of opinion, expression, and association have to be exercised in accordance with the law.

ECONOMY

One of the directive principles of the Sudanese constitution provides that the state should direct the growth of the national economy. This is to be accomplished by planning, taking into account labor, production, and the free exchange of goods. Monopoly and usury must be prevented, and self-sufficiency must be among the goals. Another directive principle provides that all natural resources are public property, and that the state must make plans to ensure the exploitation of these resources. The constitution provides for the right to property.

RELIGIOUS COMMUNITIES

The constitution of Sudan provides for religious freedom by stating that everyone has the right to freedom of religion and the right to manifest and disseminate his or her religion or belief in teaching, practice, and observance. However, the constitution gives greater weight to the Islamic faith. For instance, one of the directive principles states that supremacy in the state is to God, that sovereignty is practiced as worship to God. There is, therefore, no separation of religion from the state. Another directive principle states that those working in public life should worship God, and that Muslims in service in the state and public life should observe the Quran and the teachings of the Prophet Muhammad.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Peoples' Armed Forces is the national military force. The constitution stipulates that its duty is to defend the country, preserve safety, participate in development, and guard the national interests and constitutional order. The constitution provides for what it terms the security forces, whose responsibility is to maintain peace in Sudan both internally and externally.

The constitution further provides for a popular defense force or volunteer force for the purposes of national defense. The popular defense force is under the command of the national armed forces or the police and promotes defense and security.

The president is responsible for all the armed forces and has to ensure the country's security.

The president can declare a state of emergency in the whole country or part of the country. Such a declaration has to be presented to the National Assembly within 15 days for approval. During a state of emergency, the president can suspend some individual rights. The president can also suspend the laws and powers of the *wilayat*. The president must submit all such exceptional measures to the National Assembly for approval; the assembly may amend, approve, or cancel them.

AMENDMENTS TO THE CONSTITUTION

The president or one-third of the National Assembly can propose amendments to the constitution. An amendment has to be approved by a two-thirds majority of members of the National Assembly. Certain amendments can only be made through a referendum—those that impact basic principles, including those that relate to sharia and freedom of conscience and religion and the principles that Sudan is a federal unitary government, that Sudan has a presidential system of government, that legislative authority is vested in the National Assembly, that the judiciary is independent, and that southern Sudan is governed by a transitional government. If an amendment affects any of these principles, it can only be adopted through a referendum approved by the majority of the voting population.

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Martin Nsibirwa

SURINAME

At-a-Glance

OFFICIAL NAME
The Republic of Suriname

CAPITAL
Paramaribo

POPULATION
436,935 (2005 est.)

SIZE
62,865 sq. mi. (162,820 sq. km)

LANGUAGES
Dutch (official language), Sranang Tongo (lingua franca), various other languages spoken

RELIGIONS
Hindu 27.4%, Muslim 19.6%, Roman Catholic 22.8%, Protestant 25.2%, indigenous beliefs 5%

NATIONAL OR ETHNIC COMPOSITION
Hindustani 37%, Creole 31%, Javanese 15%, Maroons 10%, Amerindian 2%, Chinese 2%, white 1%, other 2%

DATE OF INDEPENDENCE OR CREATION
November 25, 1975

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Centralist state divided into 10 administrative districts

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 30, 1987

DATE OF LAST AMENDMENT
1992

A former Dutch colony, the independent Republic of Suriname has been transformed from a military dictatorship to a constitutional democracy based on the rule of law. Its constitution provides for a division of executive, legislative, and judicial powers.

The Republic of Suriname is a democratic state based on a governmental model comprising both parliamentary and presidential elements. The constitution, based on the principle of participatory democracy, enshrines fundamental civil and political rights as well as economic, social, and cultural rights, such as freedom of expression, freedom of assembly, freedom of religion, the right to work, and the right to education.

CONSTITUTIONAL HISTORY

After riots over unemployment and inflation, Suriname reached independence in 1975. Its first constitution was suspended on August 13, 1980, after a coup d'état removed the legitimately elected government. In response to continuing pressure due to economic decline and mounting insurgencies, the military government organized free elections and drafted a new constitution. After public approval by plebiscite, the constitution entered into force on September 30, 1987.

After a second coup d'état, leading to another brief period of military rule between December 24, 1990, and May 25, 1991, the constitution was amended in 1992 to eradicate the military's powers to interfere with governmental authority, confining the armed forces to the protection of territorial integrity and thereby reducing threats of another coup d'état.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of the Republic of Suriname is codified in a single document, constituting the primary source of

law and taking precedence over all other national law. International law provisions governing relations between individuals are directly effective in Suriname; any other international legal provisions become effective only upon approval by the National Assembly. Once effective, international law takes precedence over domestic law, rendering any national legislation incompatible with it null and void.

BASIC ORGANIZATIONAL STRUCTURE

The Republic of Suriname is a centralist state, organized as a constitutional democracy. It consists of 10 administrative districts, each made up of several departments and headed by a district commissioner. A certain level of decentralization grants administrative and legislative powers to lower government bodies at those regional levels.

LEADING CONSTITUTIONAL PRINCIPLES

The system of government of Suriname is based on the principles of a democratic state, the participation of the people, respect for fundamental rights and freedoms, and self-determination of all peoples. The stated aims of any governmental activity are a just society, a national economy free of foreign intervention, national unity, and sovereignty.

CONSTITUTIONAL BODIES

The main constitutional bodies provided for in the constitution are the president and Council of State, the Council of Ministers, the National Assembly and People's Assembly, regional government bodies, and the Constitutional Court.

The President

The executive power is vested in the president, who simultaneously serves as head of state, head of the executive, and chair of both the Council of State and the Security Council. The National Assembly elects the president with a two-thirds majority for a period of five years.

The president's powers include the appointment of cabinet ministers, the development of foreign and national policy, direction of the Council of State's activities, and convocation and chairing of the Council of Ministers. The president is also the commander in chief of the armed forces. Unless the president resigns, he or she cannot be removed from office.

The Council of State, the composition and powers of which are regulated by law, advises the president. It acts as a constitutional watchdog, by guiding the government on proposed measures, suspending Council of Minister decrees incompatible with the constitution, and supervising the government's execution of National Assembly decisions.

The Administration

The president, together with the vice president and the Council of Ministers, forms the administration of Suriname. The administration determines all policies of the executive, draws up legislation, and is answerable to the National Assembly. The Council of Ministers, consisting of all cabinet ministers and deputy ministers, is the highest executive and administrative body of the government. It is primarily responsible for the execution of administration policies, as well as the drafting of laws and regulations.

The National Assembly

The National Assembly is the central representative organ of the people of Suriname. It consists of 51 members elected by a system of proportional representation for a term of five years. To prevent favoritism, members of the National Assembly may be neither related, up to the second degree, nor legally married to one another. Apart from its legislative powers, jointly exercised with the executive branch of government, the National Assembly must approve the administration's general socioeconomic and political program. It helps safeguard the constitution by supervising the work of the executive branch of the government. A People's Assembly, consisting of 869 local and district officials, as well as parliamentarians, may convene in certain cases specified by the constitution.

Regional Administration

The regional administration consists of district and department councils as well as a district commissioner. Their primary tasks include the preparation, creation, and execution of district and departmental development plans, as well as drafting of district laws and regulations.

The Lawmaking Process

Upon presentation of a draft bill by the executive branch of government, the National Assembly examines and publicly debates the draft. It may either pass it unchanged, amend it, or veto it. In any event, it is required to inform the president of its decision. Until the National Assembly reaches a decision, the president may withdraw the bill.

The constitution specifies certain subjects that are reserved to determination by law, such as constitutional amendments, declaration or termination of war and state of emergency, creation of a development council for national development, and determination of Suriname's territorial waters, continental shelf, and exclusive economic zone.

The Judiciary

Full independence of the judiciary is guaranteed by prohibition of any interference with court proceedings. There are two levels of jurisprudence, comprising the subdistrict court or cantonal court as the court of first instance and the High Court of Justice as an appeals court for all branches of the judiciary. While the constitution also envisages the creation of a constitutional court to deal exclusively with constitutional matters, it has not yet been established.

THE ELECTION PROCESS

The right to vote is granted to those who are above the age of 18 and hold Surinamese citizenship, unless their right to vote has been forfeited by virtue of lawful detention, insanity, or irrevocable judicial decision. The right to stand for office is granted to all Surinamese citizens who have reached the age of 21 and have not been deprived of their right to vote. All elections are held by secret ballot.

POLITICAL PARTIES

Since the end of military rule, Suriname has turned to a pluralistic system of political parties. The constitutionally guaranteed right to establish political parties is restricted only by constitutional requirements of transparency, internal democratic organization and compatibility with constitutional goals, national sovereignty, and democracy in general. Reflecting Suriname's diverse ethnic makeup, most political parties are defined along ethnic lines.

CITIZENSHIP

The constitution does not regulate Surinamese citizenship, leaving this area to be prescribed by law.

FUNDAMENTAL RIGHTS

Inspired by the Universal Declaration of Human Rights, the Constitution of the Republic of Suriname guarantees a wide range of civil and political as well as social, economic, and cultural rights, based on the overarching principle of equality and nondiscrimination. Civil and political rights include the right to life and liberty, freedom from torture and forced labor, the right to private and family life, the right to effective legal remedies, and freedom of religion, expression, political opinion, association, and assembly. Social, economic, and cultural rights include the right to work, labor and trade union rights, and the right to health, property, education and training, as well as the enjoyment of culture.

Impact and Functions of Fundamental Rights

The fundamental rights guaranteed in the constitution may be invoked in domestic courts in legal disputes governing the relationship between an individual and the government. They are supplemented by the direct application of the rights stated in the United Nations International Covenant on Civil and Political Rights (ICCPR), which takes precedence over domestic law and may be directly invoked before domestic courts. Unfortunately, respect for the fundamental rights of indigenous peoples and Maroons (descendants of slaves who freed themselves and founded well-organized communities in the 18th century) remains sporadic in practice, particularly with regard to land and property rights, nondiscrimination, and health, educational, and cultural rights.

Limitations to Fundamental Rights

Constitutionally guaranteed rights and freedoms may be restricted in the event of war, threat of war, state of siege, or state of emergency, or for reasons of state security, public order, and morality. However, a suspension of rights may only occur for a specified period and must be in compliance with international legal requirements, such as the principle of nonderogation from certain human rights as enshrined in the ICCPR (Article 4).

ECONOMY

The constitution lays out aspects of the Republic of Suriname's economic order, by prescribing a development plan to promote socioeconomic progress toward a just society. The government aims at shaping a national economy free of foreign intervention.

RELIGIOUS COMMUNITIES

The Constitution of the Republic of Suriname guarantees both freedom of religion and the right to association and assembly, thereby granting the full and free exercise of all faiths. The main religious groups—Christians, Hindus, and Muslims—freely and independently practice their religion in their respective places of worship. Despite constitutional references to the power of the Almighty, religion is clearly separated from the state and there is no recognized state religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The present constitution awards the military only one role: that of protecting national sovereignty and indepen-

dence, as well as the rights and freedoms of its nationals. With the president as commander in chief, all military activities are governed by the rule of law.

Military service is obligatory for all male nationals of Suriname. However, in cases of physical disability or conscientious objection, military service may be replaced with civil service. No one enrolled in the service of the armed forces may hold office in government or any other public service.

Although the power both to declare and to end a state of emergency is vested in the president, it is subject to the consent of the National Assembly and limited to reasons provided for by law, such as the event or threat of war. During a state of emergency, the National Assembly may convoke the Security Council, consisting of the president, the chair of the National Assembly, the vice president, representatives of the Council of Ministers, the minister of justice, the armed forces, and the Suriname police corps. The Security Council is equipped with special powers to defend Suriname's external and domestic security.

AMENDMENTS TO THE CONSTITUTION

The power to amend the constitution is vested in the National Assembly, which may amend any provision of the constitution by passing a law containing the desired amendment by a majority vote of at least two-thirds of its members. Should this not be reached, the National Assembly may convene the People's Assembly to resolve the issue.

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SWAZILAND

At-a-Glance

OFFICIAL NAME
Kingdom of Swaziland

CAPITAL
Mbabane

POPULATION
1,173,900 (2005 est.)

SIZE
6,704 sq. mi. (17,364 sq. km)

LANGUAGES
English and Siswati

RELIGIONS
Christian-African religion 100%

NATIONAL OR ETHNIC COMPOSITION
Swazi 100%

DATE OF INDEPENDENCE OR CREATION
September 6, 1968

TYPE OF GOVERNMENT
Parliamentary system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
February 8, 2006

DATE OF LAST AMENDMENT
No amendment

Swaziland is a landlocked country that shares borders with Mozambique (105 km) and South Africa (430 km). It was founded by Bantu peoples from Mozambique in the 18th century and became a British protectorate when colonial rule was established in 1903. Swaziland was led to independence by Sobhuza II in 1968 and is now a dual monarchy with a king (King Mswati III since April 25, 1986) and queen mother.

The Kingdom of Swaziland operates under a parliamentary system lacking in respect for the rule of law and without a clear separation of the three arms of government: the executive, legislature, and judiciary. The kingdom is subdivided into four administrative regions with a strong central government.

Immediately after independence and operating under the Independence Westminster Constitution, Swaziland enjoyed a substantial degree of separation of powers, but this constitution was repealed on April 12, 1973, by King Sobhuza II.

King Mswati III is currently the head of state and a central political and traditional figure. The prime minister is the administrative head of the executive arm and is directly appointed by the king from among members of the dominant Dlamini clan, which forms the backbone of the monarchy. Members of Parliament are elected directly from constituencies into Parliament in what is called "election based on individual merit." Multiparty democracy is not allowed, and political parties remain banned since the repeal of the Independence Constitution in 1973.

Fundamental rights and freedoms are, in fact, not protected or guaranteed, and free political activity, including the right to associate and assemble peacefully, is not permitted. Leaders and members of opposition political organizations are constantly harassed, and political gatherings, rallies, demonstrations, and marches are forcefully dispersed by violent police and army personnel.

The judiciary lacks independence. Judges are appointed by the king on the advice of a Judicial Service Commission dominated by the king's appointees. Nevertheless, the judiciary has been under constant attack from the executive, which has refused to comply with and implement some of the judgments it has considered unfavorable.

The refusal to implement court judgments has led some members of the nation to flee into the Republic of South Africa. It is yet to be seen whether the damage done to the judicial system will be repaired.

CONSTITUTIONAL HISTORY

The Kingdom of Swaziland is a former British colony. On September 6, 1968, the kingdom gained independence through the Independence Constitution, and it became a sovereign state governed in accordance with the written constitution.

The Westminster-type constitution established a Parliament, executive, and judiciary. It created the office of the king as head of state. It provided in Chapter 2 for the protection of fundamental rights and individual freedoms, which included the right to life, personal liberty, protection from slavery and forced labor, protection from inhuman treatment, protection from deprivation of property, protection against arbitrary search or entry, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement, and protection from discrimination. The Bill of Rights also provided for derogation and enforcement mechanisms.

The kingdom held three general elections. The 1964, 1967, and 1972 elections all were conducted under a multiparty electoral system.

It was the 1972 elections that turned the course of history when members of the opposition Ngwane National Liberatory Congress won parliamentary seats. This was the first time that there would be official opposition inside Parliament, because the opposition had not been victorious in previous elections.

After this development, the constitution was repealed on the questionable contention that it had caused growing unrest, insecurity, and dissatisfaction in the kingdom and that it had permitted the importation of undesirable political practices alien to, and incompatible with, the way of life of the Swazi nation.

Since that day, Swaziland has been without a comprehensive constitution save for the remnants that were retained, which did not include the Bill of Rights. The king has remained the absolute ruler, and proponents of democracy have been subjected to oppression and harassment.

Since the repeal of the Independence Constitution, there has been continuous agitation for constitutional reform. The establishment of the Tinkhundla Review Commission (TRC), Constitutional Review Commission, as well as the Constitution Drafting Committee (CDC) was not widely accepted, as the king himself chose all the members. Its mandate did not allow the participation of organized groups. At the end of the commission's term, the king appointed yet another body, called the Constitution Drafting Committee, which he mandated to draft a constitution suitable for Swaziland. This committee in May 2004 presented to the king a draft constitution, which was ratified by the king on July 26, 2005, and went into effect in 2006.

There is widespread doubt that it will resolve the country's constitutional and good governance problems.

FORM AND IMPACT OF THE CONSTITUTIONAL ARRANGEMENT

On July 26, 2005, Swaziland adopted a comprehensive constitution, or basic law. However, the document does not enjoy popular support and legitimacy across the spectrum of the Swazi society because of the manner in which it was done and the hostile political environment prevailing. Organized civil society groupings including political parties have disowned the constitution, contending that it does not reflect the true and genuine will and aspirations of the people. They continue to call and demand for the drawing of a constitution based on free and popular consensus. International law is not part of national law unless enacted by Parliament. Although Swaziland is a member state of the African Union and has ratified the major international and regional human rights instruments, such as the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, very little, if anything, has been done to comply with the standards set by these instruments.

BASIC ORGANIZATIONAL STRUCTURE

The kingdom is a unitary state divided into four administrative regions, which do not enjoy legislative and judicial competencies. The four regions correspond to Swaziland's geographic regions, which vary from 400 to 1,800 meters above sea level, each with its own climate and characteristics, which vary from tropical to near-temperate. The regions are part of the general governance with very limited autonomy since they are under the supervision of the central government. The central government is itself two-pronged. Traditional government bodies in Lobamba exercise more power than the conventional government in Mbabane.

As provided in the 1973 King's Proclamation and in the new constitution, all executive, legislative, and judicial power vests in the king. This position was reinstated by the 1992 Establishment of Parliament Order, which currently forms the basis for the creation of government but does not in any way depart from the provisions of the proclamation, as well as the new constitution, which five months from the day of adoption provides the fundamental law of the land.

CONSTITUTIONAL BODIES

In terms of the powers his majesty derives for himself under the King's Proclamation, powers that are not interfered

with under the new constitution, he can appoint, in consultation with his appointed prime minister, the cabinet, 20 senators, and 10 members of the House of Assembly. The others are elected directly into Parliament on the basis of "individual merit," which excludes the participation of political groupings. On the advice of the Judicial Service Commission, the king appoints judges. He also appoints his advisers in the form of the King's Advisory Council and members of other bodies that perform constitutional functions.

The King's Advisory Council

The King's Advisory Council has the authority to advise the king on all matters. All of its members are appointed by the king, mostly from among princes, princesses, chiefs, and other Swazi citizens. It does not accommodate dissenting voices and is not amenable to criticism. It also is not transparent. It is based at the traditional capital, Lobamba. In most matters it is in conflict with the government, based in Mbabane.

The Lawmaking Process

Lawmaking power vests in the king and Parliament. Until 2000, when the Court of Appeal held that the king had no power to make law by decree, his majesty could adopt laws overriding even the laws adopted by Parliament, because a decree was superior to an act of Parliament.

Once parliament passes a bill, it is referred to the king for his assent, which he may withhold and refer the bill back to Parliament. The king can dissolve Parliament. This constitutional arrangement is not changed by the new constitution.

The Judiciary

The judiciary has become weak because of interference by the executive. The judiciary is made up of the magistracy, the High Court, and the Court of Appeal, which is the highest court. Judges are appointed by the king on the advice of the Judicial Service Commission, which is dominated by the king's appointees. In recent years, particularly from 2000 onward, judges have been subjected to harassment and intimidation; two High Court judges had to resign. The 2003 legal year operated without a Court of Appeal after many judges resigned in protest of the government's refusal to obey court judgments.

The new constitution also sets up a Human Rights Commission, a Public Administration Commission, and an Integrity Commission, which did not exist before. The powers of the Human Rights Commission are very limited when it comes to the exercise of power by the Crown.

THE ELECTION PROCESS

Swaziland has a political system based on Tinkhundla, a concept introduced by King Sobhuza II in 1978. This system does not allow political activity or political parties. Elections are based on a concept of "individual merit." According to this system, an individual is elected into Parliament on the basis of his or her merit, without belonging to a political group but representing a constituency. All citizens over the age of 18 are entitled to vote.

POLITICAL PARTIES

There are no legal political parties in Swaziland. Even under the recently adopted constitution they remain banned.

CITIZENSHIP

Swazi citizenship is acquired by birth or registration. A child who has a Swazi father is a Swazi citizen, but the same is not true if only the mother is a Swazi citizen. The 2005 constitution creates a Citizenship Board and empowers it exclusively to decide questions of disputed nationality, thus limiting the jurisdiction of the courts in such matters.

FUNDAMENTAL RIGHTS AND FREEDOMS

Currently, fundamental rights and freedoms are not protected in fact. The new constitution, however, makes an attempt to provide for them, albeit in a limited way.

ECONOMY

Economic policies are drafted from time to time when a "new" government gains power or upon the renewal of a previous one. Generally, the country has a free-market economy.

The economy is based on subsistence agriculture, which occupies more than 60 percent of the population and contributes nearly 25 percent to the gross domestic product (GDP). Manufacturing accounts for another quarter of the GDP. Mining has declined in importance in recent years; high-grade iron ore deposits were depleted in 1978, and health concerns cut world demand for asbestos. Exports of sugar and forestry products are the main earners of hard currency. The country is heavily dependent on South Africa, from which it receives 90 percent of its imports and to which it sends about half of its exports.

RELIGIOUS COMMUNITIES

There are formal constitutional provisions for freedom of religion; the government generally respects it in practice.

MILITARY DEFENSE AND STATE OF EMERGENCY

The creation and maintenance of the armed forces are the responsibility of the government through the king, who is commander in chief. Recently, there has been a move to involve the army in services other than defending the country and the Tinkhundla system of government. In recent times, the army has shown signs of being politicized and has become intolerant of protestors who express a different view from that of the present regime.

The king has the power to declare a state of emergency, and the country has existed under a state of emergency since the repeal of the Independence Constitution on April 12, 1973.

AMENDMENTS TO THE REMNANTS OF THE CONSTITUTION

In the repealed constitution an amendment could be made only if two-thirds of the members of Parliament voted in favor in a joint sitting; the majority depended on whether or not the amendment was for a specially entrenched provision, whereupon the amendment needed approval in a referendum. Once adopted by parliament the amendment requires the king to assent to it. This provision is essentially retained by the new constitution.

Until November 2001, when the Court of Appeal ruled that the king had no power to make law by decree, the king could himself amend his 1973 Proclamation, which stands as the supreme law of Swaziland. Since that judgment, there have been no amendments.

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Thulani Maseko

SWEDEN

At-a-Glance

OFFICIAL NAME
Kingdom of Sweden

CAPITAL
Stockholm

POPULATION
9,006,405 (2005 est.)

SIZE
173,732 sq. mi. (449.963 sq. km)

LANGUAGES
Swedish; four minority languages (Finnish, Hebrew, Sami, and Finnish dialect spoken in the border region in the far north between Sweden and Finland)

RELIGION
Protestant 87%, other (Roman Catholic, Orthodox, Baptist, Muslim, Jewish, Buddhist) 13%

NATIONAL OR ETHNIC COMPOSITION
Swedish 80%, immigrants of various origins 20%

DATE OF INDEPENDENCE OR CREATION
June 6, 1523

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
January 1, 1975; three other constitutional acts (1809, 1949, 1991)

DATE OF LAST AMENDMENT
November 27, 2002

Sweden is a parliamentary democracy based on popular sovereignty and the rule of law. The independence of the executive, legislative, and judicial powers is guaranteed through various provisions of the constitution, even though the principle of separation of powers was not a core value when the constitution was promulgated in the 1960s and 1970s. The political atmosphere in Sweden and the other Nordic countries was permeated with the idea of popular sovereignty, which was seen as the ideological basis of the successful welfare state. Later, in particular after January 1, 1995, when Sweden joined the European Union, the idea of separation of powers became more influential.

The parliament (Riksdag) consists of 349 members, sitting in one chamber. National elections take place every fourth year in September; elections for the 285 municipalities take place at the same time. The election system is strictly proportional. Each party that wins at least 4 percent of the votes in the country is represented in parliament.

Sweden is still a monarchy, although the tasks of the king are mainly representative. Political power rests with the parliament and, in particular, with the executive branch of the government. Within the executive, the prime minister has a very strong position.

The most important of the constitutional acts, Regeringsformen (The Instrument of Government), was enacted in 1974 and entered into force in 1975. Additionally, the 1809 Act of Succession, regulating the succession to the throne, and the 1949 Freedom of Press Act (which traces its origins to 1766) are both important parts of the Swedish constitutional heritage.

A number of important basic human rights are covered both by the Instrument of Government and by the European Convention of Human Rights, which has applied as domestic Swedish law since 1995. However, in general, the constitutional tradition in Sweden is weak, and it is only in the last decade that an increased interest in constitutional issues has become visible among scholars and the media.

CONSTITUTIONAL HISTORY

The first written Swedish constitution dates to the 14th century, the so-called Konungabalken (King's Act) of what is referred to as Magnus Eriksson's *landslag* (national law). The act contained rules on methods to elect kings and high officials and on the tasks of the council (*råd*), the government of the time.

Despite a few modifications, this basic "constitution" continued to apply at least in part until 1634, when the first Instrument of Government was enacted. The Instrument of Government was a very modern constitution for its time; it established the administrative features of the Swedish state that still largely exist. Because of the centralization of the administration, the main public authorities were regulated in the constitution. The relative strength of the administrative tradition compared with that of the constitutional tradition can be, in part, traced to this period.

It was under this constitution that an embryonic parliamentarism was developed for the first time. It was decided in 1660 that the four social classes (*stånd, ständer*)—aristocracy, clergy, merchants, and farmers—should form a parliament. This was the basis for Swedish parliamentarism until 1866, when a bicameral system was introduced. Nevertheless, autocracy prevailed for some time.

The next Instrument of Government, in 1720, emphasized the different functions of the state in a clearer way, and it was under this modernized constitution that political parties came into existence. The king had to govern the country according to the wishes of the council; he himself had two votes, but he had to bow to the will of the majority. It was also during this period that the concept of a constitutional law—more difficult to change than an ordinary law—took hold, and it became necessary to define which laws were constitutional. One of those so defined was the 1766 Freedom of Press Act, containing, among other elements, rules on public access to documents.

After yet another period of autocracy, the king had to resign in 1809, and a new constitution was established. This 1809 Instrument of Government formally remained in force until the end of 1974, by which time it had become the second-oldest written constitution in use anywhere in the world. This fact illustrates the peaceful development that the country has enjoyed for the last two centuries. However, some of the most important provisions in the 1809 constitution, such as the right of the king to govern the state alone, or his two votes in the highest court, gradually became obsolete. After the general democratic breakthrough of the early 1920s, most of the constitution was seen to have lost force and validity.

Under the 1809 constitution the executive power belonged to the king, and the legislative power was divided between parliament and king; up until a 1909 court reform, the king also held some judicial powers. A new Freedom of Press Act was introduced in 1810, as well as a new Parliamentary Regulation (Riksdagsordningen). That same year, the current Act of Succession was introduced; the same royal family (Bernadotte, of French origin) has held the throne since.

A new wave of constitutional reform began in the 1950s. The bicameral parliament was replaced by a one-chamber system in 1970, and the current constitution was enacted in 1975. Significant reforms were added in 1976, 1979, and 1994, in particular strengthening the protection of basic human rights. Nevertheless, the emphasis on popular sovereignty is still very strong. A core concept of the constitution is that all political power rests with parliament, representing the people. The monarchy has remained, but the king has been stripped of all formal powers, left with only purely representative functions.

From a general point of view, the most important constitutional change since 1974 is undoubtedly the accession to the European Union on January 1, 1995. The traditionally strong legislature suddenly lost some of its power, having to share its sovereignty with a supranational legislator. The incorporation of the European Convention on Human Rights into Swedish national law also contributed to a generally increased interest in constitutional issues.

FORM AND IMPACT OF THE CONSTITUTION

Sweden has four written constitutions, which date to 1810, 1949, 1974, and 1991, respectively. The constitutional system must be described as fairly modern, with the exception of some provisions in the Act of Succession (stating, for instance, that the monarch must be a follower of the pure evangelical belief). The constitution is fairly easy to change; a number of such changes have been introduced every four years, when general elections are held. This system does not promote respect for the constitution(s) as binding, superior law, although all four constitutions are formally of a higher rank than ordinary laws.

The idea of hierarchy of norms is acknowledged in the Swedish constitution and in the legal system, perhaps most clearly in Chapter 11, Article 14, of the constitution: "If a court or other public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision may not be applied." However, the statement continues, "If the provision has been approved by the Riksdag or by the Government, however, it shall be waived only if the error is manifest." This is another clear expression of the principle of popular sovereignty, with great practical consequences for the self-restraint shown, at times, by the courts when exercising judicial review.

International law does not become part of the national legal system and thus is not applicable before the national courts, unless it has been duly transformed and incorporated into national rules, either by transformation of a whole text, passage of new legislation, or some other method. The major exceptions are the laws of the European Union.

The four constitutional acts all still have at least some political relevance. The Act of Succession still regulates the way the throne is passed. The impacts of the Freedom of Press and Freedom of Speech Acts, respectively, are perhaps best seen in the rather strong position of the media in Swedish society and the privileged positions of writers and journalists in proceedings in which charges are brought against them. The Instrument of Government regulates the work and appointment of the parliament and the executive branch, as well as the election process. It also regulates the legislative process, the budget procedure, foreign relations, the position of the courts and other public authorities, and many other important issues. It must therefore be said to be of great political significance, although, at the same time, the idea that the constitution is the supreme source of law, against which all other legislative acts must be compared and measured, has never gained significant ground in Sweden.

BASIC ORGANIZATIONAL STRUCTURE

Sweden has a long history as a highly centralized state, and it remains so today.

LEADING CONSTITUTIONAL PRINCIPLES

Democracy in the form of popular sovereignty is the crucial feature of the Swedish constitution. The free formation of opinion is also very important; two separate constitutional laws are devoted entirely to issues related to freedom of speech. Free access to public documents leads to a far-reaching freedom of information, another key principle.

The Swedish constitutional system also relies on the rule of law in its formal sense, including legality, equality of all before the law, and predictability in the application of the law. The independence of the courts and public authorities is fiercely guarded. In fact, the prohibition against political intervention in administrative decision making is probably more far-reaching than in most democracies.

Sweden is a hereditary monarchy. The Act of Succession is the only part of the Swedish constitution that ignores freedom of religion, since the king or queen must "profess the pure evangelical faith, as adopted and explained in the unaltered Confession of Augsburg and in the Resolution of the Uppsala meeting of the year 1593." Any member of the royal family who does not profess this faith is excluded from all rights of succession. Apart from that, Sweden is now a secular state with no official state religion. Freedom of religion and worship is guaranteed.

Local self-government and, in particular, municipal autonomy are important features of the Swedish constitution. However, the limits of this autonomy are unclear. The protection of human rights has been much reinforced since the Instrument of Government entered into force in 1974.

CONSTITUTIONAL BODIES

The main constitutional bodies are the parliament, the cabinet, and the judiciary.

Parliament

Parliament (Riksdag) consists of one single chamber of 349 members. Free secret and direct elections take place every fourth year, always on the third Sunday in September. The votes go to parties. Every Swedish citizen who has attained the age of 18 on or before election day is entitled to vote. Extraordinary elections for the Riksdag may be called by the cabinet, except for the first three months after an ordinary election, although this has not yet occurred. Municipal and regional elections take place at the same time as parliamentary election.

The country is divided into some 20 constituencies, which among then return 310 members. Seats are allocated to the constituencies on the basis of the size of their populations and divided among the parties within each constituency on the basis of proportional representation; there are 39 national adjustment seats, which are distributed among the parties so that the distribution of all the 349 seats is proportional to the total number of votes cast throughout the whole of the realm. Political parties that receive at least 4 percent of the votes cast throughout the whole realm are entitled to share in the distribution of seats. Also eligible are parties that receive fewer votes but at least 12 percent of those votes are cast in one single constituency.

Thus, compared with that of most other countries, the election system often makes for weak governmental administrations; Sweden has not had a majority administration since May 1981.

Cabinet

The prime minister is the dominant figure in the Swedish administration. He or she appoints the other ministers and can remove them at any time.

After every election, or when a prime minister has resigned for other reasons, the speaker of parliament consults representatives of each party group of the Riksdag and then presents a candidate for prime minister

before the Riksdag. If more than half of the members of the Riksdag (i.e., 175) vote against the candidate, he or she is rejected; in any other case the candidate becomes prime minister. A possible world record was set in 1978, when Ola Ullsten became prime minister of a one-party liberal government after winning only 38 votes. Should the Riksdag reject the speaker's proposal four times (as has never happened yet), new Riksdag elections must be held.

The cabinet has collective and common responsibility for its decisions, which are made at cabinet meetings, where at least five ministers must be present. A declaration of no confidence requires the concurrence of more than half the total membership of the Riksdag. Should this happen to the prime minister, the whole cabinet is discharged.

The Lawmaking Process

A law is passed by a majority of the voting members of the Riksdag. However, the rules concerning legislation are among the most technical and complicated in the constitutional system.

Problems relating to the division of legislative authority between the parliament and the cabinet arise in many areas. The cabinet may make ordinances relating to matters other than taxes in a number of areas, such as the protection of life, health, or personal safety; the import or export of goods; public order; or education. The unclear rules create uncertainty as to when, how, and whether the cabinet may regulate a certain issue.

Of considerable importance is the so-called Law Council, or Council on Legislation. The rise of this formally weak but practically very influential judicial body must be understood in the light of the weak constitutional tradition and the absence of a separation of powers. Thus, it is seen as preferable to allow the council to give its opinion on draft legislation rather than to hand the matter over to the courts.

The Law Council includes justices or former justices of the two highest courts. It exists to pronounce opinions on draft legislation. Its opinions are sought out by the cabinet or by committees of the Riksdag. The council must be consulted about laws relating to freedom of the press or freedom of expression on the broadcast media, laws restricting the right of access to documents or other basic rights, and certain other laws relating to taxation, civil law, burdensome public law, or procedural law, unless the matter is without significance or would unduly delay the legislation. In practice, the opinions of the Law Council are quite influential; bills have been amended or even abandoned as a result of its opposition.

The Judiciary

The Supreme Court is the highest court of general jurisdiction, while the Supreme Administrative Court (Regeringsrätten) is the highest administrative court. The right to have a case tried by either of these courts may be restricted by law; in fact, those two courts deal only with issues that are of future, principled interest and may therefore be seen as precedents. Additional courts must be established by law. Any such court must have at least one permanent salaried judge, who may be removed from office only in very special cases.

No public authority, including the Riksdag, may determine how a court of law shall adjudicate an individual case or otherwise apply a rule of law in a particular case. Likewise, no public authority may determine the way an administrative body shall decide a particular case relating to the exercise of public authority vis-à-vis a private subject or a local authority, or relating to the application of law. Together with the rule that no judicial or administrative function may be performed by the Riksdag, except inasmuch as this follows from fundamental law or from the Riksdag Act, this constitutes an efficient body of rules aimed at protecting the independence of the courts and the public administration in general. These rules may also be seen as prohibiting legislation that covers individual cases or very specific situations.

The cabinet is responsible for appointing judges. Although in principle the cabinet looks only at objective factors such as merit and competence, the process is sometimes said to compromise the independence of judges. Particularly in relation to the highest courts, the cabinet is sometimes accused of appointing judges it knows and who have previously worked within the ministries.

An ombudsperson elected by the Riksdag supervises the implementation of laws and other statutes by public bodies, including courts. To that end, the ombudsperson may request opinions and information of any kind.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every Swedish citizen who is at least 18 years old on the day of the election is entitled to vote and may be a member or alternate member of the Riksdag. National referenda have taken place six times in Swedish history, for example, on the prohibition of alcoholic beverages in the 1920s (narrowly voted down) and for membership in the European Union in 1994 (supported). Local referenda take place more often, at the discretion of each municipality.

POLITICAL PARTIES

The Swedish party system is pluralistic, with seven parties represented in parliament after the 2002 elections and a number of other parties active at the local level. A political party is any association or group of voters that presents candidates for election under a particular designation. The main importance of the parties, from a legal point of view, is that they form the parliamentary basis for choosing a prime minister, who then chooses the members of

the cabinet. Apart from that, no real formal responsibilities are placed within the hands of the political parties.

Swedish law does not provide for banning any political party, since freedom of association is understood to mean that parties or organizations as such may never be criminalized, only specific actions. Thus, members of parties inciting, for example, racial hatred, defamation, or violent actions may be prosecuted for those actions, but not the organizations as such. Freedom of association may be restricted only in respect to organizations whose activities are of a military or quasi-military nature or constitute persecution of a population group of a particular race, color, or ethnic origin.

Political parties are primarily financed by state subsidies. Private donations have played a minor role, although the parties are not obliged to reveal their exact sources of income. However, the contributions from the trade unions to the governing Social Democratic Party have long been controversial.

CITIZENSHIP

Citizenship is regulated by ordinary law. A major change took place in 2001, when the idea of dual citizenship was finally accepted in Swedish law. A debate on whether knowledge of the Swedish language should be a requirement for citizenship took place during the election campaign in 2002, but so far, this is not a requirement.

A child of a Swedish father or mother is a Swedish citizen. No citizen who is, or has previously been, domiciled in the realm may be deprived of his or her citizenship unless he or she becomes at the same time a citizen of another state, either with his or her own express consent or because he or she has taken up employment in the public service.

FUNDAMENTAL RIGHTS

According to Article 1 of the Instrument of Government, the right to exercise some basic, fundamental, civil, and political liberties, namely, the freedoms of expression, information, assembly, demonstration, association, and worship, is protected. As far as freedom of expression is concerned, two special constitutional laws regulate the exercise of this freedom in books, journals, and other media.

Negative liberties, such as the right not to divulge or reveal any opinions, are also protected. Capital and corporal punishment are prohibited, as are torture and similar actions. Protection against other physical violations, body searches, house searches, and other intrusions of privacy is guaranteed, although that guarantee is not unconditional.

There are also rights with somewhat weaker protection. They include the right of trade unions to strike and take part in industrial actions, the right to property, and copyright and intellectual property rights. This also applies to the right to trade and the free exercise of a profession, as well as the right of the Sami population to practice reindeer husbandry. All those rights exist unless otherwise provided in an act of law or some similar requirement; as a result, the value of their constitutional protection is somewhat doubtful.

Impact and Functions of Fundamental Rights

While certain fundamental rights apply regardless of nationality to both citizens and foreigners, some are reserved for citizens. Most rights are available to foreigners unless a special provision states otherwise. There are some rights that only apply to Swedish citizens; for example, a citizen is guaranteed that records in a public register may not be based, without consent, on political affiliation.

The character and the wording of fundamental rights generally make it clear that they apply only in relation to the government. The issue of whether they could also be applied in relation to other private persons has not been definitely resolved by the courts, although the answer today among Swedish lawyers would probably be no rather than yes. Swedish courts, in particular the Labor Court (Arbetsdomstolen), have left the door open to apply certain rights, such as the freedom of expression and the protection against bodily searches, in the private sector, notably against employers.

Sweden is often seen as a rather socialist country, with an advanced welfare system and a large public sector. This is typically attributed to the length of Social Democratic Party control; but nevertheless, the fundamental social and economic rights guaranteed in the Instrument of Government itself cannot be considered fairly generous. The right to free basic education for children and general access to the environment is mentioned, but the constitution's basic guarantees mainly concern classical rights protecting the private sphere against the public authorities. The main social and welfare rights are not legally binding. Instead, the personal, economic, and cultural welfare of the private person are but fundamental aims of public activity. It is incumbent upon the public institutions to secure the right to health, employment, housing, and education and to promote social care as well as sustainable development to ensure a good environment for present and future generations. There is thus no tendency in Sweden to anchor the welfare state by constitutional means.

What is even more striking are the weak constitutional tradition and the near-absence of judicial review. The emphasis on popular sovereignty is a much more distinctive trait of the Swedish constitution than any particular ideological tendency, even rights-based.

Limitations to Fundamental Rights

The protection of fundamental rights varies. Some of them are characterized as absolute, in the sense that they may never be limited, while others may be subject

to limitations. Certain rights, such as providing for court proceedings to be open to the public, may be restricted by law or regulation. Restrictions or limitations may be imposed only to satisfy a purpose acceptable in a democratic society. They may never exceed what is necessary to achieve the purpose that occasioned it, nor carried so far as to constitute a threat to the free formation of opinion. Nor may any restriction be imposed solely on grounds of political, religious, cultural, or other ideology.

More detailed criteria exist for limiting freedoms of expression, information, assembly, demonstration, and association. Discrimination or unfavorable treatment in legislation of citizens due to race, color, ethnic origin, or gender is prohibited. However, discrimination on grounds of gender may be allowed as part of an effort to promote equality of men and women.

ECONOMY

It seems hard to claim, in a country with such a weak constitutional tradition as Sweden, that the constitution has any relevance to the economic life or plays any role in the daily transactions of business people. The absence of a strong constitutional tradition has also meant that there has not been great interest among economists in the importance of constitutional rules in general, or in the impact that constitutional rules may have on economic life.

The constitution does, however, contain rules on property and social protection, financial powers, taxation, and budget procedures. The rather high taxes in Sweden have no relation, as such, to the constitutional system, but result entirely from political decisions.

RELIGIOUS COMMUNITIES

Freedom of religion is total, although racial crimes, incitement to hatred, or other acts committed in the name of religion are punished in the ordinary manner. Sweden is a very secular state, where religion cannot be said to play any main part in most people's lives. The formerly strong bonds between the state and the church of Sweden are, since 2001, almost completely cut. Religious communities in general are treated in the same way as other associations and obey the same laws.

In the future, it is possible that the influence of new religious groups in the multicultural society will make religion a more important issue. At the moment, however, this does not seem to be the case.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution contains very few rules on military defense. The most important is the provision that the cabinet may commit the armed forces of the realm, or any part of them, to use force in order to repel an armed attack upon the realm. Swedish armed forces may also otherwise be committed to use force, or be dispatched abroad, provided that the Riksdag consents; that the action is permitted under an act of law; and that a duty to take such action follows from an international agreement or obligation that has been approved by the Riksdag. A state of war may not be declared without the consent of the Riksdag, although the government may authorize the armed forces to use force in accordance with international law in order to prevent violation of Swedish territory in times of peace or during a war between foreign states.

The constitution devotes a special chapter entirely to the circumstances of war and danger of war. Given that Sweden has not participated in a war since 1809, and that this constitution dates from 1974, these provisions have not merited much attention, in political or legal spheres.

Should the realm find itself at war or in danger of war, the cabinet or the speaker must convene the Riksdag in session, in Stockholm or at another convenient place. A special war delegation composed of members of different parties shall replace the Riksdag if necessary. Neither the Riksdag nor the cabinet may make decisions in occupied territory. The constitution includes other important rules, indicating, for instance, that during wartime the cabinet may decide by statute matters that should otherwise be decided by law, or that elections to the Riksdag should not take place unless the Riksdag itself decides so.

AMENDMENTS TO THE CONSTITUTION

The Swedish constitution(s) is easier to change than that of most other countries. Amendments only require two decisions, by a simple majority of the voting members of parliament, before and after a general election. Should a minority of one-third of the members of parliament demand, there is also the possibility of a referendum on a proposal concerning new or amended fundamental law. The result of such a referendum, which takes place on election day, is binding. So far, however, this procedure has never been invoked, possibly as a result of the tradition of consensus between the larger parties on any issues related to constitutional changes. The ease with which the constitutional laws can be amended, in combination with the existence of no fewer than four constitutional laws of which two are of a very technical character, leads to the occurrence of a significant number of constitutional changes every four years. This condition does not promote respect for the constitution as a special, fundamental kind of law.

A new committee revising the constitution has recently been summoned. It is projected to finish in 2008, with implementation envisaged for 2010.

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Joakim Nergelius

SWITZERLAND

At-a-Glance

OFFICIAL NAME
Swiss Confederation (Confoederatio Helvetica)

CAPITAL
Berne

POPULATION
7,317,873; 1,463,574 (20%) foreign nationals (2000)

SIZE
15,943 sq. mi. (41,293 sq. km)

LANGUAGES
German 65%, French 18.4%, Italian 9.8%, Romansch 0.8%, other 6% (1997)

RELIGIONS
Roman Catholic 41.8%, Protestant 35.3%, Muslim 4.3%, other religious communities 3.2%, none 11.1%, no details 4.3%

NATIONAL OR ETHNIC COMPOSITION
German 65%, French 18%, Italian 10%, Romansch 1%, other 6%

DATE OF INDEPENDENCE OR CREATION
Founding of the Swiss Confederation (independence) August 1, 1291; federal state (Confederation) since 1848

TYPE OF GOVERNMENT
Constitutional democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
January 1, 2000

DATE OF LAST AMENDMENT
November 27, 2005

Switzerland is a parliamentary democracy with a clear division of executive, legislative, and judicial powers. By constitutional law, the state's activities are based on and limited by the rule of law. Switzerland is also obliged by the constitution to respect international law.

Organized as a confederation, Switzerland is made up of 26 sovereign cantons. Its federal constitution explicitly declares social goals and provides for far-reaching guarantees of human rights, the essence of which are declared inviolate by the constitution. The federal constitution is widely respected by the public authorities; if a violation of the constitution does occur, there are effective remedies for the individual that are enforceable by an independent judiciary. The judiciary includes a strong Federal Tribunal.

The federal president is not the head of state, because that position does not exist in Switzerland. The president only presides over the Federal Council. The presidency vice presidency rotate annually. The Federal Assembly elects the president and the vice president of the Swiss Confederation each year from among its members following the principle of seniority. The central political figures are the seven federal councilors, elected by the parliament for four-year terms; they are constitutionally obliged to make their decisions as a collective body.

Free, equal, general, and direct elections of Federal Assembly members are guaranteed. The pluralistic system of political parties has intense political impact.

The economic system can be described as a social economy. By constitutional law, Switzerland is obligated to respect the principle of economic freedom; ensure balanced economic development; protect consumers, employees, and the needy; and fight restrictions on competition.

The military is organized as a militia and is subject to the civil government in law and fact.

CONSTITUTIONAL HISTORY

Switzerland is regarded as having been founded in 1291, when the three valley communities of Uri, Schwyz, and Unterwalden (now divided into Nidwalden and Obwalden), the so-called Ur-Kantone, joined to struggle against the rule of the counts of Habsburg, who held the German imperial throne of the Holy Roman Empire and attempted to assert feudal rights in the area. The three communities signed the Letter of Alliance, agreeing to reject any administrative and judicial system imposed from outside. A citizen of each of these communities swore, in early August 1291 at a small meadow named Ruetli, the following oath: "We will be a one and only nation of brothers."

This led to the term *confederation* (in German translated as *Eidgenossenschaft*), which grew further with the adherence of the following cantons: Lucerne in 1332, Zurich in 1351, Glarus and Zug in 1352, Berne in 1353, Fribourg and Solothurn in 1481, Basel and Solothurn in 1501, and Appenzell in 1513. Switzerland's independence of the Holy Roman Empire and its neutrality were officially recognized in 1648 in the Treaty of Westphalia, which ended the Thirty Years War.

In 1798, the armies of the French Revolution conquered the Swiss territory and Napoléon Bonaparte, future emperor of France, unified Switzerland under the name of the Helvetic Republic. The Helvetic Republic was proclaimed and its new constitution confirmed on April 12, 1798, by 121 representatives of the territories Aargau, Basel, Berne, Fribourg, Léman (Vaud), Lucerne, Oberland, Schaffhausen, Solothurn, and Zurich. The new constitution was similar to that of the French Republic. The constitution, imposed on the territories and written by Napoléon, eliminated the federal tradition of Switzerland and established a bicameral parliament, an executive (the board of directors), and a supreme court of justice.

In addition, the Helvetic Republic gave up the traditional policy of neutrality and signed a Treaty of Alliance with France in August 1798. As a consequence of that decision Switzerland became a battleground: Austrian and Russian troops fought French troops on Swiss territories, with the aim of putting the country, or parts of it, under their own control. Throughout the five years of the Helvetic Republic, the country was very unstable politically, as centralists and federalists fought each other.

In 1802, a civil war (the so-called war of the sticks) led to the end of the Helvetic Republic. Napoléon Bonaparte intervened in October 1802 and managed to put an end to the civil war. Realizing that the Swiss people would never accept a centralist state and that it was in his interest to have Switzerland as an ally, Napoléon withdrew his occupying troops. Under his mediation a new constitution (the Mediation Act) was negotiated in March 1803. The Mediation Act, approved by the Swiss people, restored the Swiss Confederation. It gave most of the responsibility to 19 cantons. Six new cantons, Sankt Gallen, Grisons, Aargau, Thurgau, Ticino, and Vaud, were added to the existing 13 cantons.

Switzerland's final boundaries were established in 1815 at the Congress of Vienna, which also recognized the perpetual neutrality of Switzerland. All the European kings and statesmen, after defeating Napoléon, were interested in reducing the influence of France in Switzerland by guaranteeing Swiss neutrality. They also decided that Valais, Geneva, and Neuchâtel would become full members of the Swiss Confederation. Switzerland consisted herewith of 22 cantons, which recovered their sovereignty in all matters except foreign affairs.

The years between 1815 and 1830 are called the Restoration period. Each canton once again minted its own money, imposed taxes and customs, and introduced its own system of weights and measures.

Around 1830, a liberal renewal movement, the Regeneration, began in Switzerland. It demanded full democratic rights and equality between citizens in cities and the countryside. Within one year 12 cantons changed their constitution, established a representative government, abolished aristocratic rule and censorship of the press, and instituted freedom of trade and industry.

In 1847, another civil war broke out, this time between the Catholic and Protestant cantons (the Sonderbundskrieg); it lasted less than one month as General Henri Dufour, leading federal troops, managed to defeat the Catholic conservatives and to end the crisis before the European powers could intervene. The Sonderbundskrieg was the last armed conflict to occur on Swiss territory.

As a consequence of this civil war, in 1848 Switzerland adopted a federal constitution, which, modeled in part on the U.S. Constitution, is regarded as the main instrument for the foundation of modern Switzerland. The Swiss Confederation changed from a group of cantons to a united federal state.

The constitution of 1848 was completely revised in 1874, giving the central government more responsibilities, such as defense, trade, and legal matters. In 1971, the Swiss people voted for women's right to vote in federal elections and to hold federal office.

The last canton to join the confederation was the canton of Jura. In 1978, several French-speaking regions left the canton of Berne, attained independence, and formed the new canton, Jura.

The legal foundation of the Swiss Confederation is the new Federal Constitution of April 18, 1999. It entered into force on January 1, 2000.

FORM AND IMPACT OF THE CONSTITUTION

The Swiss constitution is codified in a single document. It is significant not only as the legal system of the country, but also as a source of fundamental values for the functioning of Swiss society. It is widely respected by the federal and cantonal authorities. All law must comply with the provisions of the federal constitution. Federal law takes precedence over contradicting cantonal law. The

confederation and the cantons also must respect international law.

BASIC ORGANIZATIONAL STRUCTURE

Switzerland is a multiethnic, multilingual, and multireligious parliamentary democracy based on the diversity of its regions. It is a confederation of 26 autonomous cantons. Its present form was established by the 1848 constitution. Switzerland is one of the 23 federal states in the world, the second oldest after the United States of America. Its federal structure is based on three different political levels: the confederation; the 26 cantons, often referred to as the states; and the 2,873 municipalities.

The Confederation

Confederation is the term used in Switzerland to describe the central state. The confederation has authority in all areas in which it is empowered by the federal constitution, for example, in foreign and security policy, customs, and monetary affairs. It has power to pass nationally applicable legislation and controls certain other matters that are in the common interest of all Swiss citizens. Tasks that do not expressly fall within the domain of the confederation are left to the authority of the cantons. The cantons are sovereign, insofar as their sovereignty is not limited by the federal constitution, and they exercise all rights that are not transferred to the confederation.

International relations are a federal matter. According to the constitution, the confederation must strive to preserve the independence and welfare of Switzerland; it must also contribute to alleviation of need and poverty in the world and promotion of respect for human rights, democracy, the peaceful coexistence of nations, and the preservation of natural resources. It shall take into consideration the powers of the cantons and protect their interests.

Federal matters also include legislation in the fields of civil and criminal law and immigration, emigration, and asylum. The postal and telecommunication services as well as radio, television, and other forms of public telecasting of features and information are federal responsibilities. Weights and measures; the production, importation, refining, and sale of distilled spirits; and gambling and lotteries are federally regulated. Additional federal issues include the maintenance and use of the Swiss army, civil protection, transportation, nuclear energy, and fuel pipelines.

The Cantons

Article 1 of the Federal Constitution names the 26 Swiss cantons and guarantees their juridical existence by providing that the Swiss people and the cantons form the Swiss Confederation. A constitutional amendment is required to create or suppress a canton; it must be approved in a national referendum by a majority of votes as well as a majority of cantons.

The cantons differ considerably in geographic area, population size, and economic strength. According to Article 3 of the constitution, the cantons are sovereign insofar as their sovereignty is not limited by the federal constitution; they exercise all rights that are not transferred to the confederation.

Each canton has its own constitution, parliament, executive, and judiciary. According to Article 51 of the constitution, every canton shall adopt a democratic constitution, which must be approved by the people and must be subject to revision if a majority of the people so desire. The canton's legislatures and executives are of great importance, as are the courts. The courts of justice in Switzerland are cantonal, unless there is a final appeal to the Federal Tribunal.

The cantons retain attributes of sovereignty, such as their own procedural law system, the maintenance of law and order, the implementation of federal laws, fiscal autonomy, and the right to manage internal cantonal affairs. This is especially true in the fields of education and culture, the relationship between church and state, public health, commercial policy, taxation, and licensing of gambling. The cantons are also involved in town and country planning, which includes concerns such as the protection of nature and the cultural heritage, energy use in buildings, and the naturalization of foreigners. The cantons, however, no longer have any authority to make civil law and have only limited authority to make criminal law.

The cantons are also entitled to initiate legislation in the federal parliament.

The Local Authorities: The Municipalities

All the cantons are divided into autonomous municipalities or communes, of which there are currently 2,873. This number is declining, however, because of amalgamations of individual communes.

All Swiss people are first and foremost citizens of a commune. It is from this status that they automatically derive citizenship of a canton, and of the country as a whole. Foreigners who wish to become Swiss citizens must apply to the commune where they live.

The autonomy of the municipalities is guaranteed within the limits fixed by cantonal law. The confederation must take into account the possible consequences of its activities on the municipalities, in particular the special situation of cities, urbanized areas, and mountainous regions.

LEADING CONSTITUTIONAL PRINCIPLES

Switzerland is a parliamentary democracy and a confederation, with a strong division of the executive, legisla-

tive, and judicial powers, based on checks and balances. No individual may simultaneously belong to more than one of the three federal authorities—parliament, executive, and Supreme Court. The Swiss constitutional system is defined by a number of leading principles: democracy, rule of law, social welfare, and federalism.

State activity must be in the public interest and proportional to the goals pursued. State organs and officials must act in good faith, and the confederation and the cantons must respect international law. Fundamental rights must be realized throughout the legal system. Whoever exercises a function of the state must respect fundamental rights and contribute to their realization. The authorities shall also ensure that fundamental rights are respected in relationships between private parties, whenever the analogy is applicable.

Political rights protect the free opinion and expression of citizens. Various direct democracy instruments granted to the Swiss people and the cantons, such as popular initiatives, referenda, and political parties, are meant to contribute to the formation of the opinion and will of the people.

CONSTITUTIONAL BODIES

Switzerland has a unique political system. It is different from systems used in most countries, which are based on the dynamics between the administration in power and opposition parties. The Swiss system is based on consensus. National cohesion is achieved by involving the whole population in the decision-making process and by allowing citizens to participate in direct democracy.

The People and the Impact of Direct Democracy

Legislation cannot be vetoed by the executive or reviewed for constitutionality by the judiciary. However, all laws, with the exception of the budget, can be reviewed through a popular referendum before taking effect.

There are very few countries in which people have such far-reaching rights of direct democracy as in Switzerland. The long democratic tradition; the comparatively small size, in terms of both geography and population; and ultimately the high level of literacy and the diversity of media are critical in ensuring the proper functioning of this particular form of state.

Direct democracy has played a key role in shaping the modern Swiss political system. Yet one may question the actual impact of direct democracy on legislative issues that in other countries are the responsibility of elected representatives. On one hand, it could be argued that the impact of direct democracy has been limited. In the first century of using the initiative (1891–2004), only 14 initiatives were passed in Switzerland. Yet to consider this statistic alone ignores the considerable indirect impact of direct democracy. Although the majority of initiatives fail, the fact that there has been an initiative, and therefore a campaign, increases publicity surrounding the issue in question and therefore the public's knowledge of it. This system may well increase pressure on the government to introduce measures dealing with the issue, even if the referendum itself is not successful. Thus many initiatives are filed but subsequently withdrawn when the government decides to act before an initiative reaches the referendum stage.

Another impact of the direct democracy mechanisms is that they force the government to seek a wider consensus regarding the statutory and constitutional measures that it seeks to introduce than it would in a purely representative system. In a representative system, the party of government may, in the absence of a large majority, have to develop cross-party consensus on an issue in order to ensure that the measure is approved. In the Swiss system, the possibility of an optional referendum forces the government to ensure consensus even with groups outside parliament to preclude the possibility that these groups will seek to overturn the new legislation.

Conversely, the significance of direct democracy in the Swiss system is often cited as the cause of the weakness of Swiss political parties and the relatively low significance attached to normal elections. Given the prominence of direct democracy, political parties are not solely responsible for controlling the federal agenda. In addition, direct democracy often raises cross-cutting issues on which members of political parties might not be in agreement.

The Legislative Authority

The Swiss parliament, the Federal Assembly, is the legislative authority of the country elected by Swiss citizens. Subject to the rights of the people and the cantons, it is the highest authority of the confederation. The Federal Assembly may be legally dissolved only after the adoption of a popular initiative calling for a total revision of the federal constitution.

The assembly consists of two chambers with equal powers—the National Council and the Council of States. The chambers legislate, approve treaties, vote on the budget and loans, and supervise the Federal Council and the administration. The bicameral parliamentary system was introduced in Switzerland to ensure that the larger cantons would not dominate the smaller ones.

Both chambers are directly elected by the people. The National Council is elected in accordance with federal rules and the Council of States according to provisions that differ from canton to canton. In both cases, the cantons form the constituencies.

The 200-member National Council represents the Swiss people as a whole. The individual cantons are represented in proportion to the number of their inhabitants, but there is at least one representative from each canton. The members of the National Council are elected by pop-

ular vote to serve four-year terms. The system of proportional representation, the distribution of seats according to the strength of the political parties, makes it possible for small political parties to win one or more seats in the National Council.

The Council of States represents the 26 cantons. Regardless of the size of the canton's population, 20 cantons each send two members to the Council of States, while the six cantons of Appenzell Outer Rhodes, Appenzell Inner Rhodes, Basel-City, Basel-Land, Nidwald, and Obwald send only one member each. The members of the Council of States also serve four-year terms. Only large parties are represented in the Council of States because in all the cantons, except in the canton of Jura, elections to the Council of States use the system of simple majority.

The Lawmaking Process

The process leading to the adoption of a new law is complex and often lengthy. It takes at least 12 months and in extreme cases can take up to 12 years. However, the number of laws adopted has increased greatly in recent years. On average, one new law or amendment enters into force each week.

A new law progresses through five stages: the initiative stage, the drafting stage, the verification stage, the final decision stage, the entry into force.

A bill may be initiated by an individual citizen or interest group, a member of parliament, an administrative department, a canton, or the Federal Council. To prepare a first draft, the Federal Council often sets up a committee of 10 to 20 members, including representatives of interested parties. The draft is then forwarded for consultation to the cantons, parties, associations, and other groups, who are all entitled to state their position and propose amendments. The federal administrative authorities then revise the draft and submit it to the Federal Council. The Federal Council verifies the text: It either refers it again for more detailed consideration or forwards it to the National Council and Council of States for parliamentary debate.

The Speakers of the chambers decide in which chamber the new law is to be debated first. A preparatory committee of the chamber concerned—which is generally one of the 12 permanent committees—discusses the text and presents its conclusions to the whole chamber.

The chamber has three options. First, it may regard the new law as superfluous and take no further action—in which case the text is shelved. Second, it may refer the text back to the Federal Council for revision. Third, it may discuss the law in detail and finally make a decision.

This procedure is repeated in the other chamber: The preparatory committee begins by examining the text adopted by the first chamber. The second chamber then considers the matter in plenary session. It has the same options as the first chamber.

If the decisions of the National Council and Council of States differ, a reconciliation procedure begins. If different versions of the new law still exist after three debates, the conciliation conference, consisting of members of the two committees who worked on the bill, is convened to seek a compromise, which is then submitted to the two chambers for a final vote.

The new law adopted by parliament enters into force unless a referendum is sought within 100 days. For it to be valid, the signature of 50,000 electors must be obtained in favor of a popular ballot. A public vote is compulsory for constitutional amendments, which must win in a majority of cantons.

The Executive Authority

Switzerland's executive branch consists of the seven members of the Federal Council, as well as the federal chancellor. The chancellor, while entitled to propose motions and to speak during the meetings of the Federal Council, has no vote. The Federal Chancellery is the general staff of the Federal Council. One member of the Federal Council is elected for just one year to be the federal president, and another member to be the federal vice president. Their function is mostly representative, and they each continue to administer their own department.

Switzerland has one of the most stable governments in the world. Changes in the Federal Council in practice only occur if a member resigns or dies. A federal councilor remains in office for the entire legislative period and usually serves during multiple assemblies. Every four years, after parliamentary elections, he or she, to remain in office, must submit to reelection by a majority vote, but this is mostly a formality.

The Federal Council, from 1959 to November 2003, was composed of a coalition of all four major parties (a system of power sharing known as concordance). According to the Zauberformel, the unwritten "magic formula," there were two members from the Radical Free Party, two from the Social Democratic Party, two from the Christian Democratic Party, and one from the Swiss People's Party.

This formula was broken after the 2003 elections, when the Swiss People's Party gained 26.9 percent of the vote and a plurality of seats in the National Council and demanded a second seat in the Federal Council. The Federal Assembly acceded to the demand, and a new magic formula was achieved. This was the first time in 131 years that a federal councilor standing for reelection was rejected by the legislative body. Additionally, the Federal Assembly prefers to elect a member of the same language group and sex to replace the resigning member of the Federal Council.

The seven members of the Federal Council, as do the federal chancellor and the members of the Federal Assembly, enjoy immunity.

Although each councilor heads one of the seven departments (ministries) and is responsible for preparing legislation in the field of its authority, the councilors are expected to act neither as individual ministers nor as representatives of their political party. Rather, they take collective *responsibility* for the decisions of the council.

Not only is there no head of state in the confederation, there is also no real opposition party. Another form of opposition exists, however. The proposals made by the Federal Council are often rejected by the Federal Assembly or by the Swiss people, but such a rejection does not lead to a government crisis, votes of confidence, or resignations, because the Federal Council as a body is not dependent on a parliamentary majority.

As the highest governing authority and the supreme executive authority of the confederation, the Federal Council is primarily responsible for the activities of government. It must continuously assess conditions that arise from developments in the state and society and from events at home and abroad. It must define the fundamental goals of state action and determine the resources needed to attain them, plan and coordinate government policy and ensure its implementation, and represent the confederation at home and abroad.

Furthermore, the Federal Council must regularly and systematically scrutinize the work of the federal administrative authorities in order to ensure their efficiency as well as the legality and practicality of their activities. The Federal Council itself takes administrative action only in exceptional cases.

The Federal Council also takes part in the legislative procedure by leading the preliminary proceedings of legislation, submitting federal laws and decrees to the Federal Assembly, and enacting regulations insofar as the federal constitution or federal law empowers it to do so. The council drafts the budget and the state accounts. It can also approve or reject cantonal decrees in certain controversial cases, as long as this is provided for in a federal decree and backed by a referendum.

The Judiciary

The administration of justice is primarily a cantonal function. The cantons dispense justice even when it concerns the application of federal statutes.

On the level of the confederation the Federal Tribunal, made up of the Federal Supreme Court, the Federal Criminal Court (since April 2004), the new Federal Administrative Court, and the independent Federal Insurance Court. The Federal Tribunal represents the highest judicial authority of the country, but its jurisdiction is limited. It is neither an American-type Supreme Court, nor a German Bundesverfassungsgericht, nor a French Conseil constitutionnel. It has no power to declare federal laws unconstitutional, though it may overturn cantonal legislation on those grounds.

Generally speaking, the Federal Tribunal is entrusted with the control of the unity of interpretation of federal law, especially to ensure the uniformity of the civil and criminal codes of the country. The Federal Supreme Court has 30 full-time and 30 part-time judges. The new Federal Criminal Court of first instance currently has 11 judges, and the Federal Insurance Court consists of 11 full-time and 11 part-time judges. The federal judges are elected by the united Federal Assembly on the basis of linguistic, regional, and party affiliation. The period of office lasts six years and the judges are eligible for reelection. In principle, the office is open to all Swiss citizens. No legal training is required under constitutional law, although it is in practice.

The Federal Supreme Court

The Federal Supreme Court has jurisdiction over complaints regarding the violation of constitutional rights or the violation of communal autonomy and other cantonal guarantees. It also hears complaints regarding the violation of international or intercantonal contracts, as well as public law disputes between the confederation and the cantons or between cantons.

On appeal, it reviews the decisions of the highest cantonal courts and other authorities of the confederation to ensure they are compatible with the applicable law. It is the highest court to rule on disputes concerning civil law, criminal law, and public and administrative law (disputes between persons and the state, between cantons, and between the confederation and the cantons).

The new Federal Criminal Court rules in first instance on criminal cases that fall within federal jurisdiction. The future Federal Administrative Court, which is expected to begin its duties in 2007, will replace the Supreme Federal Court in the field of appeals against acts of federal administrative authorities.

The Federal Insurance Court is considered to be an organizationally independent division of the Federal Supreme Court. Its 11 federal judges and 11 part-time judges are responsible for social insurance law as part of administrative law.

POLITICAL PARTIES

The federal constitution provides for political parties to help give form to the opinions and will of the people. A number of different political parties, competing for the favor and the votes of the public, exist in the country. In the 2003 elections, the four major parties gained the support of around 80 percent of the electorate.

CITIZENSHIP

Swiss citizenship is primarily acquired by birth. A child acquires Swiss citizenship if one of his or her parents is a Swiss citizen (*ius sanguinis*). It is of no relevance where a child is born.

Swiss citizenship is derived from membership in a Swiss commune. According to Article 37 of the federal constitution everyone who holds citizenship of a commune and of the canton to which it belongs has Swiss citizenship. It also provides that no one should enjoy privileges or suffer loss because of his or her citizenship. A

foreigner can acquire Swiss citizenship by applying to the commune where he or she lives.

FUNDAMENTAL RIGHTS, CIVIL RIGHTS, AND SOCIAL GOALS

The federal constitution defines fundamental rights in Title 2, Fundamental Rights, Civil Rights and Social Goals, immediately after the general provisions. In doing so, the framers of the constitution have emphasized the fundamental importance of the rights of the people for the smooth functioning of the state and society.

Article 35 declares that the fundamental rights must be realized throughout the legal system. Everyone who performs any state function must respect fundamental rights and contribute to their realization. The authorities must also ensure that fundamental rights are respected in relations among private persons, whenever the analogy is applicable. Article 36 declares that the essence of fundamental rights is inviolable.

The Fundamental Rights

The federal constitution explicitly guarantees the following fundamental rights: human dignity; equality before the law; protection against arbitrariness and the principle of good faith; the right to life and personal freedom; protection of children and young people; the right to aid in distress; the right to privacy; the right to marriage and family; freedom of religion and conscience; freedom of opinion and information; freedom of the media; freedom of language; the right to basic education; freedom of science; freedom of art; freedom of assembly; freedom of association; freedom of residence; protection against expulsion, extradition, and removal by force; the right to property; economic freedom; freedom to form unions and the right to strike; general procedural guarantees; guarantee of access to a judge; guarantees in judicial proceedings; habeas corpus; rights in criminal procedures; and the right of petition.

Civil Rights

Article 34 of the constitution provides that political rights are guaranteed and that these guarantees protect the free formation of opinion by the citizens and the unaltered expression of their will.

Social Goals

The constitution requires the confederation and the cantons, while encouraging personal responsibility and private initiative, to strive to ensure that every person benefits from social security and necessary health care; every family as a community of adults and children is protected and encouraged; every person capable of working is able to sustain himself or herself through work under fair and adequate conditions; every person looking for housing shall find, for himself or herself and his or her family, appropriate housing at reasonable conditions; children, young people, and people of working age shall benefit from initial and continual education according to their abilities; children and young people shall be encouraged in their development to become independent and socially responsible persons, and they shall be supported in their social, cultural, and political integration. Every person shall be insured against the economic consequences of old age, disability, illness, accidents, unemployment, maternity, orphanhood, and widowhood. The confederation and the cantons shall strive to realize the social goals within the framework of their constitutional powers and with the means available to them.

Impact and Functions of Fundamental Rights

Social rights cannot be derived from the social goals, which do not confer any special rights to state services. These social goals remain a program to be followed by public authorities. Fundamental and civil rights, however, are directly applicable to every individual citizen. Fundamental rights, civil rights, and social goals are widely respected in Switzerland.

Limitations to Fundamental Rights

Any limitation of a fundamental right requires a legal basis, it must be justified by the public interest or the need to protect the fundamental rights of other persons, and it must be proportionate to the need. Serious limitations cannot be imposed unless expressly foreseen by statute. The essence of fundamental rights is inviolable.

ECONOMY

The Swiss economic system can be described as a social free-market economy. It combines aspects of social responsibility with market freedom. The constitution itself proclaims an economic system based on free competition. The legislature is thus free to structure the economy, but only according to a set of conditions provided by the framers. Switzerland is not explicitly defined by the constitution as a social state, but the constitution provides for minimal social standards.

RELIGIOUS COMMUNITIES

The federal constitution expressly guarantees complete freedom of religion or philosophical convictions. Everyone has the right to choose his or her religion or philosophical convictions freely and to profess them alone or

in community with others. Everyone has the right to join or to belong to a religious community and to follow religious teachings. No person can be forced to join or belong to a religious community, to participate in a religious act, or to follow religious teachings.

No state church exists, but all cantons support, with public funds, at least one of the three traditional Christian denominations: Roman Catholic, Old Catholic, and Protestant, through the "church tax." Each individual may, however, choose not to contribute to church funding, by declaring that he or she does not wish to be a member of any of the three traditional denominations.

Article 72 of the federal constitution addresses the relation between church and state. The regulation of the relationship is considered a cantonal matter. The confederation and the cantons may, within the framework of their powers, take measures to maintain public peace among the members of the various religious communities.

Foreign missionaries must obtain a "religious worker" visa to work in the country. Requirements include proof that the foreigner would not displace a citizen from performing that job, that the foreign worker would be financially supported by the host organization, and that the country of origin of the religious worker also grants visas to Swiss religious workers.

Religion is taught in public schools. The doctrine presented depends on which religion predominates in the particular canton. However, those of different faiths are free to attend classes of their own creed during the class period. Atheists may also be excused from the classes. Additionally, parents may send their children to private religious schools or teach their children at home.

MILITARY DEFENSE AND CIVIL PROTECTION

According to Article 58 of the federal constitution, Switzerland shall have an army, organized in principle as a militia. The army shall contribute to the prevention of war and the maintenance of peace; it shall defend the country and protect the population. It shall lend support to the civil authorities to repel serious threats to internal security, to master other exceptional circumstances, or to perform additional tasks that statutes may provide.

In urgent cases, the Federal Council may mobilize troops. If it mobilizes more than 4,000 members of the armed forces for active duty, or if the mobilization is expected to last more than three weeks, the Federal Assembly must be convened without delay.

The use of the army is a federal matter. The cantons may engage their troops to maintain public order on their territory if the means of the civil authorities no longer suffice to deter serious threats to inner security. Legislation on the military and the organization, instruction, and equipment of the army is also a federal matter. Within the limits of federal law the cantons may form cantonal units, appoint and promote officers of such units, and furnish a portion of their clothing and equipment.

Every Swiss man must render military service. The law provides for an alternative service for conscientious objectors. Military service is voluntary for Swiss women. Swiss men who render neither military nor alternative service owe a tax. In 2003 Swiss voters approved the military reform project "Army XXI," according to which the size of the Swiss army will be drastically reduced and the mandatory term of service curtailed.

Legislation on civil defense is also a federal matter and has the purpose of protecting individuals and property against the consequences of armed conflicts. The confederation is authorized to legislate matters that concern the intervention of the armed forces in catastrophes and emergencies and has the right to impose mandatory civil defense service for men.

AMENDMENTS TO THE CONSTITUTION

Amendments to the federal constitution can be initiated through popular initiatives and are subject to a compulsory referendum. The initiative mechanism, as does the mechanism for a total revision of the constitution, requires 100,000 valid voters' signatures, collected within 18 months of the filing of the initiative.

A total revision of the federal constitution may be proposed by the people, by one of the two parliamentary chambers, or by the Federal Assembly as a whole. If the initiative emanates from the people, or if the chambers disagree, the people shall decide whether a total revision should be undertaken. Should the people accept a total revision, new elections to both chambers are held.

The government may not violate any mandatory provisions of international law. Similarly, no revision of the federal constitution may violate such provisions. The federal constitution, revised in whole or in part, shall enter into force as soon as it is accepted by the people and the cantons.

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SYRIA

At-a-Glance

OFFICIAL NAME
Syrian Arab Republic

CAPITAL
Damascus

POPULATION
18,016,000 (2005 est.)

SIZE
71,498 sq. mi. (185,180 sq. km)

LANGUAGES
Arabic (official); Kurdish, Armenian, Aramaic, Circassian widely understood; French, English understood

RELIGIONS
Islam (Sunni Muslim 72%, Alawite 11%, other Muslim communities 4%) 87%, Christian (Syrian Orthodox, Greek Orthodox, Armenian Orthodox, Copt, Protestant, Armenian Catholic, Chaldean Catholic Church, Maronite Church, Melkite Greek Catholic, Syrian Catholic, Roman Catholic) 8.5%, Druze 1.7%, Jewish, Yazidi, and other 2.8%

NATIONAL OR ETHNIC COMPOSITION
Arab 90.3%, Kurd, Armenian, and other 9.7%

DATE OF INDEPENDENCE OR CREATION
April 17, 1946 (from League of Nations mandate under French administration)

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Centralist state

TYPE OF LEGISLATURE
Unicameral People's Council

DATE OF CONSTITUTION
March 13, 1973

DATE OF LAST AMENDMENT
June 17, 2000

Syria's system of government is a presidential democracy. There is a written constitution that provides for a republican form of government and stipulates that the people are the ultimate source of national sovereignty. The president is vested with broad executive and legislative powers. There are very few checks on presidential authority. Syria has had 13 presidents since independence and two under the current constitution.

Syria is a centralist state, divided into governorates that enjoy little autonomy. The state is still constitutionally declared to be a member of the 1971 Federation of Arab Republics (FAR).

The president is the head of state, the chief executive, and the secretary of the ruling Baath Party. Ministers are responsible to the president of the republic. The prime minister enjoys only limited influence. While members of parliament are elected, there is no multiparty system and the electoral process does not attain certain democratic standards.

The constitution provides for guarantees of both generations of human rights. The Constitutional Court can be charged with reviewing the conformity of laws with the constitution.

The constitution provides for an economic system that is socialist. Syria has been reluctant to move toward a liberal market economy and privatization. Syria is not an Islamic state; however, the religion of the president of the republic must be Islam and Islamic jurisprudence is a main source of legislation. A state of emergency was proclaimed in 1963 and has not been lifted since. Justifying its official title, the "permanent" constitution of Syria has only been amended a few times since 1973.

CONSTITUTIONAL HISTORY

Syria is situated in what is broadly called the Middle East. The territory had been occupied successively by Canaan-

ites, Phoenicians, Hebrews, Arameans, Assyrians, Babylonians, Persians, Greeks, Romans, Nabataeans, Byzantines, Arabs, and other groups before it was under the control of the Ottoman Turks in 1516.

When World War I (1914–18) broke out, the Ottoman Empire (centered in today's Turkey) sided with the German Empire and Austria-Hungary. The Allies, including the United States, France, the United Kingdom, and Russia, held out to the Arabs the hope of postwar independence in order to gain support against the Ottoman Empire. At the same time, Britain, France, and Russia signed the secret 1916 Sikes-Picot Agreement to divide the Middle East among them. In addition, the 1917 British Balfour Declaration promised the establishment of a national home for the Jewish people in the region.

The Ottoman Empire was defeated and an independent Arab Kingdom of Syria was established in 1920 under King Faysal of the Hashemite family (later king of Iraq and the brother of Jordan's King Abdullah). Its draft constitution was based generally on the Ottoman constitution of 1876. This was a last-minute attempt to foil the implementation of the Sikes-Picot Agreement. French troops occupied Syria later that year, after France had been given a mandate over the country by the League of Nations, an international organization founded after World War I. A mandate was a treaty between the league and the mandatory power, which was charged with establishing an independent administration for the long term. Under the Middle East mandates, the area that roughly now comprises Syria and Lebanon was assigned to France, and the area that now comprises Israel, the territories of the Palestinian Authority, and Jordan was assigned to the United Kingdom.

After the dissolution of Syria's Constituent Assembly, the French high commissioner issued a constitution on his own authority in 1930. The French territories were organized as a federation, within which each single state had its own constitution. Syrian nationalist groups forced the French to evacuate their troops in 1946, leaving the country in the hands of a republican government formed during the mandate.

With the proclamation of an independent state of Israel in 1948, a series of Arab-Israeli Wars began, several of them involving Syria. In 1948 Syria, together with Egypt, Iraq, Transjordan, Lebanon, and other Arab states, refused to accept the 1947 United Nations Partition Plan for Palestine and attacked Israel. After a year of fighting, separate cease-fire agreements were signed. The armistice line (Green Line) left Israel with more of the territory of mandatory Palestine than it had been assigned in the partition plan. The Gaza Strip and the West Bank of the Jordan were annexed by Egypt and Transjordan, respectively. Palestine ceased to exist as a political and administrative entity.

After the 1956 Suez War, the subsequent remilitarization of the Egyptian Sinai, and the closure of the Straits of Tiran, Israel attacked Egypt in 1967. In this 1967 Arab-Israeli War, Israel faced Egypt, Jordan, and Syria as allied enemies while other Arab states had already begun to mobilize their armed forces. As a result of the war, which lasted only six days, Israel annexed East Jerusalem (annexed previously by Transjordan) and gained control of the Sinai Peninsula (Egypt), the Gaza Strip, the West Bank, and the Syrian Golan Heights. The 1973 Arab-Israeli War, between a coalition led by Egypt and Syria and Israel, was a war to win back territory. It resulted in another cease-fire.

These external activities involving Syria were accompanied by internal political instability and a series of military coups, which began in 1949. The rise and fall of regimes were reflected by several rather short-lived constitutional documents. Syria became a unitary parliamentary state with the 1950 constitution. However, its democratic provisions were soon undermined by the military.

Planned mergers with other Arab states either were short-lived or did not materialize at all. In 1958, Egypt and Syria merged and adopted a provisional constitution for the United Arab Republic, but by 1961 Syria had already seceded, reestablishing itself as the Syrian Arab Republic and reinstituting the 1950 constitution. Members of the Arab Socialist Resurrection Party (Baath Party) initiated a takeover in 1963. The Baath Party, founded in the 1940s on the model of European nationalist movements, embraced secularism, socialism, and pan-Arab unity. It attracted many supporters in Iraq, Syria, Jordan, and Lebanon. In 1963, Egypt, and the now Baath-controlled Syria and Iraq, agreed on a referendum of unity and another draft constitution. This tripartite federation, however, did not materialize.

After Syria was defeated in the Six-Day War, conflicts emerged within the ruling Baath Party. Evidence for these conflicts included the 1970 retreat of Syrian army forces that had marched to support the Palestinian Liberation Army (PLA) in Jordan.

Minister of Defense Hafiz al-Assad took power in a bloodless military coup in 1970. The People's Council was chosen and a national referendum confirmed Assad as the new president. Proclaimed in 1971, the Federation of Arab Republics (FAR) was another attempt at political integration, this time consisting of Egypt, Libya, and Syria; it too, did not materialize.

In 1973, the current "permanent" Syrian constitution took effect and elections were held. This constitution resembled the 1971 Egyptian constitution and reaffirmed the ideological premise that Syria is a part of the "Arab nation." Syria was constitutionally declared to be a member of the FAR. In the late 1970s, insurrections against the secular Baath government by fundamentalist Sunni Muslims led to major clashes, and ultimately the destruction of the city of Hama in 1982.

Another Arab-Israeli war began in 1982, the Lebanon War. Israel attacked the Palestine Liberation Organization (PLO) and seized a "security zone" in the south, while Syrian and Muslim Lebanese forces occupied their own military zones in the country—Lebanese in the south, Syrians in the Beka'a Valley. Israel started to with-

draw its forces in 1985 and completed the withdrawal in 2000.

After ongoing protests from the Lebanese people in 2005, Syria also withdrew from Lebanon troops that had been stationed there since 1976 when Syria intervened in the Lebanese civil war, first on behalf of the Maronite Christians and later switching to back Sunni Muslim groups. Syria is still formally at war with Israel, which still occupies the Golan Heights and imposes its jurisdiction there. The Syrian government maintains the state of emergency, proclaimed in 1963, which freezes several articles of the constitution.

Syria is a founding member of the League of Arab States (LAS).

FORM AND IMPACT OF THE CONSTITUTION

Syria's constitution is codified in a single document consisting of 156 articles. It tops the hierarchy of domestic norms. International treaties take precedence over national legislation. The Syrian constitution does not include any article that specifically declares itself, or the international treaties Syria has signed, as the supreme law of the state. However, Article 311 of the Syrian court procedure gives precedence to treaties, when it states that the "commitment to the above mentioned rules does not contravene provisions of treaties held between Syria and other states in this regard." The Supreme Constitutional Court examines and decides the constitutionality of laws, which can be referred to the court by a small number of official actors.

According to Article 3 of the constitution, Islamic jurisprudence is a, not *the,* main source of legislation.

Article 153 of the constitution stipulates that legislation in effect and issued before the proclamation of the constitution remains in effect until it is amended to be compatible with constitutional provisions. However, laws in force and issued before the declaration of the constitution that are not consistent with its articles have never been amended; the effect has been a freezing of certain constitutional articles, such as those related to the judiciary.

BASIC ORGANIZATIONAL STRUCTURE

Syria is a centralist state. It is divided administratively into 14 provinces, one of which is Damascus. The minister of the interior proposes governors, who are appointed by the cabinet. Each governor is assisted by an elected provincial council.

The constitution reaffirms the long-held premise that Syria is a part of the "Arab nation." Syria is still constitutionally declared a member of the 1971 FAR.

LEADING CONSTITUTIONAL PRINCIPLES

Syria's system of government is a presidential democracy. It is a republic. Sovereignty is vested in the people. Power is divided among the executive, legislative, and judicial branches. According to the constitution, the judiciary is independent and includes a constitutional court.

Chapter 1 contains basic political, economic, educational, and cultural principles. Article 1 reads: "The Syrian Arab Republic is a democratic, popular, socialist, and sovereign state. No part of its territory can be ceded. It is a member of the Union of the Arab Republics. The Syrian Arab region is part of the Arab homeland."

The constitution is also "based" on five major principles that are explained in the preamble. These principles can be summarized as follows: (1) the idea of an Arab revolution to achieve the Arab nation's aspiration for unity, freedom, and socialism; (2) the reality that the nation is divided and that collective defense is needed should certain dangers occur; (3) the march toward the establishment of a socialist order; (4) the citizens' freedom and popular democracy; and (5) the world liberation movement for freedom, independence, and progress. The constitution as a whole shall "serve as a guide for action to the Syrian people's masses so that they will continue the battle for liberation and construction." In the words of the former president, Hafiz al-Assad, the 1973 constitution was to be the first Arab constitution to make socialist nationalist thought its guiding principle.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president of the republic and the cabinet, the People's Council, and the Supreme Constitutional Court.

The President of the Republic

The president is both the head of state and the chief executive officer of the executive administration.

The presidential candidate is proposed by the Arab Socialist Baath Party regional command and then nominated by parliament. The nominee must be confirmed for a seven-year term in a referendum. In practice, this person runs unopposed, as the current president did in 2000. The president is eligible for unlimited successive terms. A candidate for presidency must be an Arab Syrian Muslim and be over 34 years of age.

The president plays a key role in Syria's political life, thanks to the great range of executive and legislative powers attached to this office. The president appoints and dismisses the prime minister and the other cabinet ministers. Additionally, the president appoints top civil servants and military officers as well as the members of the Supreme Constitutional Court. Through consultation

with the cabinet the president establishes the state's general policy and supervises its implementation.

The president can dissolve the People's Council after explaining his reasons. The constitution does not specify any grounds for dissolution, but the president may not dissolve it more than once for the same reason. Elections are held within 90 days of dissolution.

The president may also appoint an unlimited number of vice presidents. In practice, there are two, one with responsibility for political and foreign affairs, the other for internal and party affairs.

The Council of Ministers

The cabinet is the highest executive and administrative body. It consists of the prime minister (also known as the president of the Council of Ministers), the deputy prime ministers, and the cabinet ministers. The ministers are responsible to the president of the republic. A cabinet minister can also be a member of the People's Council.

As a result of the far-reaching powers of the president, the role of the prime minister is rather secondary.

The People's Council

The People's Council is part of the legislative authority. It has 250 members and is elected for four years. The term can be expanded by law only in a state of war.

Among others powers, it nominates the president of the republic, approves or amends laws (but does not initiate them), debates cabinet policy, and approves the budget. It may also withhold confidence in the cabinet or a cabinet minister.

A no confidence vote must be submitted by at least one-fifth of the members of the council. When confidence has been withheld from the whole cabinet, the prime minister must submit the cabinet's resignation to the president of the republic.

The president's liability to the assembly is limited to cases of high treason. A request for indictment requires at least one-third of the members; the indictment itself needs a two-thirds majority decision in an open vote at a special secret session.

The Lawmaking Process

The president may draft bills and submit them to the People's Council for approval. The president assumes legislative authority when the council is not in session, provided that all the legislation issued by him is referred to the council in its subsequent session. In certain cases of national interest the president can assume legislative authority even when the People's Council is in session.

The council can repeal or amend the legislation by a two-thirds majority of the members attending the session, provided their number is not less than the absolute majority and that the amendment or repeal does not have a retroactive effect. Therefore, the people's Council's power to nullify the decree is rather nominal. If the council does not reject or amend the bill, it is considered approved without the need for any further vote.

Legislation issued by the president during the interim period between two councils is not referred to the council; it becomes permanent law.

The president promulgates the laws approved by the council. The president may veto these laws, within a month after receiving them, but must provide the reasons for the objection. If the council again approves them by a two-thirds majority, the president must promulgate them.

The draft budget must be transmitted to the council two months before the start of the fiscal year and must be approved to go into effect. After approval of the budget, the council can approve laws on new expenditures and revenues.

In practice, most Syrian laws are initiated by the administration and are adopted with little debate by a large majority.

The Judiciary

The Syrian judicial system is a synthesis of Ottoman, French, and Islamic laws. According to the constitution, the judicial authority is independent. The Council of State shall exercise administrative jurisdiction.

Syrian courts of general jurisdiction are divided into three levels. The first level consists of the magistrate courts, the courts of first instance, juvenile courts, and customs courts. The second level consists of courts for appeals, divided into civil and criminal chambers. The Court of Cassation is at the top level and has sections for civil, commercial, criminal, and personal status matters.

A separate court system exists for personal status cases. The law provides for sharia courts (for both Sunni and Shiite Muslims), Druze courts, and other religious courts (for Christians and Jews). In addition to the courts of regular jurisdiction and the personal status courts, Syria has several specialized court systems. These include military courts, economic security courts, a supreme state security court, and some administrative courts.

The State Supreme Security Court, established in 1968, operates under an order from the martial law governor. It is not committed to public trials and its rulings are irreversible; however, they must be endorsed by the president of the republic. Martial Field Courts, also established in 1968, examine crimes committed during time of war or during ordinary military operations if the minister of defense decides to refer the cases. Both courts were set up prior to the current constitution, and, according to reports by human rights organizations, these courts have exceeded their legal authority.

The Supreme Constitutional Court examines and decides on the constitutionality of laws, which a small number of official actors have the right to present to it. It cannot examine the constitutionality of a law passed by referendum. The court also has other duties, including jurisdiction over election disputes and the trial of the

president of the republic. It is the president, however, who appoints all its members, to four-year, renewable terms; that may be the reason why the Supreme Constitutional Court is not a powerful actor in legal and political life.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Syrians above the age of 18 have the right to vote in elections. The president can hold public referenda on important issues that affect the country's highest interests. The results of the referenda are binding and effective on the date of their promulgation.

Parliamentary Elections

The members of the People's Council are elected by general, secret, direct, and equal ballot in accordance with the election law. The constitution requires that at least half the council members be workers and peasants. The election is held within 90 days of the date of the expiration of the previous council's term. According to the majority vote system, two candidates, one of whom is necessarily a worker or a peasant, are elected in each constituency.

The Baath Party and eight other smaller political parties compose the National Progressive Front (NPF), originally established in 1971. In the 2003 elections, the government allowed independent non-NPF candidates to run for just 83 seats in the People's Council. According to international observers, these elections could not be characterized as free and fair.

POLITICAL PARTIES

The National Progressive Front represents the only framework for legal political party participation for citizens. It remains dominated by the Baath Party and thus does not undermine the one-party character of the political system. It is the constitution itself that defines the Socialist Arab Baath Party as the leading party in society and the state.

The government has banned all political activities by Syrian Kurdish parties. A 1980 law imposed the death penalty for membership in the Muslim Brotherhood.

CITIZENSHIP

Syrian citizenship is primarily acquired by birth; a child acquires Syrian citizenship if one of his or her parents is a Syrian citizen. It is of no relevance where a child is born. Syrian citizenship is regulated by law. Special facilities are guaranteed for expatriates, their sons, and citizens of Arab counties.

FUNDAMENTAL RIGHTS

In Part 4, Freedoms, Rights and Public Duties, the constitution distinguishes between human rights that apply to every human being and those that apply to Syrian citizens only. The state protects the personal freedom of the citizens and safeguards their dignity and security. Citizens are equal before the law in their rights and duties. Freedom of expression and freedom of assembly are guaranteed for citizens. Work is a right and duty of every citizen. The state undertakes to provide work for all citizens. Freedom of religion is guaranteed for all.

Impact and Functions of the Fundamental Rights

The current decades-long state of emergency has had a negative impact on fundamental or human rights in Syria. The constitution prohibits arbitrary arrest and detention; however, because of the state of emergency, significant problems remain in practice. International human rights organizations constantly report serious human rights violations in Syria, such as arbitrary detention, disappearances, and torture.

Syria has ratified the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both have precedence over national legislation. These covenants require the state to provide immediate information as to which constitutional provisions have been suspended in a state of emergency. According to the covenants, certain rights, such as the right to life and freedom of thought, conscience, and religion, may not be suspended even then.

Human rights in Islam are rooted in the belief that God is the lawgiver and the source of all human rights. This widespread assumption is reflected, for instance, in the regional Arab Charter on Human Rights (ACHR), which was adopted by the Council of the League of Arab States in 1994. Compared to the 1966 covenants, which are explicitly mentioned in the Arab Charter on Human Rights, the latter reduced the number of rights that cannot be suspended in cases of emergency. The Arab Charter on Human Rights also includes the right of every state to enact laws further restricting the rights stipulated in it. This approach seems to contradict the stipulation of "inalienable" universal rights, irrespective of belief.

Limitations to Fundamental Rights

Apart from the state of emergency, the Syrian constitution allows other possible limitations to fundamental rights. Article 27 generally provides that "citizens exercise their rights and enjoy their freedoms in accordance with the law." Freedom to hold any religious rites is guaranteed only as far as it does not "disturb the public order."

ECONOMY

According to the constitution, the state economy is a planned socialist economy that seeks to end all forms of exploitation. It recognizes three categories of property. One category is the property of the people, which includes natural resources, public domains, nationalized enterprises, and state-run establishments. A second category consists of collective property, which includes assets owned by popular and professional organizations. Finally, there is private property. Individually owned property shall not be expropriated except for the public interest and in return for just compensation in accordance with the law.

President Asad has taken initiatives to ease state control over the economy. However, Syria is still very reluctant to move toward a liberal market economy and privatization.

RELIGIOUS COMMUNITIES

The constitution requires that the president be Muslim but does not declare Islam the state religion. Freedom of faith is guaranteed and the state generally respects all religions in terms of fact and of law. The current president himself is an Alawite and therefore belongs to a minority religious group, albeit one that exercises enormous influence in the government and military.

MILITARY DEFENSE AND STATE OF EMERGENCY

Conscription is compulsory for all Syrian males under the constitution. It requires all men above the age of 18 to perform military service for 30 months. Exemptions are available for students and only sons, or for reasons of health. Voluntary recruitment is open to men and women.

The president is the supreme commander of the army and the armed forces. The president can declare war and general mobilization and conclude peace after approval by the People's Council. Syria is formally still at war with Israel, which occupies the Golan Heights. The international community has repeatedly attempted to initiate peace negotiations.

The president can declare and terminate a state of emergency in a manner stated by law. On the basis of an emergency law, Syria's president announced the state of emergency by decree in 1963. The decree explicitly provided that it would "be submitted to the first meeting of the People's Council," that is, each term after a new government has been formed. The government has justified martial law by the state of war that continues with Israel and by continuing threats posed by terrorist groups. The state of emergency in Syria has thus become a permanent legal status rather than an exceptional one.

AMENDMENTS TO THE CONSTITUTION

The president, as well as a two-thirds majority of the People's Council, have the right to propose amendments to the constitution. Upon receipt of the proposal, the council establishes a special committee to investigate it. The amendment must be approved by a two-thirds majority and by the president of the republic.

Justifying its title, the "permanent" constitution of Syria has been amended very few times since 1973. The provision that the president must be of Islamic faith was one such amendment. Another, in 2000, reduced the mandatory minimal age of the president from 40 to 34 years.

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Michael Rahe

TAIWAN

At-a-Glance

OFFICIAL NAME
Republic of China, Taiwan

CAPITAL
Taipei

POPULATION
22,604,550 (end of 2003)

SIZE
13,887 sq. mi. (35,967 sq. km)

LANGUAGES
Mandarin Chinese (official), Taiwanese (Min), Hakka dialects

RELIGIONS
Buddhist, Confucian, and Taoist 93%, Christian 4.5%, other 2.5%

NATIONAL OR ETHNIC COMPOSITION
Taiwanese (including Hakka) 84%, mainland Chinese 14%, indigenous 2%

DATE OF INDEPENDENCE OR CREATION
January 1, 1912

TYPE OF GOVERNMENT
Republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 25, 1946

DATE OF LAST AMENDMENT
June 7, 2005

Taiwan is a republic with a strong presidency. Its current 1947 constitution was drafted for all of China, of which the island of Taiwan was a province. With the Communist takeover of the mainland the Chinese government and army retreated to Taiwan. The relationship of Taiwan with mainland China remains delicate today. Fundamental rights are protected by the constitution. State and religion are separated. Taiwan has a market-oriented economy.

CONSTITUTIONAL HISTORY

The island of Taiwan has been ruled as a part of China for several hundred years. Any discussion of its constitutional development must therefore begin with the history of constitutionalism in China. Taiwan was ruled by Japan from 1895 to 1945, but the Japanese occupation had no lasting effect on the political history of the island.

Constitutionalism in the modern sense emerged in China under the Qing (Ch'ing) dynasty (1644–1911/12 C.E.). The Sino-Japanese War (1894–95) was the final blow in a series of humiliating interventions in China by foreign powers. In 1905, the Qing dispatched five delegates to observe and study the Japanese constitutional monarchy, which had successfully built Japan into a powerful modern state. Upon their return, the delegates recommended that China adopt the Japanese model. In 1906 an imperial edict supporting the idea was issued.

In 1908, the government proclaimed the 23 Articles, the founding principles of constitutionalism, and set forth a nine-year implementation schedule or tutelage period. On October 10, 1911, the Wuhan (Wuchang) uprising began, ushering in the Xinhai Revolution, which overthrew the monarchy. In a final attempt at reform the Qing promulgated the 19 Tenets. In February 1912 the Qing court proclaimed the decree of abdication.

The Republic of China was proclaimed in 1911 by revolutionaries under the leadership of Sun Yat-sen (1866–1925). The new Republic of China adopted the 19 Tenets as its first constitutional document, though it remained largely a dead letter. In the elections to parliament the Nationalist Party (Kuomintang), made up largely of former revolutionaries, won a commanding majority. Several consecutive constitutions (1912, 1923, 1936, 1947) were passed. They introduced a number of Western constitutional principles such as the rights and duties of the people and a three-branch government. The 1947 constitution was based on Chinese constitutional ideas, with the addition of elements of the 1919 German Weimar constitution. Amended several times, it is the core of today's constitutional law of Taiwan. It includes a blanket human rights clause in Article 22.

Soon after the adoption of the national constitution, the Kuomintang led by Chiang Kai-shek were defeated in mainland China by the Communist Revolution and retreated to Taiwan, where it declared a Communist Rebellion Period and imposed martial law. The national constitution assumed a merely nominal existence, as the dictatorial presidency held total control over the exercise of power. This situation truly contradicted the spirit and legitimacy of democratic constitutional law.

It was only in 1991 that the period of the Communist Rebellion was officially terminated. The constitution was amended seven times from 1991 to 2005, successfully ending the era of dictatorship.

Taiwan is recognized as an independent state by a number of other states, but not by the United States. Taiwan's relationship to mainland China has remained politically delicate since the Beijing government claimed national supremacy over the island.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is contained in one document together with Additional Articles. It takes precedence over all other national law. Framed for all of China under very different circumstances than those of today, it no longer reflects the actual needs of Taiwan.

In form, the constitution adopted the Five Power Constitution and division of powers theories of Sun Yat-sen, but in substance it implemented the cabinet system of the 1919 German constitution of the Weimar Republic.

BASIC ORGANIZATIONAL STRUCTURE

Taiwan is a unitary state structured in 16 counties and five municipalities. The 1947 constitution in theory applies to all of China including the mainland. In this framework, Taiwan has the status of a province. According to the constitution, "all levels of local government below the provincial level have self-government."

LEADING CONSTITUTIONAL PRINCIPLES

The constitution of Taiwan is based on the constitutional theory of Sun Yat-sen. It calls for a fivefold division of powers among the executive, legislative, judicial, control, and examination *yuan* (government bodies). The central government combines the cabinet and presidential systems of government.

CONSTITUTIONAL BODIES

The constitutional law of Taiwan establishes a complex framework with regard to the central organs, which mainly consist of the president, and the five branches of government, namely, the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan. After seven constitutional revisions, the key to the system is the relationship among the president, the Executive Yuan, and the Legislative Yuan.

The President

The president is the head of state. He or she is directly elected by the people of the "free area" of the Republic of China. The president serves a four-year term and can be reelected to serve only one consecutive term. The president represents the state in foreign affairs and has supreme command of the army, navy, and air force. The president promulgates laws and issue mandates; declares martial law; appoints and dismisses the members of the Executive Yuan (with the cooperation of the Legislative Yuan) and other civil and military officers; confers honors and decorations; exercises the powers of amnesty, pardon, remission of sentence, and restitution of civil rights; and exercises the powers of concluding treaties, declaring war, and making peace.

The president may, within 10 days or passage by the Legislative Yuan of a no confidence vote against the president of the Executive Yuan, declare the dissolution of the Legislative Yuan after consulting its president. However, the president cannot dissolve the Legislative Yuan while martial law or an emergency decree is in effect.

The Executive Yuan

The Executive Yuan is the highest administrative organ of the state. It has a president (equivalent to a prime minister), a vice president, and a number of ministers, chairs of commissions, and ministers without portfolio. The president of the Executive Yuan is appointed by the president of the republic with the approval of the Legislative Yuan; the other cabinet members are appointed by the president

of the republic upon the recommendation of the president of Executive Yuan.

The Legislative Yuan has the power to pass a motion of no confidence against the president of the Executive Yuan, who must then resign. However, after such passage, the Executive Yuan may ask the president of the republic to dissolve the Legislative Yuan. The existence of this option encourages the Legislative Yuan to act with caution with regard to motions of no confidence. The actual workings of the mechanisms depend on the decisions of the political parties.

The Judicial Yuan has noted, in a crucial ruling, that the constitution establishes a system of checks and balances between the president of the republic and the president of the Executive Yuan. The constitutional basis for this statement can be found in the articles pertaining to the issuance of emergency orders. Pursuant to current constitutional law, the Executive Yuan should be considered responsible to the Legislative Yuan rather than to the president of the republic, but this has not yet been fully implemented. In practice, the relationships among the president of the republic, the Executive Yuan, and the Legislative Yuan require clarification.

The Legislative Yuan

The Legislative Yuan is the highest legislative organ of the state; it exercises legislative power on behalf of the people. The Legislative Yuan has 225 (from December 2007 onward: 113) members. Some members are elected from a nationwide constituency and by Chinese citizens residing abroad, on the basis of proportional representation among political parties. The remainder are elected by popular vote in individual constituencies. Members of the Legislative Yuan serve a term of four years and are reelectable. The Legislative Yuan has a president and a vice president elected from among its members.

The Legislative Yuan has the power to decide by resolution matters such as statutory bills, budgetary bills, auditing reports, or bills concerning martial law, amnesty, declaration of war, conclusion of peace, treaties, and other important affairs of the state. It exercises the power of consent over the appointment of the president, vice president, and grand justices of the Judicial Yuan; the president, vice president, and members of the Examination Yuan; and the president, vice president, auditor general, and members of the Control Yuan.

The Lawmaking Process

Every bill, after it is passed by the Legislative Yuan, requires support from a majority in the cabinet or Executive Yuan. This dualist power structure allows for diverse political arrangements and shifts of powers among executive departments, subject to strict regulations.

Before the 1997 revision of the constitution, if the cabinet returned a bill to the Legislative Yuan for reconsideration, the latter needed a two-thirds majority vote to overrule the objection. Now it needs only a majority of all the members. This amendment will reduce the likelihood that the Executive Yuan will reject bills passed by the Legislative Yuan. The greatest hurdle for a system in which the president is head of administration as well as head of state will be the resistance of the Executive to implementation of bills passed by a Legislative Yuan under the control of a different political party.

The Judicial Yuan

The Judicial Yuan is the highest judicial organ of the state. It establishes subordinate organs, including courts of various instances, administrative courts, and the Committee on the Discipline of Public Functionaries. It is responsible for the trial of civil, criminal, and administrative cases and for the disciplinary punishment of public employees. The Judiciary Yuan is composed of 15 grand justices, including a president and a vice president selected from among them. Each grand justice of the Judicial Yuan serves an individual term of eight years and cannot serve another consecutive term. Grand justices are nominated and, subject to consent by the Legislative Yuan, appointed by the president of the republic. Among the grand justices nominated by the president in the year 2003, eight members, including the president and the vice president of the Judicial Yuan, will serve for four years. The remaining grand justices will serve for eight years. The Council of Grand Justices of the Judicial Yuan is responsible for interpreting the constitution.

The Examination Yuan

The Examination Yuan is the highest organ of the state dealing with the civil service. It is responsible for matters relating to screening of civil servants: their security of tenure, pecuniary aid in case of death, retirement, and old-age pension, as well as legal matters relating to the employment, discharge, official performance grading, salary scales, promotion and transfer, and awards and commendations of civil servants. These responsibilities are shared by the Ministry of Examination, the Ministry of Civil Service, the Civil Service Protection and Training Commission, and the Supervisory Board of the Public Service Pension Fund. The Examination Yuan comprises a president, a vice president, and 19 members, who serve six-year terms. They are all nominated and, with the consent of the Legislative Yuan, appointed by the president of the republic.

The Control Yuan

The Control Yuan is the highest control or audit organ of the state; it exercises powers of consent, impeachment, censure, and auditing. It is composed of 29 members, including a president and a vice president, who serve six-year terms. All of these are nominated and, with the consent of the Legislative Yuan, appointed by the president of the republic. The Control Yuan establishes the Ministry of Audit, responsible for auditing various public organs across the nation. The auditor general serves a

term of office of six years and is nominated and, with the consent by the Legislative Yuan, appointed by the president of the republic.

THE ELECTION PROCESS

All Taiwanese above the age of 20 have the right to vote in the elections.

Members of the Legislative Yuan are elected by a mixed system of single nontransferable votes and by proportional representation. The president and the vice president are elected by direct vote of all citizens.

POLITICAL PARTIES

Taiwan has a pluralist system of political parties. The formerly overwhelming position of the Kuomintang Party has given way to make room for other important political parties in recent years. The grand justices of the Judicial Yuan also form a Constitutional Court to adjudicate matters relating to the dissolution of unconstitutional political parties.

CITIZENSHIP

Citizenship is primarily acquired by birth. The principle of *ius sanguinis* is applied. This means that a child acquires Taiwanese citizenship if one of his or her parents is, at the time of that child's birth, a Taiwanese citizen. It is of no relevance where a child is born.

FUNDAMENTAL RIGHTS

The constitution places strong emphasis on fundamental human rights: Articles 7 to 22 of Chapter 2 of the constitution all underline the importance of the protection of fundamental rights. The constitution guarantees a wide range of human rights. The general equal treatment clause is contained in Article 7, which guarantees that all citizens of the Republic of China are equal before the law, irrespective of their sex, religion, ethnic origin, class, or party affiliation. Article 8 guarantees personal freedom.

Impact and Function of Fundamental Rights

The executive government has taken steps to improve respect for human rights. Almost all restrictions on the press have ended, restrictions on personal freedoms have been relaxed, and the prohibition against organizing of new political parties has been lifted. Besides the fundamental rights already mentioned, Article 22 guarantees "all other freedoms and rights of the people," unless they are detrimental to social order or public welfare.

Limitations to Fundamental Rights

There is a general limitation clause, which provides that none of the freedoms and rights can be abridged by law except such laws as are necessary to prevent infringement upon the freedoms of others, to avert an imminent danger, to maintain social order, or to promote public welfare.

ECONOMY

The national economy is constitutionally based on the Principle of People's Livelihood. The constitution seeks to effect the equalization of land rights and regulate private capital in order to assure an equitable distribution of national wealth and sufficiency for the people's livelihood.

Private property is protected by the state. However, private wealth can be restricted, if it is deemed detrimental to the balanced development of national wealth and people's livelihood. Liberalization of the economy has diminished the dominant role of state-owned enterprises. Taken as a whole, the Taiwanese economic system can be described as a market-oriented economy.

RELIGIOUS COMMUNITIES

Freedom of religious belief is guaranteed. It is generally respected by the executive government in terms of law and fact. There is no state religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

Citizens are constitutionally obliged to perform military service. General conscription requires all men to perform basic military service from January 1 of the year after they become 18 until December 31 of the year they become 40 years of age. Generally, men undergo 22 months of training. They may choose alternative nonmilitary national service instead.

The president is the supreme commander of the army, navy, and air force of the country. The Additional Articles to the Constitution of the Republic of China stipulate that the president may, by resolution of the Executive Yuan Council, issue emergency decrees and take all necessary measures to avert imminent danger affecting the security of the state or of the people, or to cope with any serious financial or economic crisis.

AMENDMENTS TO THE CONSTITUTION

The Legislative Yuan can amend the constitution on its own initiative. Upon proposal and by resolution of

the Legislative Yuan, a bill to amend the constitution may be ratified by the majority of citizens through a referendum.

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Tsi-Yang Chen

TAJIKISTAN

At-a-Glance

OFFICIAL NAME
Republic of Tajikistan

CAPITAL
Dushanbe

POPULATION
7,011,556 (July 2004 est.)

SIZE
55,251 sq. mi. (143,100 sq. km)

LANGUAGES
Tajik (official) and Russian (language of international communication)

RELIGIONS
Sunni Muslim 85%, Shia Muslim 5%, other 10% (2003 est.)

NATIONAL OR ETHNIC COMPOSITION
Tajik (including Islmaili Pomiri) 64.9%, Uzbek 25%, Russian 3.5%, other 6.6%

DATE OF INDEPENDENCE OR CREATION
September 9, 1991

TYPE OF GOVERNMENT
Authoritarian presidential regime

TYPE OF STATE
Centralistic state with federal elements

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 6, 1994

DATE OF LAST AMENDMENT
June 22, 2003

Tajikistan is a presidential autocracy with a strong president exercising control over executive, legislative, and judicial powers. The president appoints and dismisses the administration, the judges, and the members of the Majlisi Milli, the upper chamber of the parliament. Free, equal, direct, fair, and transparent elections are guaranteed by the constitution. However, none of the elections has met minimal democratic standards.

Tajikistan is made up of five provinces, including the city of Dushanbe and the Mountainous Badakhshan Autonomous Province. The constitution provides for fundamental human rights and allows individuals and government institutions to appeal to the Constitutional Court to protect those rights. Religious freedom and state noninterference in religious matters are guaranteed, but not implemented.

CONSTITUTIONAL HISTORY

According to the present-day Tajik leadership, the first Tajik state was the Persian-speaking Samanid Empire (875–999 C.E.), which ruled what is now Tajikistan and neighboring areas under the ruler Ismail Somoni, the "founding father" of the Tajik nation. In the early 13th century, the Tajik territory was incorporated into the realm of the Mongol conqueror Genghis Khan. After his death in 1227, Genghis Khan's empire was split among his sons. In the late 14th century, one of his relatives, Amir Timur (Tamerlane), conquered not only today's Tajik territory, but also vast parts of Russia, Persia, and Turkey. Starting from the 16th century Tajikistan was ruled as part of the Khanats of Kokand and Bukhara. After a series of attacks that began in the 1860s, during the "Great Game" between the British and the Russian Empires for supremacy in Central Asia, the Tajik people were under Russian rule, which continued after 1917 under Soviet auspices. In 1924, Tajikistan was styled an Autonomous Soviet Socialist Republic within Uzbekistan; in 1924 it was reorganized as a Soviet Socialist Republic. After the failure of the 1991 Moscow hardliners' coup, Tajikistan reluctantly declared its independence on September 9, 1991.

In 1992–97, a civil war pitted old-guard regionally based ruling elites against disenfranchised regions, liberal

reformists, and Islamists loosely organized in the United Tajik Opposition (UTO). By 1997, the Tajik government and the UTO successfully negotiated a power-sharing peace accord, which was implemented in 2000.

On November 6, 1994, a new constitution was adopted by referendum to replace the 1978 constitution of the Tajik Socialist Soviet Republic and the 1977 constitution of the Soviet Union. The post-Soviet constitution was amended several times, most recently on June 22, 2003.

FORM AND IMPACT OF THE CONSTITUTION

Tajikistan has a written constitution, codified in a single document that takes precedence over all other national law. International law is a constituent part of the Tajik legal system and has precedence over Tajik laws.

BASIC ORGANIZATIONAL STRUCTURE

Tajikistan is a centralistic state, made up of five provinces (*viloyatlar*), including Dushanbe city and the Mountainous Badakhshan Autonomous Province. The provinces differ considerably in geographical area, population size, and economic strength.

The Mountainous Badakhshan Autonomous Province is an integral and indivisible part of the Republic of Tajikistan. Its territory cannot be changed without the consent of its own parliament; a right to secede from Tajikistan is not stipulated in the constitution.

Each province is governed by a chairperson of the *hukumat,* or province administration, who is appointed and dismissed by the president upon approval of the relevant local parliament. The chairperson of the *hukumat* is the president's representative, responsible before the higher executive bodies and assembly of the province.

LEADING CONSTITUTIONAL PRINCIPLES

Tajikistan's system of government is dominated by the president, who controls the executive, legislative, and judicial power. The judiciary is not fully independent.

The Tajik constitutional system is defined by a number of leading principles: state sovereignty, democracy, supremacy of the constitution and the law, separation of state and religion, and centralism. According to the constitution, Tajikistan is a social state; its policy is aimed at providing at least minimal living conditions for all.

Political participation is restricted, as key positions (e.g., chairpersons of *hukumats*) are appointed by the president. The lower chamber of the Tajik parliament and the parliaments of districts and towns are directly elected.

The rule of law is proclaimed. All state bodies, public associations, and citizens must act according to the constitution and the law. State and religion are separated.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the administration; the bicameral parliament, the Supreme Assembly or Majlisi Oli; and the Constitutional Court.

The President

The president is the head of state and exercises the executive power. The president protects the constitution, laws, and the rights and freedoms of the citizens; guarantees the unity, national independence, territorial integrity, stability, and continuity of the state; ensures the functioning of the bodies of state power; and implements international treaties. The constitutional term of the president is seven years. The same person can be elected twice.

The president appoints and dismisses the prime minister and other ministers with the consent of the Supreme Assembly; the chairpersons of the provinces, districts, and towns with the approval of the relevant assembly; with the approval of the Ministry of Justice the president also appoints the prosecutor-general and the judges of all major courts.

The Administration

The administration implements the executive power. Formed by the president, it comprises the prime minister, the prime minister's deputies, cabinet ministers, and chairpersons of state committees.

The administration "ensures the successful leadership of economic, social, and spiritual spheres and the implementation of laws and decrees of the Supreme Assembly, and orders and decrees of the president of Tajikistan."

The Majlisi Oli (Parliament)

The Majlisi Oli, the Supreme Assembly, is the main representative body. It comprises two chambers—the National Assembly (lower chamber) and the Assembly of Representatives (upper chamber). The term of the Majlisi Oli is five years.

The Majlisi Namoyondagon is the lower chamber of the Majlisi Oli. It consists of 63 deputies, of whom 41 are elected in single-mandate constituencies and 22 are assigned to the parties on the basis of proportional representation. The Majlisi Namoyondagon sits permanently.

The Majlisi Milli is the upper chamber. It has 33 members, eight directly appointed by the president and 25 elected indirectly by the provincial assemblies. The Majlisi Milli acts on a convocational basis.

Besides adopting laws, both chambers share responsibility with the administration for defining the major

directions of the republic's domestic and foreign policy; they adopt the state budget and confirm ministerial and presidential decisions. Whereas the Majlisi Namoyondagon has the prerogative of legislative initiative, the Majlisi Milli can either approve or veto its acts; the latter has power to fill key government positions.

The Lawmaking Process

The right of the legislative initiative belongs to the Majlisi Oli, the president, the administration, the Constitutional Court, the Supreme Court, the Supreme Economic Court, and the Assembly of People's Deputies of Badakhshan. A law legally goes into effect after it has been adopted by the Majlisi Namoyondagon, approved by the Majlisi Milli, signed by the president, and published in the media. If a law is rejected by the Majlisi Milli or the president, the Majlisi Namoyondagon can overturn the decision.

The Judiciary

The judicial system comprises the Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, and the Court of Badakhshan. All high-ranking judges are elected by the Majlisi Milli on the suggestion of the president. All lower-ranking judges are directly appointed and dismissed by the president on the suggestion of the Ministry of Justice. Their term of service is five years. According to the constitution, judges are independent and are subordinate only to the constitution and law. Interference in their activity is not permitted.

The Constitutional Court consists of seven judges, one of whom is a representative of the Badakhshan. It ranks at the same level as the Supreme Court, the Supreme Economic Court, the Military Court, and the Court of Badakhshan. It deals with constitutional disputes submitted by the government agencies with legislative initiative authority and individuals.

THE ELECTION PROCESS

All Tajik citizens over the age of 18 have the right to vote. Citizens who have been permanent residents in the country for at least seven years and have reached the age of 25 or 35, respectively, may stand for election to the Majlisi Namoyandagon and Majlisi Milli.

To be registered as a candidate in the presidential election, one has to be between the ages of 35 and 65, know the state language, and have lived on Tajik territory for the past 10 years. Citizens who have been judicially certified as insane, as well as those imprisoned upon verdict, may neither vote nor stand for election.

According to reports of international organizations, all elections held so far have fallen short of international election standards. They have lacked transparency, accountability, fairness, and secrecy.

POLITICAL PARTIES

The constitutional right to form political parties and other public associations is limited through provisions that ban organizations that encourage racism, nationalism, social and religious enmity, or hatred; or advocate the forcible overthrow of the constitutional structures; or form armed groups. Among the six registered political parties is the Islamic Revival Party. Several nonregistered political parties operate illegally in the underground.

CITIZENSHIP

On the day of adoption of the constitution, all people living on the territory of Tajikistan became Tajik citizens. Nowadays, Tajik citizenship is acquired at birth if one of the child's parents holds Tajik citizenship or, by an adult, after living on Tajik territory for five years.

FUNDAMENTAL RIGHTS

The constitution defines the fundamental rights of individuals and citizens in its second chapter. The traditional set of individual rights, and political, economic, and social rights are emphasized.

Impact and Functions of Fundamental Rights

According to the constitution, all Tajik citizens have equal rights and freedoms and are equal before the law, without discrimination by nationality, race, sex, language, religious belief, political persuasion, social status, knowledge, and property. Men and women enjoy equal rights. Citizens' rights and freedoms, established by constitution and laws, are not inalienable; they can be abolished by a constitutional change.

Limitations to Fundamental Rights

According to the constitution, the freedoms and rights of individuals and citizens are protected by the constitution, the laws of the republic, and international documents recognized by Tajikistan. Only a court decision may limit citizens' rights and freedoms.

ECONOMY

The constitution specifies that the economic system is based on various forms of ownership and structured by a set of conditions. Among them are the freedom of economic activity and entrepreneurship, equality of rights, and equality and legal protection of all forms of ownership. The constitution also defines social rights (to work, leisure, housing, health care, social security, and education).

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a basic human right. According to the constitution, religious organizations and associations must be separate from the state and must not interfere with state affairs.

In reality, however, religion and state clearly interface in many ways. The government appoints the mufti as the supreme Muslim religious authority and controls nonstate religious associations such as Hizbut Tahrir. The religiously affiliated Islamic Revival Party is represented in parliament, and Islamists loosely organized in the United Tajik Opposition are included in the government.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president is the chief commander of the armed forces, appointing and dismissing their commanders. The president also has the right to declare a state of war and a state of emergency, which must be approved by the Majlisi Oli.

A state of emergency may be declared as a temporary measure (not longer than three months) to ensure the security of citizens and the state when there is a direct threat to the rights and freedoms of citizens or to the independence or territorial integrity of the state and when natural disasters prevent the normal operations of the constitutional authorities. Even during a state of emergency, certain specified rights and freedoms may not be limited. The Supreme Assembly may be dispersed.

General conscription requires all men over the age of 18 to perform basic military service of 24 months. In addition, there are professional contract soldiers who serve for fixed periods in the Tajik army. The Tajik government has obliged itself by international treaties not to produce atomic, biological, or chemical weapons.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be changed by referendum. Certain features are irrevocable, such as the form of public administration, territorial integrity, and the democratic, law-governed, and secular nature of the state.

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Marie-Carin von Gumppenberg

TANZANIA

At-a-Glance

OFFICIAL NAME
The United Republic of Tanzania

CAPITAL
Dodoma

POPULATION
34,569,2321 (2002 population census) with population density of 36 people per sq. km

SIZE
364,905 sq. mi. (945,100 sq. km)

LANGUAGES
Kiswahili (national and official), English (official)

RELIGIONS
Roman Catholic 50%, Islam 40%, Protestant 7%, traditional belief, Buddhism and other 3% (est.)

NATIONAL OR ETHNIC COMPOSITION
Approximately 130 Bantu ethnic groups 97%, Indian and Arab descendants 3%

DATE OF INDEPENDENCE OR CREATION
Tanganyika (December 9, 1961; republic December 9, 1962); Zanzibar (December 10, 1963, revolution January 12, 1964); United Republic of Tanzania (April 26, 1964, union of Tanganyika and Zanzibar)

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
April 26, 1977, Constitution of the United Republic of Tanzania; 1985 Constitution of Zanzibar

DATE OF LAST AMENDMENT
April 6, 2005

The United Republic of Tanzania is a union of the two states of Tanganyika (on the mainland) and Zanzibar (on islands) founded on April 26, 1964. It is a parliamentary democracy and a unitary secular state. It is based on the rule of law with separation of executive, judicial, and legislative powers. The constitution is the supreme law of the land. The executive is accountable to the legislature and to the judiciary, which is independent.

The Constitution of the United Republic of Tanzania guarantees fundamental human rights. All public authorities are subject to the constitution. The Special Constitutional Court of the United Republic of Tanzania is established to protect human rights against violations. It is mandated to interpret the constitution.

Tanzania has been a multiparty democratic state since 1992 and has had a free-market economy since the 1990s. The military is subject to the civil government under the constitution.

CONSTITUTIONAL HISTORY

Tanzania was colonized in different phases. After the scramble for and partition of Africa that followed the 1884–85 Berlin Conference, Tanganyika fell under German colonial rule, and Zanzibar under British control. After World War I (1914–18) Britain took over Tanganyika as well. At the end of World War II (1939–45) Tanganyika became a United Nations Trust Territory under British control. By that time, Britain had imposed its own legal system.

Tanganyika gained independence with a Westminster system of government, whereby the head of the executive administration was the prime minister (Julius Kambarage Nyerere) while the head of state was the British monarch (Queen Elizabeth II). The people of Tanganyika soon declared a republic, which was inaugurated on December 9, 1962. With this change, Nyerere became president and head of state.

Zanzibar became independent of British rule on December 10, 1963. A month later, on January 12, 1964, a violent revolution overthrew the sultan and suspended the constitution of the State of Zanzibar. On April 26, 1964, the two independent states decided to form a union. The Articles of Union of Tanganyika and Zanzibar were to remain in effect in the new United Republic of Tanzania for one year. In 1965 the Interim Constitution of Tanzania was enacted. On April 26, 1977, the permanent constitution of the United Republic of Tanzania was enacted by the National Assembly. This basic law continues to apply in both parts of the union.

FORM AND IMPACT OF THE CONSTITUTION

The United Republic of Tanzania has a permanent written constitution codified in a single document called the Constitution (Katiba ya Jamhuri ya Muungano wa Tanzania). The constitution is the supreme law of the United Republic of Tanzania; any law inconsistent with it is declared null and void. All laws enacted must conform to the constitution, and international law must be in accordance with the constitution to be applied.

BASIC ORGANIZATIONAL STRUCTURE

Tanzania is divided into 26 administrative regions. There are 21 regions in Tanzania Mainland and five regions in Tanzania Zanzibar. Dar es Salaam is a distinct commercial city within Tanzania. The regions are subdivided into districts, divisions, wards, villages, and hamlets.

LEADING CONSTITUTIONAL PRINCIPLES

Tanzania is a sovereign united republic. It is guided by a number of principles: It is a democratic society, founded on the principles of freedom, justice, fraternity, and concord. Its government must adhere to the principles of democracy and socialism. The executive is accountable to a legislature composed of elected members who are representatives of the people. The judiciary is independent and dispenses justice without fear or favor, thereby ensuring that human rights are preserved and protected and that the duties of every person are faithfully discharged.

CONSTITUTIONAL BODIES

Tanzania has the following constitutional bodies: the executive (which comprises the president, vice president, prime minister, cabinet, and government); the legislature (the parliament, composed of the president and the National Assembly, or Bunge la Jamhuri); and the judiciary (Mahakama), which is independent in order to ensure separation of powers and checks and balances.

The Executive

The president is the head of state, the head of the executive administration, and the commander in chief of the armed forces. He or she is democratically elected to a five-year term of office and can be reelected for one more consecutive term. The vice president is the principal assistant to the president in all matters; in particular, the vice president assists the president in supervising the day-to-day implementation of union matters and performs all duties of the office of the president when the president is out of the country or is not functioning as president.

The president appoints a prime minister, who supervises the day-to-day functions and affairs of the executive administration. He or she also manages the executive's relations with the National Assembly.

The Legislature

Legislative power over all union matters, and of all matters concerning Tanzania Mainland, is vested in the parliament, which consists of two elements—the president and the National Assembly. The National Assembly is vested with powers to oversee and advise the executive administration on behalf of the people. The president may attend parliament but has no right to vote on any matter. The parliament is vested with the power to deliberate upon and ratify all treaties and agreements to which the United Republic is a party.

Legislative power in Tanzania Zanzibar is vested in the House of Representatives. If the House of Representatives enacts any matter that is within the legislative power of parliament, that law shall be null and void, and likewise if the National Assembly enacts any law on a matter within the purview of the House of Representatives, that law shall be null and void. There are specific union matters in which both Tanzania Mainland and Tanzania Zanzibar have jurisdiction and must cooperate. These include the constitution of Tanzania and the government of the United Republic, foreign affairs, defense and security, police, emergency powers, citizenship, immigration, external borrowing and trade, service in the government of the United Republic, income tax, ports, and all matters related to transport, mail, communication, higher education, industrial licensing and statistics, mineral resources, the National Examinations Council of Tanzania, the Court of Appeal of the United Republic, and registration of political parties. The legislature oversees the executive branch in the exercise of its duties.

The Lawmaking Process

The National Assembly is responsible for enacting laws for the United Republic of Tanzania. It does so by debat-

ing and passing bills that eventually have to be assented to by the president. The president can either approve or disapprove a bill passed by the assembly. In the latter case, the president returns the bill to the National Assembly together with a statement of his or her objections. The National Assembly must wait six months to resend the bill to the president; even then, it must pass the bill by a majority of two-thirds of all members of parliament. Then the president has two choices: to assent to the bill within 21 days or to dissolve parliament.

After the president's assent, the cabinet minister responsible for that matter gives notice of the law through the government *Gazette*. Cabinet ministers and others who have departmental responsibilities have the power under the constitution to make regulations that have the force of law. These need not go to the National Assembly.

The Judiciary

The judiciary is officially independent. The Court of Appeals of the United Republic of Tanzania is the supreme court of the country. There are High Courts both in Tanzania Zanzibar and Tanzania Mainland, with concurrent jurisdiction. The High Courts have original jurisdiction in all civil and criminal matters.

The Special Constitutional Court of the United Republic deals with constitutional and union matters. The court has the power to interpret the provisions of the constitution.

THE ELECTION PROCESS

Every citizen who has attained the age of 18 years is entitled to vote in any public election held in Tanzania. This right is subject to other provisions of the constitution.

POLITICAL PARTIES

The constitution guarantees a multiparty system. The multiparty system was first legalized in 1992, and the first multiparty election was held in 1995. Political parties are subject to registration; there are 14 political parties in Tanzania.

CITIZENSHIP

Citizenship in Tanzania is acquired by birth, naturalization, or affiliation. The Citizenship Act of 1995 specifies the conditions for granting, losing, and resuming citizenship.

FUNDAMENTAL RIGHTS

Chapter 3 of the constitution, Articles 12–24, enshrines the fundamental rights (the Bill of Rights). The Bill of Rights binds both individuals and state agencies.

The preamble to the constitution also mentions freedom, fraternity, justice, and concord as founding principles. The 1994 Basic Rights and Duties Enforcement Act was enacted to provide procedures for the enforcement of the fundamental rights.

Impact and Functions of Fundamental Rights

The United Republic of Tanzania is a democratic state. There is no democracy without fundamental rights. Thus, the fundamental rights are the core upon which the society is based, and the guarantee of good governance in line with the rule of law. A Commission on Human Rights and Good Governance has been established to promote these goals.

Limitations to Fundamental Rights

Human rights and freedoms as set out in the constitution have their reasonable limits. There is a general limitation clause (Article 30), which provides the parameters within which the fundamental rights may be enjoyed. Fundamental rights may be limited by the rights, reputation, and privacy of others; by the public interest in defense, safety, order, or public morality; or in the interest of ensuring the fair execution of justice.

ECONOMY

The constitution provides for a number of economic rights such as the right to property, the right to work with appropriate remuneration, and freedom of movement. Although there is no mention of a specific economic system, the current economic status of the United Republic of Tanzania is determined as a social market economy despite the principle of socialist democracy.

RELIGIOUS COMMUNITIES

The United Republic of Tanzania is a secular state. Everyone has the right to freedom of religion. Religious bodies manage their own affairs without interference from the state authorities.

MILITARY DEFENSE AND STATE OF EMERGENCY

The armed forces are responsible for the defense and security of the territory and the people of Tanzania, pursuant to the laws. Members of the defense and security forces are prohibited from joining any political parties, although they may vote in elections; this includes the police and the prison service as well as those in national service, whether on temporary or permanent terms.

The president, as commander in chief of the armed forces, has the power to declare war; he or she commands military operations connected with the defense of the United Republic, as well as rescue operations to save lives and property in times of emergency, whether within or outside the country. No one may establish a private armed force within the territory of the United Republic.

AMENDMENTS TO THE CONSTITUTION

Article 98 of the constitution specifies procedures for amending the constitution and certain other basic laws. Parliament enacts a law for amending the constitution by a vote of not less than two-thirds of all members of parliament from Tanzania Mainland and not less than two-thirds of all members of the parliament of Tanzania Zanzibar.

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Chacha Bhoke

THAILAND

At-a-Glance

OFFICIAL NAME
Kingdom of Thailand

CAPITAL
Bangkok

POPULATION
65,444,371 (2005 est.)

SIZE
198,457 sq. mi. (514,000 sq. km)

LANGUAGES
Thai (official) and English; Chinese, Lao, Malay, and ethnic dialects (Mon-Khmer, Tibeto-Burman, and Miao-Yao)

RELIGIONS
Buddhist 95%, Muslim 3.8%, Christian 0.5%, other (including Hindu and Sikh) 0.3%, unaffiliated 0.4%

NATIONAL OR ETHNIC COMPOSITION
Thai 75%, Chinese 14%, other (including hill tribes such as Karen, Hmong, Mien, Lahu, Akha, and Lisu) 11%

DATE OF INDEPENDENCE OR CREATION
1238 (traditional founding date)

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
October 11, 1997 (suspended on September 19, 2006)

DATE OF LAST AMENDMENT
No amendment

Thailand is a constitutional monarchy based on the rule of law with a clear division of executive, legislative, and judicial powers. Between 1932 and 2006, Thailand had 16 constitutions and 20 military coups.

Organized as a unitary state, it is made up of 76 provinces. The king is the head of state and appoints all ministers, but the king's function is mostly representative or symbolic. The strong prime minister is the chief executive. The prime minister must be appointed from among the members of the House of Representatives. The bicameral National Assembly consists of the Senate and the House of Representatives. The constitution includes a number of provisions designed to prevent conflicts of interest between public officials and private business. Thai constitutional law recognizes the significance of judicial independence. A constitutional court is charged with interpreting the constitution.

The constitution provides for far-reaching guarantees of human rights. However, civil rights are sometimes compromised by the discrepancy between government behavior and legal norms as well as by the authorities' selective application of established law. Thailand has achieved a pluralistic system of political parties and a well-differentiated system of interest groups. The economic system can be described as a social market economy. Religious freedom is guaranteed and Buddhism is the official religion of Thailand. According to the constitution, the military is subject to the civil government. However, following a military coup on September 19, 2006, the constitution was suspended.

CONSTITUTIONAL HISTORY

A unified Thai kingdom was well established by the mid-14th century C.E with the Kingdom of Sukothai. According to tradition, the city of Sukhothai was part of the Khmer Empire (centered in today's Cambodia) until 1238, when Thai chieftains seceded and established the Kingdom of Sukhothai (1238–1438). Its decline coincided with the rise of the Ayutthaya Kingdom in the south (1350–1767). Ayutthaya's system of government was based on the

Hindu concept of divine kingship; however, Theravada Buddhism was introduced as the official religion—to differentiate the kingdom from the neighboring Hindu kingdom of Angkor.

During the following centuries, a feudal system prevailed. By the 18th century the Kingdom of Siam (as the country was known until 1939) had become an absolute monarchy. The king is often referred to as Rama, from the Hindu deity.

Although the country was never formally taken over by any European colonial power, it began to open itself to Western powers in the 19th century. The process began with the 1855 Treaty of Friendship and Commerce with Great Britain.

In 1932, the absolute monarchy was abolished by a young Western-oriented political elite known as the promoters. A permanent constitution was promulgated that year (December 10 marks Constitution Day). It provided for a quasi-parliamentary regime in which the executive and legislative powers were vested in a unicameral legislature, the National Assembly. Suffrage was limited, and half the members of the assembly were appointed by the executive administration in power. Real power resided with the "promoters," who relied on backing from the army and the People's Party.

The first parliamentary elections in the history of Thailand were held in 1933. King Prajadhipok (Rama VII, 1925–35) abdicated two years later. His 10-year-old nephew, Ananda Mahidol (Rama VIII, 1935–46), was named king to succeed him, and a regency council was appointed to carry out the functions of the monarchy.

During World War II (1939–45), the country was governed by Prime Minister Phibun Songgram and his nationalist regime. It changed the name of the country to *Thailand,* which means "Land of the Free" (Muang Thai) in the Thai language. The pro-Japanese policy of the regime was opposed when Japanese forces started to occupy the country. Phibun was forced from office and replaced by the predominantly civilian government led by Pridi Bonomyong.

This government drafted a new constitution that established a bicameral legislature in 1946. The lower house was elected by popular vote and the upper house was elected by the lower house. The elections, which in fact preceded the formal enactment of the constitution, were the first in which political parties participated. The new constitution provided for a Constitutional Tribunal. This was a response to a famous Supreme Court judgment on the constitutionality of the War Criminal Act no. 1/2489, which had been enacted after the war. Before that decision, there was an ongoing debate as to which organization should be competent to consider the issue as to the constitutionality of a law. After the mysterious death of the king, who had recently returned from Europe, rumors spread and Prime Minister Pridi resigned.

The late king's younger brother, Bhumibol Adulyadej, Rama IX, succeeded to the throne. In the following years, Thailand saw a series of military coups d'état, the first with the return of Phibun to power. The 1949 constitution was suspended by the government and the 1932 constitution was declared in force again. A revised constitution was promulgated in February 1952, and elections were held for seats in the new, unicameral legislature. Nearly all the appointed members of parliament were army officers. Steps toward more democracy were stopped after university students protested against the elections, and a state of emergency was declared.

In 1973, students and workers again rallied in the streets to demand a more democratic constitution and genuine parliamentary elections. The king succeeded in negotiating a compromise, and a new constitution took force the following year.

Military power continued to limit parliamentary government. The 1978 constitution reestablished a bicameral legislature, in which the military-controlled Senate could block initiatives in important areas. Army rule ended in 1992 amid bloody fighting in the streets of Bangkok (known as Black May or Bloody May). In 1995, after having abolished absolute monarchy 60 years before, Thailand conducted its first genuine parliamentary elections free of military veto.

In 1997, a regionwide economic crisis accompanied the adoption of the current constitution. It was drafted by a 99-member Constitutional Assembly chosen by the National Assembly. Public consultation was an important aspect. Among the underlying problems to be addressed were the corruption and instability of civilian government. The constitution introduced proportional representation for some seats and established an independent election commission. It also strengthened the role of the prime minister, further separated executive and legislative functions, and reinforced a system of checks and balances.

Thailand is an active member of the regional Association of Southeast Asian Nations (ASEAN).

FORM AND IMPACT OF THE CONSTITUTION

Thailand has a written constitution, codified in a single document of 336 sections. Called the Constitution of the Kingdom of Thailand (or, informally, the people's constitution), it takes precedence over all other national law. The constitution is supplemented by eight obligatory organic laws to govern matters such as political parties and election procedures. International law must be in accordance with the constitution to be applicable within Thailand.

BASIC ORGANIZATIONAL STRUCTURE

Thailand is a unitary state made up of 76 provinces, called *changwat,* including the metropolitan area of Bangkok.

The provinces are administered by appointed governors (*phuwarachakan*) and divided into districts, subdistricts, and villages. Governors of the provinces are career civil servants appointed by the Ministry of Interior, whereas Bangkok's governor is popularly elected. The autonomy of the municipalities and the principle of self-government are constitutionally recognized.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution takes five general principles as its starting point: First, Thailand is a unified and indivisible kingdom. It is a democracy, in which sovereignty resides with the people. People enjoy equal protection and are guaranteed the constitutionality of laws.

Chapter 5 of the constitution contains directive principles of state policy that serve as policy guides for legislation and the administration of state affairs. Among other provisions, they obligate the state to protect and uphold the institution of kingship and the independence and the integrity of its territories. The state maintains the armed forces, upholds the democratic regime of government, and fosters national development. The state is also directed to promote friendly relations with other countries and adopt the principle of nondiscrimination. Other directive principles urge the state to patronize and protect Buddhism as well as other religions, to promote and encourage public participation, and to prepare a political development plan.

CONSTITUTIONAL BODIES

Sovereignty belongs to the people of the nation, with the concurrence of the king (assisted by a Council of State), and exercised through the National Assembly, the Council of Ministers, and the courts, as stipulated by the constitution. Other constitutional bodies are the ombudspersons, the National Human Rights Commission, the National Anti-Corruption Commission, and the independent Election Commission.

The King

The king's sovereign power emanates from the people. The 1924 Palace Law on Succession provides for only male succession to the king. However, the constitution allows the king to change this law at will to make female succession possible in the future. The king is the head of state. The king exercises legislative power through parliament, executive power through the cabinet, and judicial power through the courts. The monarch is endowed with a formal power of assent and appointment; however, he is above partisan affairs and does not interfere in the decision-making process of the government.

The Buddhist king is expected to conform to the 10 principles of royal good governance derived from the teachings of the Lord Buddha. In practice, the current king exerts strong informal influence but has never used his constitutionally mandated power to veto legislation or dissolve parliament.

Royal succession is organized by the constitution and the 1924 Palace Law on Succession, which forbids a princess to inherit the throne. The king appoints his successor in accordance with the law on succession, which may only be amended by himself. However, if the king does not name his successor, the Council of State submits the name of the successor to the National Assembly and asks for approval. In this case (when the king does not name his successor) the Council of State may submit a name of a princess. The successor is then invited to ascend the throne and proclaimed by the president of the National Assembly.

The Council of State

The Council of State, or Privy Council, renders advice to the king, on his request, on all matters pertaining to monarchical functions. All 18 councilors are appointed by the king.

The Parliament

The bicameral National Assembly (Rathasapha) consists of the Senate and the House of Representatives. The Speaker of the House of Representatives is also the president of the National Assembly. The president of the Senate is the vice president of the National Assembly.

The National Assembly's main functions are to promulgate laws, to monitor the administration of state affairs, and to endorse or reject the administration's program.

Senate (Wuthisapha)

The Senate consists of 200 members, who, since 1977, are all elected by the people for a term of six years. The president of the Senate is elected for the full six-year term.

The main functions of the Senate are to scrutinize draft laws that have passed the House of Representatives and to sit together with the house to consider various important matters. It also monitors the administration, nominates persons for royal appointment such as the justices of the Constitutional Court, and has the power to impeach allegedly corrupt politicians. The Senate's monitoring powers are exercised through questioning, general debate, and the right to set up committees. Every senator has the right to question any minister on matters under the minister's responsibility. A motion for a general debate must be supported by three-fifths of the senators.

There are two categories of session, each lasting 120 days. During a legislative session only legislative work is permitted, on bills, government decrees, amendments to the constitution, and treaties. The Senate's supervisory function is restricted during these sessions; questions are

permitted, but there may be no no confidence vote or motion of censure. Those matters can be dealt with during an ordinary session.

Under the 1997 constitution, the Senate has the duty to enact all of the required organic laws called for by the constitution within the time limits specified. If the House of Representatives is dissolved, full lawmaking authority passes to the Senate. The Senate cannot be dissolved.

House of Representatives (Sapha Phuthaen Ratsadon)

The House of Representatives consists of 500 members, who serve for a four-year term. Its main functions are to initiate and deliberate on draft laws, to scrutinize the budget, and to select the prime minister from among the members of parliament. It can also dismiss the prime minister or any cabinet minister, monitor the administration, and sit with the Senate to consider major matters, such as constitutional issues, important procedural matters, declarations of war or peace, and the ratification of international treaties.

The House of Representatives can hold a vote of no confidence in the prime minister. The motion requires the initial support of at least two-fifths of the total number of representatives, and it must include the name of a suitable replacement. To pass, the motion needs an absolute majority of representatives. If the motion is passed, the president of the House of Representatives submits the name of the person nominated to the king for appointment. Only one-fifth of the total number of representatives is required to initiate a vote of no confidence in individual cabinet ministers.

The dissolution of the House of Representatives is a royal prerogative. The royal decree must include the date when new general elections are to be held, which must be within 60 days. The king may dissolve the House of Representatives only once for the same reason.

The Council of Ministers

The Council of Ministers carries out the administration of state affairs. All ministers are appointed by the king.

The office of the prime minister is a central body and the nerve center of the administration. The latest constitution strengthens the office, so that the prime minister is less likely to need the support of a large coalition. The prime minister must be appointed from among the members of the House of Representatives.

Some of the key subdivisions of the Office of the Prime Minister are the Budget Bureau, the National Security Council, the Juridical Council, the National Economic and Social Development Board, the Board of Investment, and the Civil Service Commission.

The prime minister is assisted by deputy prime ministers and by a number of cabinet ministers who hold the portfolio of Minister to the Prime Minister's Office. The number of cabinet members is limited to 36.

Ministers are individually and collectively accountable to the House of Representatives and have to retain its confidence. The 1997 constitution requires all newly appointed cabinet members to resign from their parliamentary seats, in order to further separate the executive and legislative functions.

The constitution includes provisions to prevent conflicts of interest between elected officials and businesses. A minister may not own shares in a corporation. However, the constitution does not bar family members of politicians from owning these shares.

The Lawmaking Process

Bills are introduced either by the Council of Ministers or by members of the House of Representatives. The Senate does not have the right of initiative.

Both houses have to approve a bill. After a bill has been approved, the prime minister presents it to the king for signature within 20 days. It enters into force upon its publication in the *Government Gazette*.

In case of amendment by the Senate, the bill is sent back to the House of Representatives. If the House of Representatives accepts the amendments, the bill is sent to the king for signature; if not, a joint committee with equal representation of both chambers is set up.

If one of the two chambers rejects the conclusions of the joint committee, the bill is deferred. A deferred bill returns to the rejecting chamber, which reexamines it at the end of a period of 180 days. If the chamber now adopts either version by an absolute majority, the bill is considered to have been adopted by the National Assembly and is presented to the king for signature.

If the king refuses to assent within 90 days, the National Assembly can reaffirm it with a two-thirds majority of all members of both houses. The bill is then promulgated with or without the king's signature.

In ordinary affairs, the Senate has a period of 60 days to examine draft legislation; otherwise it is deemed to have adopted it. In budgetary affairs, the period is reduced to 30 days.

For certain types of legislation considered necessary for the administration of affairs of state, the Council of Ministers can demand a joint meeting of the two chambers to reconsider a bill that the House of Representatives declined to support. This mechanism of legislative arbitration is intended to prevent political bargaining by members of parliament who have been denied cabinet posts. The Council of Ministers is no longer compelled to resign, as was previously the convention if such bills failed to pass.

The Judiciary

The judiciary is composed of courts of first instance, courts of appeal, and the Supreme Court. The courts of first instance are trial courts of general jurisdiction (civil courts, criminal courts, provincial courts, and small claim courts), as well as special courts (the juvenile and Family Courts, the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, the Bankruptcy

Court, and military courts). Appeals against judgments by courts of first instance can be filed with the Court of Appeals, subject to certain restrictions. The Supreme (Dika) Court can review and adjudicate all cases. Its judgments are final. Decisions of the Constitutional Court are not subject to review by the Supreme Court.

The Thai constitution recognizes judicial independence. For example, the Office of the Judiciary is an independent agency, no longer part of the Ministry of Justice; it is responsible for personnel and budget matters. Judges are independent in trial and adjudication.

The Constitutional Court, charged with interpreting the constitution, began operation in 1998. Its decisions are final and binding on the National Assembly, the Council of Ministers, the courts, and other state organizations. The scope of the Constitutional Court's powers is very broad. The court has the power to decide whether a bill or law, or any provision thereof, complies with the constitution, and it has the power to declare the law or provision void. The Constitutional Court also has the power to review the application of any pertinent law involved in any case before any court.

In 2004, the Constitutional Court upheld two antiterrorist decrees issued by the prime minister in 2003 that provided punishments ranging from fines to the death penalty. This was the first use of a constitutional provision that allows parliament to refer executive decrees to the Constitutional Court. Although the court has issued some controversial rulings that have split the justices into opposing camps, the vast majority of its rulings have been premised on a high degree of agreement. Apart from the king, the court enjoys the highest level of public esteem of all constitutional bodies.

The Election Commission

The Election Commission controls and conducts elections for the House of Representatives, the Senate, local assemblies, and local administrators. It also supervises referendums. The commission has the right to give orders to relevant officials, to conduct investigations, and even to order new elections when there is evidence that the polling stations had "not proceeded in an honest and fair manner."

The commission consists of a chair and four other commissioners appointed by the king with the advice of the Senate from among persons of evident political impartiality and integrity.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The right to vote is granted to all those who have been Thai nationals for at least five years, are above the age of 18, and are registered in a constituency for 90 days or longer. Voting is compulsory.

The constitution includes several provisions for direct participation by citizens in the political process. For example, people can submit legislation to the parliament or ask the Senate to remove high officials. There can be a referendum initiated by the government, but it does not have any binding effect.

Parliamentary Elections

The constitution determines the general electoral framework. In addition, a 1998 organic law regulates elections to both chambers of the National Assembly.

Of the 500 members of the House of Representatives, 100 members are elected on a party list basis through proportional representation, and 400 are elected in single-member constituencies through a first-past-the-post majority vote. There is a constitutional hurdle of 5 percent of the total votes that has to be achieved by each party in order to win any of the 100 national seats. This mixed electoral system is called a parallel system.

Only Thai nationals by birth at least 25 years of age may stand for election to the House of Representatives. They must have graduated university (this is waived if they have been members of parliament before), and they must belong to a political party.

To stand for the Senate, a candidate must be at least 40 years of age, be a Thai citizen by birth, and hold a university degree. There is a single-vote majority system. Unlike in the House of Representatives, candidates may not be members of a political party. A senator can only be appointed a cabinet minister one year after the end of his or her senatorial term.

POLITICAL PARTIES

Thailand has had a pluralistic system of political parties since the 1946 constitution. The Communist Party is legally prohibited.

For many years, the parties were overshadowed by the military-bureaucratic elite. The perception that political parties were unworthy of trust was widespread. Although party politics received a major impetus from the student uprising of 1973, it has continued to suffer from longstanding deficiencies, such as patron-client relationships, especially in rural areas. In such relationships, several clients form a group, and a patron and the group are in turn subordinate to a higher-level patron. The organic law on political parties has attempted to deal with these problems. On the one hand, deficiencies remain and an organizationally stable party system has not taken firm root in the Thai society. On the other hand, Thailand has a well-differentiated system of interest groups, particularly in the nongovernmental organization (NGO) sector.

CITIZENSHIP

Thai citizenship is primarily acquired by birth, under the principle of *ius sanguinis*. A child acquires Thai citizenship if one of his or her parents is a Thai citizen. It is of no relevance where a child is born.

A foreigner can also acquire Thai citizenship if he or she legally resides in Thailand, has displayed good behavior, has a regular occupation, has a domicile in the Thai kingdom, and has knowledge of the Thai language. Dual citizenship is generally not recognized.

FUNDAMENTAL RIGHTS

Scattered throughout the constitution are guarantees of human rights and dignity, fundamental freedoms, and public participation in the democratic process. Chapters 3 and 4 call for protection of human dignity and of the rights and liberties of the Thai people. Chapter 5 lists the directive principles of state policies, which include compliance with the law, protection of rights and liberties, efficient administration of justice, and public participation.

A mechanism has been established to ensure respect for fundamental rights. Independent organizations, such as the National Human Rights Commission, provide checks and balances and monitor the compliance with the constitution.

The constitution provides for the full traditional set of human rights. The people are guaranteed freedom of expression, religion, movement, and association. Social rights, such as health care for the poor, pensions for the elderly without means of support, and guarantees of accessible facilities for the handicapped, are also addressed. Equal protection is a duty of the state in many respects: origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or legitimate political views. Measures taken to eliminate obstacles to equality are not deemed to constitute unjust discrimination.

Thailand acceded to the International Covenant on Civil and Political Rights in 1997, and to the International Covenant on Economic, Social and Cultural Rights in 1999. Nevertheless, human rights activists are still concerned about a lack of protection for those defending human rights, the lack of rights for refugees, and the use of the death penalty, which is explicitly permitted by the 1997 constitution. The death penalty is regularly applied in Thailand, usually for murder, rape, or heroin trafficking.

Impact and Function of Fundamental Rights

The 1997 constitution is generally regarded as a benchmark in a reform process that began after Thailand's last military coup in 1991. This is reflected by the prominence of fundamental rights within the document. It is the first constitution in Thailand to link civil liberties to the idea of "human dignity." The Constitutional Court has a decisive role in protecting fundamental rights. While some decisions of the Constitutional Court have tended to enhance the fundamental rights of citizens, other decisions have promoted the authority of the state.

Fundamental rights can be defensive—preventing the state from interfering with the legal position of the individual, for example, in relation to individual freedom or property. Other rights entitle individuals to certain services from the state; for example, the state is required to provide 12 years of free education.

Fundamental rights also guarantee due process. The constitution allows for the detention of criminal suspects without a court order for 48 hours (instead of seven days under the earlier constitution). Unlike in other Asian countries, however, there is no direct access to higher courts on constitutional grounds in Thailand. This is a significant disadvantage for people who suffer human rights abuses. However, a person whose rights are violated can generally bring a lawsuit or defend himself or herself in the court.

The state in all its forms is constitutionally bound to uphold rights and liberties. Individuals also have some public duties, such as duty to defend the country. Unless or until the Constitutional Court decides otherwise, fundamental rights do not regulate relations among private individuals and legal persons in Thailand.

Those who stress the importance of defensive rights and due process tend to regard the constitution as the final result of the 1997 reform process. Others, however, consider the political guarantees in the constitution offer potential to continue and expand the reform process.

Limitations to Fundamental Rights

Section 28 contains a general limitation clause for fundamental rights. It states that a person can invoke his or her rights and liberties only insofar as such actions do not violate the rights and liberties of other persons or are not contrary to the constitution or good morals. Some sections contain specific limitation clauses, such as freedom of movement, which can be restricted by a law enacted to protect the security of the state, public order, public welfare, town and country planning, or welfare of youth. Another example is freedom of assembly: restrictions may explicitly be imposed when a state of emergency or martial law is declared.

There are also limitation limits, such as are stipulated in Section 29. A restriction cannot be imposed except by a law specifically enacted for the purpose and only "to the extent of necessity" and provided that it shall "not affect the essential substances" of such rights and liberties. This means that all state actions that affect the rights of people must be reasonable and there must not be any alternative that is less impairing.

ECONOMY

Some of the directive state principles in the constitution relate to the country's economy. The state is encouraged to provide for a system of labor relations, help people of working age obtain employment, and guarantee social security and fair wages. The state also encourages a free-market economic system. It does not engage in enterprises in competition with the private sector, except when necessary to ensure the security of the state, preserve the common interest, or provide public utilities. In sum, the economic system can be described as a social market economy.

RELIGIOUS COMMUNITIES

The king must be a Buddhist and is considered the upholder of the Buddhist religion and the upholder of all religions. Theravada Buddhism is the official religion of Thailand. The government permits religious diversity, and other major religions are represented. Spirit worship and animism are widely practiced.

The state constitutionally patronizes and protects Buddhism and other religions and promotes good understanding and harmony among followers of all religions. It also encourages the application of religious principles to create virtue and develop the quality of life.

MILITARY DEFENSE AND STATE OF EMERGENCY

Thai armed forces are composed of professional career soldiers and conscripts. Men who have reached the age of 20 are required to serve in the armed forces for two years. Every person has a constitutional duty to defend the country and to serve in the armed forces as provided for by law. The king holds the position of head of the Thai armed forces.

The constitution distinguishes among a state of emergency, martial law, and a state of war. A state of emergency is a declaration that may suspend certain normal functions of government. Martial law takes effect when a military authority takes control of the normal administration.

For the purpose of maintaining national or public safety or national economic security or averting public calamity, the king may issue an emergency decree, which has the force of an act of parliament, but only if the Council of Ministers finds the situation to constitute a case of emergency. Furthermore, the emergency decree must be approved by the National Assembly; if the assembly disapproves, the emergency decree lapses. During a state of emergency or martial law, restrictions on certain human rights are legally justified. For example, freedom of assembly and expression can be restricted, and forced labor is permitted.

The king has the prerogative legally to declare and lift the martial law. However, if necessary in a certain locality as a matter of urgency, the military authority also may declare martial law.

Violence in Thailand's southern, mainly Malay Muslim provinces has been steadily escalating since early 2004. Armed separatist groups have been active since the late 1960s. The origins of the current violence lie in historical grievances stemming from discrimination against the ethnic Malay Muslim population and attempts at forced assimilation by successive ethnic Thai Buddhist governments in Bangkok for almost a century. The government declared martial law. According to human rights reports, martial law has been in force in some areas for many years.

The king has the prerogative to declare war with the approval of the National Assembly. The declaration requires a majority of two-thirds of the total number of members of parliament.

AMENDMENTS TO THE CONSTITUTION

Draft constitutional legislation can be proposed by the Council of Ministers or by one-third of the total number of members of the House of Representatives. It can be proposed by members of the Senate and the House of Representatives if it is supported by one-third of the total number of members of both chambers.

The National Assembly examines the amendment in a joint sitting of both chambers and uses three readings. First, at least one half of the total number of the members of the assembly must vote in favor of the amendment in principle. The second reading examines the articles individually and requires only a simple majority vote. The third reading takes place 15 days after the second reading and requires an absolute majority of all the members in each chamber.

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Michael Rahe

TOGO

At-a-Glance

OFFICIAL NAME
Republic of Togo

CAPITAL
Lomé

POPULATION
5,429,299 (2003)

SIZE
21,924 sq. mi. (56,785 sq. km)

LANGUAGES
French (official language), Ewé, Gurma, Kabiyé, Kotokoli

RELIGIONS
Christian 30%, Muslim 15%, traditional more than 50%

NATIONAL OR ETHNIC COMPOSITION
More than 30 social groups; Ewé (south), Gurma and Kabiyé (north) most important

DATE OF INDEPENDENCE OR CREATION
April 27, 1960

TYPE OF GOVERNMENT
Presidential regime

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
September 27, 1992

DATE OF LAST AMENDMENT
February 6, 2005

Since the 1990s, the Republic of Togo has begun implementing democracy, under political pressure from a worldwide movement backed by Western countries in general and the European Union in particular. The constitution sets up a presidential regime with some checks and balances, including the referendum, which can be initiated by the people, in such conditions as are prescribed by the constitution.

There is no specific economic system set up in the constitution. State and religion are separated.

CONSTITUTIONAL HISTORY

In 1884, Germany made Togoland a protectorate, establishing borders with the neighboring French and British territories. After World War I (1914–18), the country was divided between France and the United Kingdom under the League of Nations Mandate system; after World War II (1939–45) the two territories were placed under the United Nations trusteeship system, under the same rulers. The British territory was eventually merged with its newly independent neighbor, Ghana, the former British colony of the Gold Coast. The French area became an independent country on April 27, 1960, with Sylvanus Olympio as its first president.

In January 1963, Olympio was assassinated in a military coup led by Eyadéma Gnassingbe, who named himself president after a second coup in 1967, a post he held until his death in February 2005.

Upon the president's death his son, Faure Gnassingbe, assumed the presidency with the support of the ruling single party and the army; he was endorsed by the National Assembly with the help of some manipulations of the constitution. Pressure from African and international organizations forced him to resign, but he was then elected in the April 2005 presidential elections.

FORM AND IMPACT OF THE CONSTITUTION

The constitution of the Republic of Togo is one written document, comprising 159 articles. It establishes that international law will prevail over national law subject to

the principle of reciprocity in international relations. The constitution recognizes human rights, although those provisions are not always implemented in practice.

BASIC ORGANIZATIONAL STRUCTURE

Togo is a unitary state.

LEADING CONSTITUTIONAL PRINCIPLES

The leading principles established in the constitution are the protection of rights and duties, political pluralism, and rule of law. Rights are also recognized for legal persons. The constitution also establishes a right of civil disobedience (Article 45). With regard to religion, the preamble makes a reference to God, as does the oath read out by a newly elected president.

CONSTITUTIONAL BODIES

The main constitutional organs are the president, the executive administration, parliament, and the judiciary, including a constitutional court.

The President

The president is the head of state and the head of the army. The president is elected through direct, secret, and universal ballot, for a five-year renewable term. The president presides over meetings of executive administration. The president has the right to promulgate acts adopted by the National Assembly. The president also has the power to dissolve the National Assembly, after consultation with the prime minister and the president of the National Assembly.

In case the Constitutional Court has declared the presidency vacant, the president of the National Assembly assumes the position in the interim, while an election is organized within 60 days.

The Executive Administration

The executive administration is composed of the prime minister, cabinet ministers, and secretaries of state, as deemed appropriate by the prime minister. The prime minister, appointed by the president, appoints the other members of the cabinet. The executive administration is responsible before the National Assembly.

The Parliament

The parliament is composed of the National Assembly and the Senate. The assembly deputies are elected through a secret, direct, and universal ballot for five-year terms. The function of the senators is to represent local communities; one-third are appointed by the president. Their term is also set at five years. However, the Senate has never actually been established. The assembly has legislative power. Deputies share the legislative initiative with the executive administration, adopt legislation, and exercise control over the executive. The number of deputies is established by legislation; the current number is 81.

The Lawmaking Process

Parliament meets twice a year for its ordinary sessions, which last not more than three months each. Legislative initiative is shared by the deputies and the cabinet. According to the constitution, the senators merely comment on legislation before it is voted upon by the assembly. A simple majority is usually sufficient to pass a law.

The Judiciary

The independence of the judiciary is provided for in the constitution, which establishes a Supreme Court as well as appeals courts and tribunals. The constitution also establishes the independence of the judges and requires that they be guided only by the law. The Supreme Court is the highest court in Togo to hear all matters related to the administration and individuals. It is composed of two chambers: one for civil and criminal litigations, one for administrative disputes. The High Court of Justice is composed of the presidents of the two chambers of the Supreme Court and four deputies of the National Assembly. It has jurisdiction over the president, the members of the executive administration, and the judges of the Supreme Court.

The Constitutional Court

The role of the Constitutional Court is to ensure that any law adopted by parliament is in conformity with the constitution, and that human rights are protected. It is composed of nine judges, three appointed by the president of the republic, three by the National Assembly, and three by the Senate for a renewable term of seven years. The president appoints the president of the Constitutional Court for a term of seven years.

In any case before an ordinary court, an argument of nonconformity to the constitution can be raised. The Constitutional Court must make a ruling on the matter before the original court may dispose of the principal matter.

THE ELECTION PROCESS

All Togolese above 18 years of age have the right to vote, unless they are banned from exercising their civil and political rights for reasons based on the law. Candidates for the presidential elections must be at least 35 years old.

POLITICAL PARTIES

Political parties are allowed insofar as they are in conformity with the principles stated in the constitution, especially concerning human rights and freedoms. In practice, the opposition parties have suffered a degree of harassment from the administration.

CITIZENSHIP

Citizenship is a matter of law. Nationality is acquired by birth or marriage. A child who has one Togolese parent is Togolese, unless he or she chooses not to acquire citizenship.

FUNDAMENTAL RIGHTS

The constitution establishes a system of human rights protection, with the Constitutional Court having formal jurisdiction. There is reference in the preamble to the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights, and other international legal materials. In practice, however, there have been continuous violations of human rights and disregard for the rule of law by the administration, according to nongovernmental organizations and international rights groups.

For example, in February 2005, when President Eyadéma Gnassingbe died, the ruling party chose not to conform to the constitution by letting the president of the National Assembly become interim president. Instead the majority of deputies, who are members of the ruling party, decided to amend the constitution in violation of Article 144, which establishes the amendment procedure. Such manipulation permitted Faure Gnassingbe, son of the deceased president, to be appointed interim president. Only under international pressure did the ruling party relent and allow the constitutional procedures to be applied.

Impact and Function of Fundamental Rights

Human rights have been the major issue in the political and social development of Togo since 1990. The constitution highlights those rights and provides for judicial protection, but no clear provisions determine the jurisdictional procedures for such protection.

The constitution provides for two organs related to human rights protection. One is the National Commission of Human Rights, whose 17 members are elected by the National Assembly for a term of four years. The other is the ombudsperson, whose objective is to resolve disputes between individuals and the administration. The ombudsperson is appointed by the Council of Ministers for a term of three years.

Limitations to Fundamental Rights

The only limitations of human rights are the duties of individuals and national security. In practice, the government routinely infringes individual and collective rights by claiming that national security and the public order are at risk.

ECONOMY

The constitution does not stipulate a specific economic system but provides for the protection of economic rights.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is recognized in the constitution, and there is separation between the state and religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the head of the armed forces. Any member of the armed forces who wants to run in the presidential election must first resign from the service. Defending the state is an obligation for all citizens, and the constitution provides for compulsory military service. However, the National Assembly has not adopted any legislation to implement this provision as yet. The constitution obliges all Togolese to engage in civil disobedience if a military coup takes place.

AMENDMENTS TO THE CONSTITUTION

Either the president of the republic or one-fifth of the deputies in the National Assembly may propose amendments to the constitution. A vote of four-fifths of the National Assembly is needed to approve the amendment. If the amendment is supported by two-thirds of the National Assembly but fails to reach the four-fifths threshold, it is submitted to a referendum. During an interim presidency or a threat to the country's territorial integrity, amendments are prohibited. The republican form of the regime and the principle of secularism (*laïcité*) cannot be amended.

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Roland Adjovi

TONGA

At-a-Glance

OFFICIAL NAME
Kingdom of Tonga

CAPITAL
Nuku'alofa

POPULATION
97,784 (2005 est.)

SIZE
288 sq. mi. (747 sq. km) land size

LANGUAGES
Tongan, English

RELIGIONS
Protestant 70%, Roman Catholic 25%, other (Anglican, Seventh Day Adventist, Church of Jesus Christ of Latter-day Saints, Pentecostal, Baha'i, Muslim) 5%

NATIONAL OR ETHNIC COMPOSITION
Tongan

DATE OF INDEPENDENCE OR CREATION
June 4, 1862

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 4, 1875

DATE OF LAST AMENDMENT
October 16, 2003

Tonga is the only remaining kingdom in the Pacific Ocean. Its constitution is the third-oldest constitution in the world, in force since 1875. From time to time, when new circumstances arise, including international events, the constitution is amended to take those factors into account. The country has found it economically more practicable to follow the amendment path than totally replace the constitution.

The latest amendments to the constitution in 2003 were restrictions on freedom of speech in cases of threats against national security, the morality of the state, or traditional culture and values. The constitution embodies what transpired in the past and safeguards Tonga from being a victim of lawlessness and social disorder.

The ongoing vitality of the constitution guarantees the sovereignty of the Kingdom of Tonga. It has in essence upheld the peace and welfare of the Tongans in the past and, Tongans believe, will do so long into the future.

CONSTITUTIONAL HISTORY

Prior to 1875, Tonga was divided and ruled by a number of local tribal chiefs in their respective area. It was not until 1845 that Taufa'ahau Tupou I, who adopted the English ruling title of George, unified Tonga and became its first king. He proclaimed the Emancipation Edict in 1862, abolishing slavery of commoners to the traditional chiefs and granting them freedom from servitude to chiefs and kings. This edict eventually led to the enactment of the constitution in 1875, as a guarantee of the reforms that had been achieved over the years.

The king's achievement in maintaining a unified kingdom for decades won him the title among historians of the father of modern Tonga, or the grand old man of the Pacific. His lineage still rules Tonga.

The 19th century was marked throughout the Pacific region by the encroachment of European colonial rule in all the neighboring Pacific Islands. George Tupou I looked for means to secure Tonga's sovereignty against the European threat. With the help of missionaries, especially Shirley Baker, George Tupou I understood that only by enacting a written constitution could he prevent the Europeans from colonizing his country.

A draft of a written constitution was submitted to the king, who modified it to fit local circumstances. He convened a council of tribal chiefs as a parliament in No-

vember 1875. On November 4 the council approved the document and it became the constitution of Tonga.

That constitution was a beacon for smaller and less powerful states. It legitimized the right of the Kingdom of Tonga to be recognized worldwide as an independent state. It also provided legal guidelines by which the kingdom could be ruled.

FORM AND IMPACT OF THE CONSTITUTION

Tonga has a written constitution that is the supreme law of the kingdom. Any other laws that are in conflict with it are null and void to the extent of the inconsistencies. Other laws also refer to international conventions.

BASIC ORGANIZATIONAL STRUCTURE

Tonga is composed of three main island groups: Tongatapu, Ha'apai, and Vava'u. The island groups differ in size. The main administrative center is situated in the main island group, Tongatapu. It has attracted local migration from the other two island groups and is the site of the capital, Nuku'alofa. The royal family's main residence is also in Nuku'alofa. The king with the consent of the cabinet appoints governors to Ha'apai and Vava'u. These governors are responsible for ensuring that the law is applied in the respective district.

LEADING CONSTITUTIONAL PRINCIPLES

Tonga is a constitutional monarchy. The constitution sets down the framework in which the kingdom should be governed, and the king rules according to what is stated in the constitution. The constitution sets out a separation of powers among the executive, legislative, and judiciary branches.

CONSTITUTIONAL BODIES

The constitution sets out the throne of Tonga and its order of succession. It also provides for a Privy Council and a Cabinet and specifies their respective powers and responsibilities.

The King

The monarch (referred to as king in the constitution) is a part of the executive. The monarch has prerogatives such as appointing cabinet ministers, including the prime minister; appointing the privy councilors; and appointing the Speaker of the Legislative Assembly.

The monarch is the commander in chief of the army and navy, but he or she may not declare war without the consent of the Legislative Assembly. The monarch may enter into treaties with other states only on the consent of the Legislative Assembly.

Succession of the throne goes to the eldest male child. In the absence of any male issue, succession can go to the eldest female child. In case of a vacancy of the line of succession, the nobles of the realm must select a new line of kings.

The Privy Council

The Privy Council acts as adviser to the king, who appoints all its members, most of whom are Cabinet ministers and governors. The members serve at the king's pleasure. Whenever the word "king" appears in any official document it is interpreted to refer to the King in Council.

The Cabinet

The Cabinet ministers are appointed by the king. They are not accountable to the Legislative Assembly; however, they must present an annual report to the Legislative Assembly every year. Their appointments can be terminated by the king at any time.

The Legislature

The legislature is known in Tonga as the Legislative Assembly. It is here where the peoples' representatives, the nobles' representative, Cabinet ministers, and the royal governors of the outer island groups meet to enact laws. These laws must be sanctioned by the king in person or are void.

There are nine representatives for the people in the Legislative Assembly.

The thirty-three nobles in the kingdom make up a class of their own. They elect nine members from among their peers, using the same geographic distributions as the people's representatives.

The Lawmaking Process

When the Legislative Assembly has agreed upon any bill that has been read and voted for by a majority three times, the bill is presented to the king for his sanction. All laws must be sanctioned by the king in person or they will be postponed until the next sitting of the assembly.

The Judiciary

The judiciary comprises the Court of Appeal, the Supreme Court, the Land Court, and the Police Magistrate Court. The Court of Appeal is made up of three judges; they sit only once a year in Tonga. There are only two Supreme

Court judges in Tonga. They also sit in the Land Court and are assisted by local assessors. The police magistrates are localized and are evenly located throughout the kingdom.

The jurisdictions of the courts are clearly defined, with the Court of Appeal as the highest court of law in the kingdom. The chief justice is the president of the Court of Appeal.

THE ELECTION PROCESS

All Tongans over the age of 21 have the right to vote in the general election. Any Tongan can stand for candidacy but must be supported by a certain number of votes, before that person can be registered as a candidate.

POLITICAL PARTIES

The election to the Legislative Assembly in 2005 was distinguished by the registration of a new political party with a candidate of its own. That candidate was elected in an election process held shortly after the general elections.

CITIZENSHIP

Tongan citizenship is acquired by birth. Any child born of a Tongan father automatically becomes a citizen. In the past decade Tonga introduced a system of naturalization. A foreigner who holds a Tongan passport and has lived in Tonga for five consecutive years can become a Tongan *subject.* The subjects cannot fully exercise the rights of a Tongan *citizen.* A Tongan citizen can inherit property according to Tongan laws; a Tongan subject cannot.

FUNDAMENTAL RIGHTS

Clause 1 of the constitution states that every Tongan is free and at liberty to do whatever he or she wants to do with her or his property. No laws whatsoever can take away such freedom from the Tongans.

There are other rights such as freedom of speech, freedom of religion, and the sacredness of the Sabbath day. The constitution guarantees that no laws shall take away those rights. However, there are certain limitations imposed on those rights. In relation to freedom of speech, the media must use as regulatory principles national security, nondefamation, protection of the king and the royal family, official secrets, public order, morality, privileges of the Legislative Assembly, and avoid contempt of court.

Freedom of religion allows free association of people to form religious groups in Tonga. Keeping the Sabbath sacred is a requirement of the constitution. It does not involve a total prohibition of work on Sabbath, but rather a requirement of decent behavior and outward observance of the Sabbath. Sabbath in Tonga is on Sunday.

These principles were incorporated into the constitution so that these rights can be exercised in a reasonable manner.

ECONOMY

The constitution guarantees freedom of property and due compensation from the government in case of expropriation of land. Agricultural products can be mortgaged by farmers in their loans, but these mortgages cannot be enforced against them. This restriction reflects the importance of agriculture, the predominant economic activity in Tonga.

RELIGIOUS COMMUNITIES

Freedom of religion is provided for in the constitution, which does not establish any national church. However, it is commonly perceived in Tonga that the Free Wesleyan Church of Tonga is the main national church, since it is the church of the royal family. However, there is a clear separation between the government and the church.

Several of the churches in Tonga have formed a council of churches as a nongovernmental organization of mutual cooperation.

MILITARY DEFENSE AND STATE OF EMERGENCY

The king is the commander in chief of the army. The king can declare martial law in Tonga. The army remains subject to the civil laws of the kingdom, except in times of martial law.

AMENDMENTS TO THE CONSTITUTION

Any provision of the constitution can be amended by the Legislative Assembly, but in general a unanimous vote is required. Certain provisions, however, such as the succession to the throne of Tonga, can be amended by the nobles' representatives alone.

An amendment has to be passed three times by the assembly before it can be submitted to the king for the king to assent.

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'Ofa Pouono

TRINIDAD AND TOBAGO

At-a-Glance

OFFICIAL NAME
Republic of Trinidad and Tobago

CAPITAL
Port-of-Spain

POPULATION
1,096,585 (2005 est.)

SIZE
1,980 sq. mi. (5,128 sq. km)

LANGUAGES
English

RELIGIONS
Roman Catholic 29.4%, Hindu 23.8%, Anglican 10.7%, Muslim 5.8%, Presbyterian 3.4%, other 26.9%

NATIONAL OR ETHNIC COMPOSITION
East Indian (immigrants from northern India) 40.3%, Afro 39.5%, mixed 18.4%, white 0.6%, Chinese or other 1.2%

DATE OF INDEPENDENCE OR CREATION
August 31, 1962

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
August 1, 1976

DATE OF LAST AMENDMENT
November 2, 2000

Trinidad and Tobago is a parliamentary democracy within the British Commonwealth of Nations. The country is a republic and organized as a unitary state. Executive, judiciary, and legislative powers are separated. Fundamental rights enjoy constitutional protection; in case of their violation, effective measures of redress exist.

The executive head of state is the elected president. Political power is exercised by the cabinet, headed by the prime minister. The cabinet relies on parliamentary support. In Parliament, the members of the House of Representatives are elected by popular vote. The members of the Senate are appointed by the president. The party system is pluralistic.

Freedom of conscience is guaranteed. The state is not affiliated with any religious group. The constitution protects the enjoyment of private property.

CONSTITUTIONAL HISTORY

Trinidad and Tobago emerged for the first time as a single entity in 1889 when Tobago became a ward of Trinidad. Even though the economy on both islands relied on sugarcane plantations operated with African slaves, their history was quite different.

Trinidad had been ruled by Spain for more than 300 years when it became a British Crown colony in 1802. When slavery was abolished in the empire in 1834–38, large numbers of northern Indian laborers immigrated to work on the plantations and replaced the former slaves. The division between these two ethnic groups is still visible until today in the country's society.

Tobago changed hands many times between different European nations and was ultimately acquired by Britain in 1814. At that time, a legislative assembly existed, providing representation for a few landowners. This assembly was abolished in 1877.

When the islands were united in 1890, they became a Crown colony. They were ruled by a royal governor with virtually autocratic powers and a Legislative Council that was fully appointed by the British Crown.

The first steps toward increased self-government were taken in 1925, when limited elections for a few seats in the Legislative Council were held. The franchise was then

based on property and the electorate was very small. The first elections under universal adult suffrage were held in 1946.

From 1958 until 1962, Trinidad and Tobago formed part of the West Indies Federation, which attempted to unite 10 British island colonies in the Caribbean to provide more self-determination.

When the West Indies Federation was dissolved in 1962, Trinidad and Tobago achieved its independence as a constitutional monarchy within the Commonwealth of Nations, following years of negotiation with the British Crown. Executive head of state became the queen of England, represented by an appointed governor-general.

In 1976, the current constitution came into force. It substituted the office of the governor-general with that of a president elected by parliament. Trinidad and Tobago became a republic.

Following Tobago's call for more autonomy, the Tobago House of Assembly was created in 1980 to deal with local affairs.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is enshrined in Act 4 of 1976. It is the supreme law of Trinidad and Tobago and prevails over any other law made by Parliament.

BASIC ORGANIZATIONAL STRUCTURE

Trinidad and Tobago is a unitary state. There are seven counties and four municipalities on Trinidad, but they have no powers under the constitution. For historical reasons, Tobago is a ward of Trinidad. It has its own council for self-administrative purposes, the Tobago House of Assembly.

LEADING CONSTITUTIONAL PRINCIPLES

The country is a parliamentary democracy within the Commonwealth of Nations and a republic. There is a clear division of powers among the legislative, the executive, and the judiciary, and an adequate system of constitutional checks and balances exists. The judiciary is independent. Protection of individual fundamental rights is guaranteed.

CONSTITUTIONAL BODIES

The principal constitutional bodies are the president, the Parliament, and the cabinet.

The President

The executive head of state is the president. The holder of the office is elected by a special Electoral College composed of the two houses of Parliament. The president's term of office is five years. The president may be removed from office by a majority of two-thirds of all the members of each house of Parliament.

The president appoints the prime minister, the ministers, and the senators; exercises the power of pardon; and is the commander in chief of the armed forces. When exercising these powers, the president acts on the advice of the cabinet. However, the duty to act on constitutional advice is not legally enforceable, and the president is not constitutionally barred from political partisanship. This system led to several constitutional crises in 2000 and 2001 over the removal of some government-appointed senators and their replacement by other personalities.

The Parliament of Trinidad and Tobago

The Parliament of Trinidad and Tobago is based on the British Westminster model. It is composed of the president, the Senate, and the House of Representatives.

The House of Representatives has at present 36 members elected in general elections. At least two of the constituencies are granted to Tobago to secure representation of the smaller island's interests.

The Senate consists of 31 senators, all appointed by the president. Sixteen are appointed on the advice of the prime minister and six on the advice of the leader of the opposition. Nine senators are appointed at the president's discretion from among outstanding persons in the community.

The Parliament's term of office has a duration of five years.

The Lawmaking Process

Laws are made by both houses of Parliament. General legislative bills may be introduced in either house and require the approval of a majority of votes in both houses. The House of Representatives may, however, ultimately override the rejection of a bill by the Senate. To its entry into force the president's formal assent is required.

Money bills regulating issues of public finance may only be introduced to the House of Representatives. They may ultimately be passed without the Senate's consent.

The Cabinet for Trinidad and Tobago

The cabinet for Trinidad and Tobago has authority for the general direction and control of the executive. It is headed by the prime minister. The president appoints as prime minister that member of the House of Representatives who commands the support of the majority of its members. The other ministers are appointed from among the members of either house of Parliament.

The cabinet is collectively responsible for its actions to Parliament and may be voted out of office by a vote of no confidence.

The Judiciary

The legal system of Trinidad and Tobago is modeled on the British legal system. The judiciary is independent of the legislative and the executive.

The constitution establishes a Supreme Court of Judicature for Trinidad and Tobago, which includes a High Court of Justice and a Court of Appeal. The chief justice presides in both courts.

The High Court is the court of original jurisdiction for civil and criminal matters. It also has jurisdiction for allegations of violations of fundamental rights and for constitutional disputes over the validity of the appointment of senators and the Speaker of the House of Representatives. The High Court's decisions may be appealed in the Court of Appeal. The Court of Appeal has exclusive constitutional jurisdiction for decisions on a candidate's qualification for eligibility as president.

The court of last instance is the Judicial Committee of the Privy Council in London. In recent years, the Judicial Committee has had to decide regularly on cases of death row prisoners. In 2003, the Judicial Committee ruled that the mandatory death sentence for murder without consideration of extenuating circumstances violated the constitution.

THE ELECTION PROCESS

Any citizen of Trinidad and Tobago aged 18 or older is eligible to vote or to run for office as a member of the House of Representatives. Candidates must have resided in Trinidad and Tobago for a minimum of two years immediately before the election. Holders of a public office or a post in the country's police or military are disqualified from being members of Parliament.

Elections to the House of Representatives are secret. Constituencies are won by simple majority of votes.

POLITICAL PARTIES

The system of political parties in Trinidad and Tobago is pluralistic. Party politics run along ethnic lines, reflecting the partitioning of the society. The two parties currently represented in the House of Representatives are the People's National Movement (PNM), dominated by Afro-Trinidadians, and the United National Congress (UNC), whose followers are largely Indo-Trinidadians.

CITIZENSHIP

Generally, every person born on the territory of Trinidad and Tobago or as a child to a citizen of Trinidad and Tobago holds the country's citizenship.

FUNDAMENTAL RIGHTS

The constitution protects individual fundamental rights in Sections 4 and 5. The rights granted are exclusively liberal rights, such as the protection of life and liberty, freedom of religion, and private property. The constitution particularly emphasizes protection against discrimination on grounds of race, origin, color, religion, or sex.

Fundamental rights may be limited by acts of Parliament. Such an act must explicitly highlight the inconsistency with fundamental rights. It has to be approved by three-fifths of both houses of Parliament and must be shown to be reasonably justifiable. Redress for violations of fundamental rights may be sought in the High Court.

Generally, fundamental rights and freedoms are respected by the government. However, international human rights groups continuously draw attention to the conditions in state prisons and the treatment of police detainees. Trinidad and Tobago withdrew its ratification of the American Convention on Human Rights in 1999.

ECONOMY

Trinidad and Tobago's economy is market based. The constitution provides for the protection of private property.

RELIGIOUS COMMUNITIES

The constitution grants freedom of conscience, religious belief, and observance. The state is secular. Religious groups have the same rights and obligations as most legal entities. In recent years, the government has strengthened legal prohibitions against religious discrimination by amending legislation to remove certain discriminatory religious references.

MILITARY DEFENSE AND STATE OF EMERGENCY

The military is headed by the president of Trinidad and Tobago as the commander in chief. The armed forces are made up of volunteers, and there is no conscription.

A state of emergency has to be declared by the president. During this period, the president may issue orders and instructions to deal with the situation, including limiting individual fundamental rights and freedoms. The proclamation may be revoked or extended at any time by the House of Representatives.

AMENDMENTS TO THE CONSTITUTION

Legislative bills that provide for amendments of the constitution or alterations of any of the constitution's provi-

sions require strong parliamentary support. The majority required depends on the particular section to be changed. Alterations of the fundamental rights and freedoms, for example, need the support of at least two-thirds of all the members of the Senate and the House of Representatives. Changes in the president's immunity from civil and criminal proceedings, or in Parliament's powers to alter the constitution, need an even higher majority of three-fourths of the votes of all the members of both houses.

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Larissa Zabel

TUNISIA

At-a-Glance

OFFICIAL NAME
Republic of Tunisia

CAPITAL
Tunis

POPULATION
9,974,722 (2005 est.)

SIZE
63,170 sq. mi. (163,610 sq. km)

LANGUAGES
Arabic, French

RELIGIONS
Muslim 98%, Christian 1%, Jewish less than 1%

NATIONAL OR ETHNIC COMPOSITION
Arab-Berber 98%, European 1%, other 1%

DATE OF INDEPENDENCE OR CREATION
March 20, 1956

TYPE OF GOVERNMENT
Parliamentary democracy (presidential preeminence)

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
June 1, 1959

DATE OF LAST AMENDMENT
May 13, 2003

Tunisia is a presidential democracy based on the rule of law with a clear division of executive, legislative, and judicial powers. It is divided into 23 governorates, each headed by a governor appointed by the president. The constitution of Tunisia guarantees the inviolability of the human person and freedom of conscience and protects the free exercise of beliefs, with reservation that they not disturb the public order. The freedoms of opinion, expression, the press, publication, assembly, and association are also guaranteed and exercised within the conditions defined by the law.

The Tunisian constitution guarantees the inviolability of the home, the privacy of correspondence, and the right to move freely in the interior of the territory, to leave it, and to establish one's domicile within the limits established by the law.

The president of Tunisia is the head of state. The president is the guarantor of national independence, of the integrity of the territory, of respect for the constitution and the laws, and of the execution of treaties. The president watches over the regular functioning of the constitutional public powers and assures the continuity of the state.

The president of Tunisia is assisted by an executive administration directed by a prime minister.

Religious freedom is guaranteed and state and religious communities are separated. The economic system can be described as a social market economy. The military is subject to the civil government in terms of law and fact. By constitutional law, Tunisia is obliged to contribute to world peace.

CONSTITUTIONAL HISTORY

In the early centuries of the Islamic period, beginning in the seventh and eighth centuries C.E., Tunisia was called Ifriqiyah. The Arabs conquered Tunisia in 647 C.E. In 1230, a separate Tunisian dynasty was established by the Hafsids. Tunisia was incorporated in 1574 into the Ottoman Empire, an arrangement that formally lasted until 1922. In reality, Tunisia was long an autonomous state.

In 1860, a constitution (or *destour*), which in theory limited the authority of the monarch, was promulgated. In 1888, the Treaty of Bardo effectively established a

French protectorate over the country. This treaty made no reference to a protectorate; it stated that the military occupation was temporary and would end the moment there was evidence that the Tunisian administration was capable of reestablishing law and order in the country.

In 1920, the Destour Party confronted the *bey* (or governor) and the French government with a document demanding the establishment of a constitutional form of government in which Tunisians would possess the same rights as Europeans.

In 1951, France permitted a government that had nationalist sympathies to take office. In July 1954 the French premier, Pierre Mendès-France, promised complete autonomy to Tunisia, subject to a negotiated agreement. In June 1955, an agreement was finally signed by the Tunisian delegates, even though it imposed strict limits on Tunisia in the fields of foreign policy, education, defense, and finance.

In March 1956, France granted full independence to Tunisia and a republic was declared with Habib Bourguiba as president. In 1957 Bourguiba formally ended the nominal rule of the former Ottoman beys. In June 1959, the country adopted a constitution modeled on the French system, which established the basic outline of the highly centralized presidential system that continues today.

In 1975, the Chamber of Deputies unanimously bestowed the presidency for life on the sick and aging Habib Bourguiba, who centralized power under his progressive but increasingly personalized rule. In 1987, Bourguiba was deposed by his prime minister, Zayn al-Abidin bin Ali (Ben Ali). He promised greater democratic openness and respect for human rights, signing a "national pact" with opposition parties. However, the ruling party, renamed the Rassemblement Constitutionnel Démocratique (Constitutional Democratic Rally [RCD]), continued to dominate the political scene. Ben Ali ran for reelection unopposed in 1989 and 1994 and won the 1999 elections facing two weak opponents. Citizens still do not have full political freedom.

A constitutional amendment, approved in 2002 in a referendum, permitted the president to run for more than two terms, and in 2004 Ben Ali was reelected with 95 percent of the vote; he again faced only token opposition. The landslide victories of Ben Ali and the government party were marked by intimidation and credible accusations of vote rigging.

FORM AND IMPACT OF THE CONSTITUTION

Tunisia has a written constitution, codified in a single document called the Basic Law, which takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Tunisia. Treaties enter into force only after their ratification and provided they are applied by the other party. Treaties ratified by the president and approved by the Chamber of Deputies have higher authority than ordinary laws.

BASIC ORGANIZATIONAL STRUCTURE

The Tunisian state structure is made up of three levels: central, intermediate, and local.

At the central level, there are 21 ministries, organized into general directorates in accordance with the French administrative model.

The intermediate level includes 23 governorates, which have political representation at the central government level. Each governorate is headed by a governor, who is appointed by the president.

In 2002, the Council of Regions was created. This is a consultative body charged with suggesting to the president and the prime minister action that would give local administrations increased financial and decision-making autonomy.

The local level revolves around municipalities. Each municipality is headed by a president elected for a five-year term.

LEADING CONSTITUTIONAL PRINCIPLES

Tunisia's system of government is a parliamentary democracy. There is a division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent and includes a constitutional court.

The Tunisian constitutional system is defined by a number of leading principles: Tunisia is a democracy, a republic, and a social state, and it is based on the rule of law. The 2002 constitutional reform consecrated the principles of rule of law and pluralism, and the values of solidarity, tolerance, and liberty. At the same time that it promotes political and civil rights, Tunisia endeavors to guarantee the social, economic, and cultural rights of its citizens.

The Tunisian constitution does not allow the exploitation of religion or race for political purposes. It states in Article 8 that "a political party must not be based, at the level of its principles, objectives, activities and programs, upon a religion, language, race, gender or region."

The preamble of the constitution commits Tunisia to promote world peace, to consolidate national unity, and to remain faithful to human values that constitute the common heritage of peoples. These values include human dignity, justice, liberty, and a striving for peace, progress, and free cooperation among nations. The constitution obliges Tunisia to take an active part in the integration of the Maghreb (the North African states).

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the prime minister and the cabinet ministers; the parliament, formed by the Chamber of Deputies and the Chamber of Councilors; and the judiciary. A number of other bodies, such as the Economic and Social Council, complete this list.

The President

As head of state, the president is the guarantor of national independence and the integrity of the territory. The president upholds respect for the constitution and the laws, supervises the execution of treaties, monitors the regular functioning of the constitutional public bodies, and assures the continuity of the state.

The president is elected for five years by universal, free, direct, and secret suffrage. Elections take place within the last 30 days of the previous term of office. A candidate for the presidency must be a Tunisian who does not carry any other nationality and whose father, mother, and paternal and maternal grandfathers were of uninterrupted Tunisian nationality. The candidate must also be a Muslim between the ages of 40 and 70 on the day of submitting his or her candidacy, whose civil and political rights have not been curbed for any legal reason. The declaration of candidacy is recorded in a special register before a commission composed of the president and four other members. This commission rules on the validity of the candidacies and proclaims the result of the election.

The president is the supreme commander of the armed forces. He or she accredits the diplomatic representatives of foreign powers, ratifies treaties, and declares war and concludes peace with the approval of the parliament. The president also exercises the right of pardon.

The president promulgates constitutional, organic, or ordinary laws and ensures their publication in the *Official Journal of the Tunisian Republic*. The president of the republic may return the bill to the national parliament for a second reading. If the bill is adopted by the national parliament with a majority of two-thirds of its members, the law must be promulgated and published. The president may submit to a referendum any bill relating to the organization of the public powers or seeking to ratify a treaty that, without being contrary to the constitution, may affect the functioning of the institutions.

As head of the executive branch, the president directs the general policy of the nation, defines its fundamental options, and informs the national parliament accordingly. The president watches over the execution of the laws and exercises the general regulatory power, which he or she may delegate in whole or in part to the prime minister. The president appoints the highest civil and military officers on the recommendation of the executive administration.

In case the presidency of the republic becomes vacant as a result of death, resignation, total incapacity, or a ruling by the Constitutional Council that the president is unfit for office, the president of the national parliament becomes interim president for a maximum of 60 days until a new president is elected for a full five-year term. The interim president may not be a candidate for the presidency and may not call a referendum, dismiss the executive administration, or dissolve the national parliament. During this period, a motion of censure against the executive government cannot be presented. During the same period, presidential elections are organized to elect a new president of the republic for a term of five years. The new president may dissolve the national parliament and organize early legislative elections.

The Executive Administration

The administration puts into effect the general policy of the nation. It is responsible to the president of the republic, who appoints the prime minister and, on the suggestion of the prime minister, the other members of the executive administration. The president can dismiss the executive administration or any of its members at his or her discretion or on the recommendation of the prime minister.

The president presides over the Council of Ministers; in his or her absence the prime minister presides. The prime minister directs and coordinates the work of the executive administration. Decrees of a regulatory character are countersigned by the prime minister and the interested member of the executive government.

Parliament may dismiss the executive administration by a motion of censure, on grounds that it is not following the general policy and fundamental options stated in its program. The motion must initially be supported by at least half the members of parliament and needs a two-thirds majority of the deputies to pass.

The Parliament

The Tunisian parliament is the central representative organ of the people. It is composed of the Chamber of Deputies and the Chamber of Councilors.

The members of the Chamber of Deputies (Majlis al-Nuwaab) are elected by universal, free, direct, and secret suffrage for a five-year term. Any voter born of a Tunisian father who is at least 25 years of age on the day of submission of his or her candidacy is eligible for election to the national parliament.

The Chamber of Councilors is composed of councils whose number shall not exceed that of two-thirds of the members of the Chamber of Deputies. The majority of councilors represent regions: One or two seats are allocated to each governorate (depending on its population); the elected members of the local authorities choose the advisers from among themselves by a secret ballot. One-third of the councilors are elected at the national level from among various social sectors: employers, farmers, and workers. Enough candidates are nominated by the

relevant professional organizations to provide voters with a choice. Seats are distributed equally among the concerned sectors. The candidates must have the appropriate qualifications in the sector they are to represent.

The remaining members of the Chamber of Councilors are appointed by the president of the republic from among prominent figures and holders of positions of responsibility at the national level. Once elected, councilors must not be bound by local or sectoral interests.

The term of office for the members of the Chamber of Councilors is six years. Half of its composition is renewed every three years.

The Chamber of Deputies is elected for a period of five years. If war or imminent peril makes a new election impossible, the mandate of the Chamber of Deputies is extended by a law until it is possible to proceed with the elections.

The Chamber of Deputies meets each year in ordinary session from October to July. However, the first session of every newly elected legislature begins in November. During the vacation, the Chamber of Deputies may meet in extraordinary sessions at the request of the president or the majority of deputies.

No member of the Chamber of Deputies or the Chamber of Councilors can be arrested or prosecuted for the duration of his or her mandate for a crime or misdemeanor as long as the Chamber of Deputies or the Chamber of Councilors has not lifted the immunity. However, in the event of a flagrant offense, arrest is permitted, though the relevant chamber must be informed without delay.

The president has power to dissolve the Chamber of Deputies if it passes a second motion of censure during the same legislative period. New elections must be called within 30 days.

The Lawmaking Process

The right to introduce a bill is possessed equally by the president of the republic and by the deputies. However, priority is given to bills presented by the president.

The parliament may authorize the president to issue decree laws within a fixed time limit and for a specific purpose. They must be submitted for ratification to the parliament upon expiration of that time limit.

Organic and ordinary laws are passed by the parliament by absolute majority. A draft organic law may not be submitted for deliberation by the parliament until after the expiration of a period of 15 days from its filing.

The budget must be voted on by December 31. If by that date the national parliament has not made a decision, the provisions of the financial bill may be implemented by decree, in three-month renewable installments.

Once a bill has been passed by the parliament, it must be countersigned by the president and promulgated.

The Judiciary

The judiciary in Tunisia is independent of the executive and legislative branches and is a powerful factor in legal life. Sharia courts were abolished in 1956; since then Tunisia has had a single unified judiciary structure. Magistrates are appointed by presidential decree upon the recommendation of the Superior Judicial Council.

The Superior Judicial Council serves as the administrative authority of the judiciary, which is actually administered by the Ministry of Justice. The council is presided over by the president of the republic and is composed of senior jurors. The current judicial system has civil, criminal, and administrative departments.

At the base of the Tunisian judicial structure are the 51 district courts, in which a single judge hears each case. The jurisdiction of the district courts extends to civil cases of lesser value, as well as cases related to issues of labor and nationality, civil affairs, personal estate actions, actions in recovery, and injunctions to pay.

The courts of first instance serve as the appellate courts for the district courts. There is a court of first instance in each region of the country. Each court is composed of a three-judge panel. The courts of first instance are empowered to hear all commercial and civil cases, irrespective of the monetary value of the claim.

The appeal courts serve as the appellate courts for decisions made in the courts of first instance. The three appeals courts are located in Tunis, Sousse, and Sfax.

The Supreme Court or Court of Cassation is located in Tunis and serves as the final court of appeals. The court has one criminal and three civil divisions.

The district courts have jurisdiction to hear all misdemeanor cases. The courts of first instance hears all other criminal cases except felonies. A grand jury first hears felony crimes. Once a judge issues an indictment based on the grand jury proceedings, the case is submitted to the criminal court division of the appeals court. The criminal division of the Court of Cassation serves as the final appellate court for criminal matters.

The High Court meets in a case of high treason committed by a member of the executive government.

THE ELECTION PROCESS

According to the constitution and electoral code, all Tunisians over the age of 18 have the right to vote in the election: “Suffrage is universal, free, direct, and secret.” Citizens naturalized for more than five years can also vote, as can Tunisians living abroad who have registered in their embassy or consulate and have received their electoral card.

A National Monitor for Presidential and Legislative Elections has been established to control the electoral process. This body includes personalities known for their autonomy. The Constitutional Council approves the applications of presidential candidates and validates the results of elections.

Each presidential candidate and each list of candidates to legislative elections receives government funding to finance the campaign. During the electoral campaign,

candidates are all offered equal time to speak to voters on national radio and television.

Parliamentary Elections

A candidate to the Chamber of Deputies must be the child of at least one Tunisian parent and must be 23 years of age. Candidates are excluded if they have been convicted of a serious crime, are involved in undischarged bankruptcy, are insane, or are active members of the armed and security forces. The renewable term of office is five years.

Individual candidates and those running independently can advertise in the press and other media. Campaigning is allowed for only two weeks preceding the election.

A candidate to the Chamber of Councilors must be born of a Tunisian father or mother, be at least 40 years of age on the day of submitting the candidacy, and have the right to vote. Concurrent membership of the Chamber of Deputies and of the Chamber of Councilors is not allowed.

The authorities must inform the voters where to vote at least seven days in advance of an election. No military or security forces can be present in the polling stations during voting without special permission, and voters cannot be armed.

POLITICAL PARTIES

Tunisia has a "pluralistic system" of political parties. In 1981, Bourguiba authorized the legal formation of opposition political parties, indicating a possible shift in the direction of democracy, and multiparty legislative elections were held for the first time in 1981. By 1986, six opposition parties had legal status.

The 1980s was largely characterized by popular unrest and labor difficulties, as well as a search for the aged Bourguiba's successor. In November 1987, amid widespread unrest and growing support for Islamism, Bourguiba was declared mentally unfit to rule and was removed from office. He was succeeded by General Zine el-Abidine Ben Ali, whom he had appointed as prime minister a month earlier.

Ben Ali initially moved toward liberal reforms, but after the 1989 elections, he instituted repressive measures against Islamist activists. During the 1994 election campaign, the government arrested political dissidents and barred the Islamic party Al Nahda from participation.

In 1994 Ben Ali gained 99 percent of the vote and the RDI won all 141 seats in the legislature. In 1999, Ben Ali was again reelected with nearly 100 percent of the vote; he faced a token challenge from two opposition candidates.

CITIZENSHIP

Tunisian citizenship is primarily acquired by birth. The principles of *ius sanguinis* and *ius soli* are both applied. Anyone who has a Tunisian father obtains Tunisian nationality automatically wherever he or she is born. Anyone who has a foreign father and a Tunisian mother must be born in the country to acquire nationality automatically. If born abroad, such a child can acquire Tunisian nationality only if his or her parents make the request.

A foreigner whose father and grandfather were born in Tunisia can become Tunisian. This right, however, is not granted to foreigners whose ascending maternal ancestors alone were born in Tunisia.

FUNDAMENTAL RIGHTS

The Tunisian constitution guarantees the inviolability of the human person and freedom of conscience and protects the free exercise of beliefs, with reservation that they not disturb the public order. The liberties of opinion, expression, the press, publication, assembly, and association are also guaranteed and exercised within the conditions defined by law.

The Tunisian constitution guarantees the inviolability of the home and the secrecy of correspondence and the right to move freely in the interior of the territory, to leave it, and to establish one's domicile within the limits established by the law. The right to form unions is also guaranteed.

The general equal treatment clause is contained in Article 6, which guarantees that all persons are equal before the law.

Every accused person is presumed innocent until his or her guilt is established in accordance with a procedure offering guarantees indispensable for defense. The sentence is personal and cannot be pronounced except by virtue of an existing law.

Impact and Functions of Fundamental Rights

The preamble of the Tunisian constitution states that the republican regime is "the best guarantee for the respect of human rights, for the establishment of equality among citizens in terms of rights and duties, and for the achievement of the country's prosperity through economic development and use of the nation's riches for the benefit of the people." It also characterizes it as "the most effective way of protecting the family and ensuring the citizens' right to work, health care and education."

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. The Tunisian constitution stipulates possible limitations according to specific needs of the public and to the rights of others. Article 7 states: "The citizens exercise the plenitude of their rights in the forms and conditions established by the law. The exercise of these rights cannot be limited except by a law enacted for

the protection of others, the respect for the public order, the national defense, the development of the economy, and social progress." On the other hand, no fundamental right may be disregarded completely. Each limit to a fundamental right faces limits itself.

ECONOMY

The Tunisian constitution does not specify an economic system.

The fundamental rights protect the freedom of property and the freedom of occupation or profession, general personal freedom, as well as the right to form associations, partnerships, and corporations.

RELIGIOUS COMMUNITIES

Freedom of religion or belief, which is guaranteed as a human right, also involves rights for the religious communities.

Islam is the state religion. The constitution provides for the free exercise of other religions that do not disturb the public order, and the government generally observes and enforces this right.

The government recognizes all Christian and Jewish religious organizations that were established before independence in 1956 but does not permit Christian groups to establish new churches. The government also partially subsidizes the Jewish community.

The government controls and subsidizes mosques and pays the salaries of prayer leaders. The president appoints the grand mufti of the republic. The 1988 law on mosques provides that only personnel appointed by the government may lead activities in mosques and stipulates that mosques must remain closed except during prayer times and other authorized religious ceremonies, such as marriages or funerals. New mosques may be built in accordance with national urban planning regulations but become the property of the state.

MILITARY DEFENSE AND STATE OF EMERGENCY

In case of imminent peril menacing the institutions of the republic or the security and independence of the country or obstructing the regular functioning of the public powers, the president of the republic may take the exceptional measures necessitated by the circumstances, after consultation with the prime minister and the president of the national parliament.

During this period, the president of the republic may not dissolve the national parliament, and no motion of censure may be presented against the executive government. These measures cease to have effect as soon as the circumstances that produced them end. The president of the republic must address a message to the national parliament on this subject.

AMENDMENTS TO THE CONSTITUTION

An amendment to the constitution can be proposed only by the president of the republic or by one-third of the members of the Chamber of Deputies, provided the amendment does not undermine the republican form of the state.

The Chamber of Deputies studies the proposed revision after a resolution adopted by an absolute majority, after identification of the purpose of the amendment and its study by an ad hoc committee. The president of the republic may put to a referendum proposals for revision of the constitution; he or she submits the draft amendment of the constitution to the people after it has been adopted by an absolute majority of the Chamber of Deputies upon a single reading. If that route is not taken, the draft amendment of the constitution can be adopted by the Chamber of Deputies by a two-thirds majority upon two readings; the second reading takes place at least three months after the first.

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Dahmène Touchent

TURKEY

At-a-Glance

OFFICIAL NAME
Republic of Turkey

CAPITAL
Ankara

POPULATION
67,803,927 (2000)

SIZE
301,384 sq. mi. (780,580 sq. km)

LANGUAGES
Turkish (official), Kurdish, Arabic, Armenian, Greek

RELIGIONS
Muslim (mostly Sunni) 99.8%, other (Greek Orthodox, Armenian Gregorian, Catholic, Syriac Orthodox, Jewish) 0.2%

NATIONAL OR ETHNIC COMPOSITION
Turkish 80%, other (Kurdish, Greek, Armenian, Syriac, Jewish, Georgian, Lazian, Circassian, Bosnian, Arab) 20%

DATE OF INDEPENDENCE OR CREATION
October 29, 1923

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
November 7, 1982

DATE OF LAST AMENDMENT
June 21, 2005

The Turkish republic is a parliamentary democracy based on the division of powers. Its fundamental principles are the rule of law, secularism, a social state, and respect for human rights. It is organized as a unitary state, and the central government monopolizes political power. The local administrations do not exercise power independently of it.

The predominant bodies provided for in the constitution are the Turkish Grand National Assembly, the president of the republic, the Council of Ministers, and the Constitutional Court. The assembly makes, amends, and repeals laws and controls the executive and the budget. Free, equal, general, and direct elections of the members of parliament are guaranteed.

The president of the republic is the head of the state. In this capacity, he or she represents the Republic of Turkey and the unity of the Turkish nation. The Council of Ministers, composed of the prime minister and the ministers, is the other branch of the executive power. The independence of the judiciary of the legislative and executive powers is safeguarded. The Constitutional Court examines the constitutionality of laws and ensures respect for human rights. Individual, political, and social rights and freedoms are secured by the constitution. The economic system is a social market economy. The constitution describes political parties as indispensable elements of the democratic political life.

CONSTITUTIONAL HISTORY

The Ottoman Empire ruled today's Turkey through the 14th century. A constitutional monarchy was first established by the constitution of 1876, which established a bicameral parliament, one of whose chambers, the Meclis-i Mebusan, was elected by the people. The other chamber, the Meclis-i Ayan, was appointed by the sultan. The legislative process was designed so that the sultan's decisions always prevailed. The administration was appointed by the sultan and was responsible directly and solely to him.

The transition to a genuine parliamentarian system occurred with the 1909 constitutional amendment, but it was soon supplanted by the one-party rule of the Union and Progress (İttihad ve Terakki) Party.

The 1921 constitution, considered a step to republican government, fused the legislative, executive, and partly the judicial powers under parliament, which presided over the War of Independence. The 1924 constitution followed the proclamation of the republic; it was directly inspired by the French Revolution and Enlightment philosophy, which exerted a considerable influence on Mustafa Kemal Atatürk, founder of the republic.

The multiparty system gained momentum in the first years of the 1924 constitution, until the so-called Law on the Establishment of Peace (Takriri Sükun Kanunu) opened the way to the authoritarian one-party rule of the People's Republican Party (Cumhuriyet Halk Partisi [CHP]), which lasted until 1946, when a multiparty system was reestablished. The Democratic Party (Demokrat Parti [DP]) gained a majority in parliament; its behavior—it considered itself to be the only representative of national sovereignty, and it deviated from the secular ideology of the republic—provoked the coup of May 27, 1960, which in turn led to the 1961 constitution.

The 1961 constitution created a social rule of law and guaranteed fundamental rights and freedoms. During the 20 years it remained in force, Turkey gained wide experience with democratic institutions. Perhaps the most important advances were the establishment of the Constitutional Court, full judicial control over the administration, full independence of the judiciary, and autonomy of universities and state broadcasting agencies. Individual and collective rights and freedoms, particularly the rights of labor unions, were effectively guaranteed.

The same constitution established the National Security Council, limited to a solely advisory capacity. As terrorist activities gained momentum, a movement favoring direct or indirect intervention in politics grew within the army. After several failed coup attempts and a military-dominated regime in 1971 and 1973, the army took full power on September 12, 1980.

The military regime lasted until the end of 1983. Its authoritarian vision shaped the current, 1982 constitution. However, that constitution has been amended several times, most significantly in 1995, 2001, and 2004. The latter two reforms are part of the process of harmonization with European Union (EU) standards, in preparation for membership in the EU.

There were institutional and practical reasons behind the emergence of the armed forces as an important actor in the country's politics, even under civilian administrations. The National Security Council still occupies an important place in the Turkish constitutional political system, although the amendments of 2001 gave its civilian members a majority for the first time. The 2004 amendments strengthened the powers of the Audit Court to monitor state property in the possession of the armed forces.

FORM AND IMPACT OF THE CONSTITUTION

Turkey has a written constitution, codified in a single document that has supremacy over all other laws. The revolutionary laws, annexed at the end of the constitution, have a special semiconstitutional status since they cannot be challenged on grounds of unconstitutionality. Likewise, international treaties duly put into effect have the force of ordinary law but cannot be appealed to the Constitutional Court. The 2004 amendment provides that in cases of conflict between national law and ratified international treaties on fundamental rights and liberties, the treaty takes precedence. Thus, international human rights treaties are superior to national law; whether they outrank the constitution is yet to be determined. Apart from these exceptions, all legal norms (laws, ordinances, regulations, etc.) must comply with the provisions of the constitution.

BASIC ORGANIZATIONAL STRUCTURE

The Turkish republic is a unitary state. The central government monopolizes political power and determines the powers allocated to local administrations. The powers, structure, and boundaries of the local units can be changed by the central government unilaterally. According to the Constitutional Court, the principle of the unitary state is not compatible with regional autonomy and self-government or with federalism.

The executive authority is, however, based on local as well as central administration. Turkey is divided into provinces on the basis of geographical features, economic conditions, and public service requirements; provinces are further divided into administrative districts.

The local units are public corporate entities established to meet the common local needs of the inhabitants of provinces, municipal districts, and villages. Their decision-making organs are elected by the people. The central administration has the power of administrative trusteeship over the local units. Stronger decentralization in local government is a pressing need. However, all reform initiatives in this field have failed for fear that such evolution could foster ethnic secessionist or Islamic fundamentalist tendencies in various local units.

LEADING CONSTITUTIONAL PRINCIPLES

The Turkish state is a democratic, secular, and social republic governed by the rule of law, respecting human rights and loyal to the nationalism of Atatürk. It constitutes, with its territory and nation, an indivisible entity.

The constitutional provisions relating to the form of the state as a republic, to the characteristics of the republic, and to its indivisibility cannot be amended.

Secularism occupies a prominent position. It is directly inspired by the French model of *laïcité* and based on a separation between the religious sphere and the political one. In the terms of the preamble, there can be no role whatsoever for sacred religious feelings in state affairs and politics. Secularism has been the spearhead of the modernization process of the republic. Even today, the judiciary and particularly the constitutional court play a zealous role in defending this principle.

The fundamental aims and duties of the state are to safeguard the independence and integrity of the Turkish nation: indivisible, republican, and democratic; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social, and economic obstacles to the fundamental rights and freedoms of the individual in a manner compatible with the principles of justice, the social state, and the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence.

Sovereignty is vested fully and unconditionally in the nation, which exercises it through the authorized organs as prescribed by the principles in the constitution. The right to exercise sovereignty cannot be delegated to any individual, group, or class. No person or agency can exercise any state authority that does not emanate from the constitution.

The principle of separation of powers is a prime feature of the Turkish constitution. The constitution implies a parliamentary system based on the principle of the collaboration of executive and legislative institutions of government. The judiciary, however, is entirely independent.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the Turkish Grand National Assembly (the parliament), the president of the republic, the Council of Ministers, and the Constitutional Court.

The Turkish Grand National Assembly

The Turkish Grand National Assembly is the legislative organ in Turkey. According to the constitution, legislative authority cannot be delegated to any other branch of government. The Turkish Grand National Assembly is composed of 550 deputies elected by direct universal suffrage.

The term of the assembly is five years. However, the assembly may decide to hold new elections any time before the termination of its regular term. The president of the republic can also call new elections when (1) the Council of Ministers does not receive a vote of confidence or is compelled to resign by a vote of no confidence, and (2) a new Council of Ministers cannot be formed within 45 days, or (3) the new Council of Ministers does not receive a vote of confidence within 45 days. The president can also call new elections if a new Council of Ministers cannot be formed within 45 days after the resignation of the prime minister or within 45 days after the election of the presiding members of the newly elected assembly. The assembly is dissolved automatically if the president of the republic has not been elected by the assembly even in the fourth ballot.

The members of the assembly enjoy the classical parliamentary privileges. They cannot be held liable for votes cast, speeches made, and opinions expressed in the course of legislative activities or for disclosure of those activities outside the legislature. The constitution provides that no members of the assembly can be arrested, interrogated, detained, or tried unless the assembly decides otherwise. If the assembly decides to remove a member's freedom from arrest, he or she can appeal to the Constitutional Court on the grounds that the removal is contrary to the constitution, law, or the rules and procedures of the assembly.

The most important functions of the assembly are to make, amend, and repeal laws. Its other important role is to control the executive and the budget. The assembly can force a cabinet member to resign by withholding its confidence, and it can exercise its supervisory power by motions of censure, questions, parliamentary investigations, general debates, and parliamentary inquiries.

The motion of censure is the most powerful instrument of the legislative control of the executive. A motion of censure may be tabled either on behalf of a political party group or by the signature of at least 20 deputies. In the debate about the motion, only one of the signatories to the motion, one deputy from each political party group, and the prime minister or one minister on behalf of the Council of Ministers may take the floor. In order to unseat the Council of Ministers or a minister, an absolute majority of the total number of members voting is required.

A question is a request for information addressed to the prime minister or to individual ministers to be answered orally or in writing on behalf of the Council of Ministers. A parliamentary investigation is conducted to obtain information on a specific subject. A general debate is the consideration of a specific subject relating to the community and the activities of the state at the plenary sessions of the assembly. Parliamentary inquiries may be initiated by a decision of the assembly to ascertain criminal responsibility of the prime minister or individual ministers in matters connected with their office. The inquiry is carried out by a parliamentary commission composed of 15 members. The decision to take a person to court is taken by secret ballot and requires an absolute majority of the total number of members. In the case of impeachment the prime minister or minister is tried by the Constitutional Court, called the Supreme Court when it exercises this power.

The budgetary powers of the assembly are set by the constitution with a detailed timetable. An annual bud-

get bill is submitted to the assembly by the Council of Ministers at least 75 days before the beginning of every new fiscal year. A rejection of the budget by the assembly is considered as a vote of censure against the Council of Ministers.

The President of the Republic

Executive power is exercised by the president of the republic and the Council of Ministers in conformity with the constitution and the law. The president of the republic is the head of the state. In this capacity he or she represents the Republic of Turkey and the unity of the Turkish nation and ensures the implementation of the constitution and the regular and harmonious functioning of the organs of state.

The president of the republic is elected for a term of seven years by the Turkish Grand National Assembly. A candidate for the post must be a Turkish citizen over 40 years of age who has completed higher education and is eligible to be a deputy; he or she may be a sitting deputy. In order to secure impartiality, the constitution provides that the president of the republic cannot be elected for a second term; if the president-elect is a member of a party, he or she must leave the party; if the president-elect is a deputy, he or she must resign that post.

The president of the republic is elected by a two-thirds majority of the total number of members of the assembly by secret ballot. If a two-thirds majority of the total number of members cannot be obtained in the first two ballots, a third ballot is held and the candidate who receives the absolute majority is elected. If an absolute majority is not obtained in the third ballot, a fourth ballot is held between the top two third ballot candidates. If a president is still not elected by an absolute majority, new general elections for the assembly are held immediately.

The president is not politically responsible for his or her actions connected with the office. Therefore, all presidential decrees must be countersigned by the prime minister and the ministers concerned, who bear the political responsibility. Thus, in formal terms the executive functions are exercised by the Council of Ministers.

The president of the republic is not responsible even in criminal matters connected with his or her office. Here, too, the responsibility is assumed by the prime minister and the ministers concerned. The president of the republic may be impeached only for high treason, at the request of at least one-third of the total number of members of the Turkish Grand National Assembly and by the decision of at least three-fourths.

The constitution contains a long list of presidential powers and classifies them according to their legislative, executive, and judicial functions. Among the legislative powers are promulgating laws, returning laws to the Turkish Grand National Assembly for reconsideration, submitting proposed constitutional amendments to referendum, appealing to the Constitutional Court to annul laws or provisions of laws or other norms, and calling new elections for the assembly.

In the executive capacity, the president appoints the prime minister and has the power to accept his or her resignation. The president appoints and dismisses ministers on the proposal of the prime minister, summons the Council of Ministers whenever he or she deems it necessary and presides over its sessions, ratifies and promulgates international treaties, and summons and presides over the National Security Council. The president also has the power to proclaim martial law or a state of emergency; can issue decrees that have the force of law, in accordance with the decisions of the Council of Ministers; and appoints members of the Higher Education Council and rectors of universities.

The president appoints the members of the Constitutional Court, one-fourth of the members of the Council of State, the chief public prosecutor and the deputy chief public prosecutor of the High Court of Appeals, and the members of the Military High Court of Appeals, the Supreme Military Administrative Court, and the Supreme Council of Judges and Public Prosecutors.

In spite of this long list of competences, to which others can be added, the president of the republic is not the head of state as in presidential or semipresidential systems. Most of these powers are formal and not substantive; they may be exercised only upon the recommendation or prior action of another body or require the participation of the prime minister or other ministers.

The Council of Ministers

The other major organ of the executive branch is the Council of Ministers, composed of the prime minister and the other ministers. The prime minister is appointed by the president of the republic from among the members of the Turkish Grand National Assembly. The ministers are nominated by the prime minister and appointed by the president of the republic from among the members of the assembly or those eligible for election as deputies. They can be dismissed by the president of the republic upon the proposal of the prime minister when deemed necessary.

The completed list of members of the Council of Ministers is submitted to the assembly for a vote of confidence. A simple majority is sufficient for approval.

The prime minister, as chairperson of the Council of Ministers, ensures cooperation among the ministers and supervises the implementation of the administration's general policy. He or she ensures that the ministers exercise their functions in accordance with the constitution and laws, may take corrective measures to this end, and may propose to the president the dismissal of a minister. The prime minister is normally the leader of the majority party in the Turkish Grand National Assembly and has the support of the assembly.

In spite of the considerable powers of the president of the republic, the prime minister is the effective head of the executive. However, the prime minister has to maintain a good relationship with the president, who can stymie the administration by refusing to sign executive decrees.

All ministers assume both collective responsibility for the general policy of the administration and individual responsibility for the actions of their own ministry. No individual minister can stay in office if the Council of Ministers falls as a result of a vote of no confidence. By contrast, the assembly can vote a motion of censure to unseat an individual minister.

The Lawmaking Process

The Turkish Grand National Assembly enacts, amends, and repeals laws. The Council of Ministers and deputies are empowered to introduce laws.

The assembly convenes with at least one-third of the total number of its members and adopts laws by an absolute majority of those present; however, the quorum for enactment of a law can under no circumstances be less than a quarter plus one of the total number of members.

The laws adopted by the assembly are promulgated by the president of the republic within 15 days. The president may, within the same period, return a law for reconsideration, but if the assembly readopts the law without any change, the president must promulgate it.

The Judiciary

The judicial power is mainly exercised by courts of justice (civil and criminal), administrative courts, and military courts. Decisions by lower courts are examined by higher courts. The higher courts in Turkey are the Court of Cassation (final appeal), the Council of State, the Military Court of Cassation, the High Military Administrative Court of Appeals, the Court of Jurisdictional Disputes, the Audit Court, and the Constitutional Court.

The Court of Cassation is the last instance for reviewing decisions of courts of justice, the Council of State is the last instance for reviewing decisions of administrative courts, and the Military Court of Cassation is the last instance for reviewing decisions of military courts.

Some specialized courts prescribed by law act as both first and last instance in their limited field. The High Military Administrative Court of Appeals is the court of first and last instance for disputes that arise from administrative acts involving military personnel, even if such acts were carried out by civil authorities. In disputes that arise from the obligation to perform military service, there is no condition that the person concerned be a member of the military body. The Jurisdictional Court of Disputes is empowered to deliver final judgments in disputes among courts of justice, administrative courts, and military courts concerning their jurisdiction and decisions.

The Audit Court is charged with auditing, on behalf of the Turkish Grand National Assembly, all the accounts relating to the revenue, expenditure, and property of government departments financed by the general and subsidiary budgets. It makes final decisions on the acts and accounts of the responsible officials.

The Constitutional Court examines the constitutionality, in respect of both form and substance, of laws, decrees that have the force of law, and the rules of procedure of the Turkish Grand National Assembly. Constitutional amendments can be examined and verified only with regard to their form. However, no action can be taken before the Constitutional Court alleging the unconstitutionality as to the form or substance of decrees that have the force of law issued during a state of emergency or martial law or in time of war. In addition, international treaties cannot be taken before the Constitutional Court on grounds of unconstitutionality.

The Constitutional Court is composed of 11 regular and four substitute members. The president of the republic appoints all the members of the court, but the majority of the candidates (seven regular and three substitute members) are nominated by other high courts. The president of the republic also appoints one member from a list of three candidates nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education and three members and one substitute member from among senior administrative officers and lawyers. The Constitutional Court has complete independence of the legislative and executive branch.

Access to the Constitutional Court is gained through two processes: An annulment action can be instituted by the president of the republic, parliamentary groups of the party in power and of the main opposition party, or a minimum of one-fifth of the total number of members of the Turkish National Assembly. The annulment action must be initiated within 60 days of the promulgation of the law in question in the official gazette. Secondly, any first instance court may dispute the constitutionality of a law to the Constitutional Court, subject to no time limitation. The first instance court which is trying a case may submit its appeal even before the parties raise an issue of unconstitutionality, or when one of the parties raises the issue during proceedings it may submit the appeal if it is convinced of the seriousness of the claim. Proceedings are delayed until the Constitutional Court can render its decision.

Any law, decree, or parliamentary rule annulled by the court ceases to have effect from the date the annulment is published in the official gazette.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Elections for the Turkish Grand National Assembly are held every five years. Every Turk over the age of 30 who has completed primary education and has not been sentenced for serious offenses is eligible to be a deputy.

In conformity with the conditions set forth in the law, all Turkish citizens over 18 years of age have the right to vote, to be elected (to certain posts), to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referenda are held under the direction and supervision of the Supreme Election Council, a judicial body, in accordance with the principles of free, equal, secret, direct, and universal suffrage and public counting of votes. The Supreme Election Council supervises all election and campaign procedures, investigates disputes, and makes final decisions on all irregularities, complaints, and objections.

The constitution does not specify the system of elections to the Turkish Grand National Assembly. These are regulated by the Election of Deputies Law, which introduced the d'Hondt version of proportional representation. This method secures advantages for the small political parties and thus leads to a greater variety of opinions in the assembly. The large number of parties, however, can make it harder to fashion a Council of Ministers and win a vote of confidence. To counteract that tendency, the election law now requires a national threshold of 10 percent; parties that receive less than 10 percent of the votes nationally are not assigned any seats in the assembly. The system strongly favors the larger parties, and there have been discussions about lowering the threshold to 5 percent.

POLITICAL PARTIES

The 1982 constitution describes the democratic regime as a party democracy and classifies political parties as indispensable elements of the democratic political life.

Citizens over 18 have the right to form political parties and, in accordance with established procedures, to join and withdraw from them. Judges and prosecutors, members of higher judicial organs, civil servants not considered to be laborers by virtue of the services they perform, members of the armed forces, and students who are not yet in higher education institutions cannot be members of political parties.

Political parties can be formed without prior permission. The state provides financial assistance to the political parties, as regulated by law, and specifies procedures related to membership fees and donations. The activities, internal regulations, and operation of political parties have to be in line with democratic principles. Political parties cannot engage in commercial activities.

The statutes and programs, as well as the activities, of political parties must not be in conflict with the independence of the state, its indivisible integrity with the territory and people, human rights, the principles of equality and rule of law, sovereignty of the nation, and the principles of the democratic and secular republic. They must not aim to protect or establish class or group dictatorship or dictatorship of any kind; nor may they incite citizens to crime.

When it is established that the statute, program, or activities of a political party violate the principles mentioned, the Constitutional Court can dissolve it. The office of the chief public prosecutor must first file a suit to that effect.

CITIZENSHIP

Everyone bound to the Turkish state through the bond of citizenship is a Turk. The child of a Turkish father or a Turkish mother acquires Turkish citizenship. Citizenship can also be acquired under conditions stipulated by law, such as marriage or a decision of the Council of Ministers, and can be forfeited only in cases determined by law. No Turk is deprived of citizenship unless he or she commits an act incompatible with loyalty to the motherland, such as desertion from military service or escape abroad subsequent to a judicial condemnation for crimes against the security of the state. No citizen can be extradited because of a crime, except for the fulfillment of the obligations required by the International Criminal Court.

FUNDAMENTAL RIGHTS

Fundamental rights and freedoms are considered inviolable and inalienable.

Individual rights and freedoms are categorized as follows: right to life and right to protection and development of one's material and spiritual being; prohibition of forced labor; right to liberty and security; protection of private life and inviolability of the domicile; freedom of communication; freedom of residence and movement; freedom of religion and conscience, thought and opinion, expression and dissemination of thought; freedom of science and the arts; freedom of the press; freedom of association; property rights; and guarantees of lawful judgment.

A number of social and economic rights and duties are also guaranteed: protection of the family; right and duty of training and education; fair utilization of the coasts; land ownership; protection of agriculture, animal husbandry; and persons engaged in these activities; due compensation for expropriation, nationalization, and privatization; the right and duty to work, guarantees for working conditions, and the right to rest and leisure; the right to organize labor unions and engage in collective bargaining, strikes, and lockouts; guarantee of fair wage; the rights to health, environment, and housing; protection of youth; the right to social security; conservation of historical, cultural, and natural wealth; and protection of arts and artists.

Social rights first entered Turkish constitutional life with the 1961 constitution, which was highly advanced for its time. The 1982 constitution might be seen as a regression of social rights, or as an attempt to reconcile social justice concerns with the requirements of the capitalist economy.

As for political rights and duties, the constitution guarantees the right to vote, to be elected, to petition, and to engage in political activity and includes some provisions related to political parties. It protects the right to enter public service or the national service and imposes the obligation to pay taxes.

Impact and Functions of Fundamental Rights

The Turkish constitution is capable of being interpreted in a manner that would allow the state or its rulers to restrict or even destroy the fundamental rights and freedoms embodied in the constitution. Nevertheless, in practice many of these rights have undergone a process of entrenchment in the recent era.

As far back as 1987 Turkey recognized the right of individuals to appeal to the European Court of Human Rights. The court's judgments have had a huge influence on the Turkish law, necessitating the amendment of several laws and even of some provisions of the constitution. Turkey has recently ratified the United Nations Human Rights Conventions of 1966 but does not recognize the jurisdiction of the Human Rights Committee. Human rights questions play a major role in the relationship between Turkey and the European Union; every year, a considerable part of the annual report of the European Union about Turkey as a candidate for membership is devoted to human rights issues.

Limitations to Fundamental Rights

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the constitution and without infringing upon their essence. These restrictions must not be in conflict with the letter or spirit of the constitution or the requirements of the democratic order, the secular republic, or the principle of proportionality.

The rights and freedoms embodied in the constitution may not be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, or endangering the existence of the democratic and secular order of the Turkish republic, based on human rights.

In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, to the extent required by the exigencies of the situation. In no case may obligations under international law be violated. Even under such circumstances, the individual's right to life and the integrity of his or her material and spiritual being are inviolable except when death occurs through lawful acts of warfare; no one may be compelled to reveal his or her religion, conscience, thought, or opinion or be accused on account of them; offenses and penalties may not be made retroactive; nor may anyone be held guilty until so proved by a court judgment.

The fundamental rights and freedoms of noncitizens may be restricted by law in a manner consistent with international law.

ECONOMY

The constitution of Turkey does not impose a specific economic system. Taking certain provisions into consideration, however, it can be said that the constitution implies a preference for a social market economy.

According to the constitution, everyone has the right to own and inherit property and the freedom to work and conclude contracts in the field of his or her choice. The constitution also safeguards the freedom to establish private enterprises. However, these rights can be restricted in order to secure the public interest and the principle of a social state. For instance, the right to property may be limited by law only in view of the public interest. The state can take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

In addition, the constitution obliges the state to engage in planning to accommodate economic, social, and cultural developments and to supervise markets. The rapid, balanced, and harmonious development of industry and agriculture throughout the country and the efficient use of national resources are the duties of the state. The state must also ensure and promote the sound, orderly functioning of the money, credit, capital, goods, and services markets. It must also prevent the formation of monopolies and cartels, in practice or by agreement.

RELIGIOUS COMMUNITIES

The right to freedom of conscience, religious belief, and conviction, as well as the right to perform acts of worship, religious services, and ceremonies, are placed under constitutional protection. No one may be compelled to worship or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his or her religious beliefs and convictions. No one is allowed to exploit or abuse religion or religious feelings or things held sacred by religion for the purpose of personal or political influence. No one may attempt to base the fundamental, social, economic, political, and legal order of the state on religious tenets, even partially.

The relationship between state and religion is based upon a staunch secularism and a regime of total separation. Legal institutions are particularly hostile to the interference of religion. Nevertheless, a disposition of the 1982 constitution, though highly criticized, introduced a system of compulsory education and instruction in religion and ethics in the curricula of primary and secondary schools. These courses are conducted under state supervision and control. Other religious education and instruction is subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

Another element inconsistent with the secular conception of state is the department of religious affairs, which is within the general administration and exercises its duties prescribed in its particular law. In principle, this public entity must function in accordance with the principles of secularism, removed from all political views and ideas and aimed at national solidarity and integrity.

In practice, the department, charged to ensure the whole society's religious needs, represents only the Sunni version of Islam.

There is no legal practice of registration or "recognition of religions" as in many European countries. The non-Muslim religious institutions are organized in the form of foundations that enjoy the guarantees granted by the 1923 Treaty of Lausanne, which is considered the founding act of the republic. The Treaty of Lausanne confines the concept of minority to the non-Muslim minorities and provides a set of freedoms and rights for non-Muslim citizens as well as non-Muslim institutions. The status of non-Muslim institutions has been, however, quite problematic and influenced by the vicissitudes of international politics. Recently, in the context of the harmonization of laws with the European Union legal system, a reform considerably improved the legal status of non-Muslim institutions and facilitated the acquisition of land property and the construction of new houses of worship.

MILITARY DEFENSE AND STATE OF EMERGENCY

The power to authorize a declaration of war or to allow foreign armed forces to be stationed in Turkey is vested in the Turkish Grand National Assembly whether the assembly is adjourned and in recess or in session. If the country is subjected to sudden armed aggression and an immediate decision about the deployment of armed force thus becomes imperative, the president of the republic can mobilize the Turkish armed forces.

The office of commander in chief is considered inseparable from the Turkish Grand National Assembly and is represented by the president of the republic. The Council of Ministers is responsible to the assembly for national security and for the preparation of the armed forces for the defense of the country. The chief of the general staff is the actual commander of the armed forces and, in time of war, exercises the duties of commander in chief on behalf of the president of the republic. The chief of the general staff is appointed by the president of the republic, at the proposal of the Council of Ministers; the chief is responsible to the prime minister.

The National Security Council is composed of the prime minister; the chief of the general staff; deputy prime ministers; the ministers of justice, national defense, internal affairs, and foreign affairs; the commanders of the army, navy, and air forces; and the general commander of the gendarmerie, and is presided over by the president of the republic.

The National Security Council submits advisory decisions to the Council of Ministers. It works to ensure the necessary coordination of the civil and military organs with regard to the formulation, establishment, and implementation of the national security policy of the state.

In the event of natural disaster, dangerous epidemic disease, or a severe economic crisis, the Council of Ministers, presided over by the president of the republic, may declare a state of emergency for a period not exceeding six months. In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order or fundamental rights and freedoms, or in case of a serious deterioration of public order as a result of acts of violence, the decision is made after consultation with the National Security Council.

In the event of a declaration of a state of emergency, the decision must be submitted immediately to the Grand National Assembly for approval. At the request of the Council of Ministers, the assembly may extend the duration of the state of emergency for a maximum of four months or may lift it altogether.

During the state of emergency, the Council of Ministers, presided over by the president of the republic, may issue decrees that have the force of law on matters necessitated by the state of emergency. These decrees are published in the official gazette and are submitted to the Grand National Assembly on the same day for approval; the time limit and procedure for their approval by the assembly are specified in the rules of procedure.

The Council of Ministers, presided over by the president of the republic and after consultation with the National Security Council, may declare martial law for a period not exceeding six months. This is possible only in the event of widespread acts of violence that are more dangerous than the cases necessitating a state of emergency and that are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the constitution. Martial law is also possible in the event of war, the emergence of a situation necessitating war, an uprising, the spread of violent and strong rebellious actions against the motherland and the republic, or widespread acts of violence of either internal or external origin threatening the indivisibility of the country and the nation. This decision is submitted for approval to the assembly on the same day. If the assembly is in recess, it is assembled immediately. The assembly may reduce or extend the period of martial law or lift it.

During the period of martial law the Council of Ministers, presided over by the president of the republic, may issue decrees that have the force of law. These decrees are submitted for approval to the Grand National Assembly on the same day. Extension of the period of martial law, for a maximum of four months each time, requires a decision by the assembly. In the event of a state of war, the limit of four months does not apply.

Military service is compulsory and its term is 15 months. Neither conscientious objection nor substitution of civil service is allowed.

AMENDMENTS TO THE CONSTITUTION

The constitution of Turkey is not a flexible constitution. According to Article 4, the provisions contained in the

first three articles cannot be amended nor their amendment be proposed. Article 1 states that "the state of Turkey is a republic." Article 2 describes the republic as "a democratic, secular, and social state governed by the rule of law in accordance with the concepts of social peace, national solidarity and justice, respectful of human rights, committed to Atatürk nationalism, and based on the fundamental principles set forth in the preamble." Article 3 states that "the Turkish state is an indivisible whole with its territory and nation. Its language is Turkish. Its Flag is composed of a white crescent and star on a red background, in the manner prescribed by law. Its national anthem is the Independence March. Its capital is Ankara."

The remaining provisions of the constitution can be amended in accordance with a complicated procedure. The amendment must be proposed by at least one-third of the total number of members of the Turkish Grand National Assembly. If the proposal is adopted by at least three-fifths but less than two-thirds of the total number of members of the assembly, the president of the republic may either return the amendment to the assembly for further consideration or submit it to a referendum. If the assembly adopts the proposal by a majority of at least two-thirds, the president may either ratify it, return it to the assembly for further consideration, or submit it to an optional referendum. If the assembly readopts the bill by a majority of at least two-thirds upon further consideration, the president of the republic still has the option of submitting it to a referendum.

Amendments submitted to referendum require the approval of more than half of the valid votes cast.

Despite the rigidity of the procedure, many amendments have been approved between 1987 and the current time. The provisions relating to fundamental rights and freedoms have been amended several times in order to eliminate the authoritarian character of the 1982 constitution and to effect greater conformity with liberal democracy.

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TURKMENISTAN

At-a-Glance

OFFICIAL NAME
Turkmenistan

CAPITAL
Ashgabat

POPULATION
6,408,600 (June 1, 2004)

SIZE
188,456 sq. mi. (488,100 sq. km)

LANGUAGES
Turkmen 72%, Russian 12%, Uzbek 9%, other 7%

RELIGIONS
Muslim 89%, Eastern Orthodox 9%, other 2%

NATIONAL OR ETHNIC COMPOSITION
Turkmen 85%, Uzbek 5%, Russian 4%, other 6% (2004)

DATE OF INDEPENDENCE OR CREATION
October 27, 1991

TYPE OF GOVERNMENT
Presidential republic

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 18, 1992

DATE OF LAST AMENDMENT
August 15, 2003

Turkmenistan is a presidential republic. Since independence from the Soviet Union in 1991, Turkmenistan has proclaimed a policy of permanent neutrality. Turkmenistan is a unitary state and has a written constitution, which was adopted in 1992.

The Turkmen constitution establishes the basic organizational structure of the state and the principles on which it is based. It enumerates fundamental rights and freedoms of citizens and stipulates the essence of state governance.

CONSTITUTIONAL HISTORY

In the middle of the 1850s the territory of Turkmenistan, populated by numerous separate tribes, was absorbed by the Russian Empire, and Russian laws and state institutions were introduced. In the 1920s, the country was incorporated into the Communist "new Russia," and in 1924 it became a founding member of the Union of Soviet Socialist Republics. Turkmenistan was one of the 15 republics until 1991, when the Soviet Union dissolved.

On October 27, 1991, Turkmenistan proclaimed its independence and became a sovereign state. On March 2, 1992, Turkmenistan joined the United Nations, in which on December 12, 1995, the permanent neutrality of Turkmenistan was supported by a resolution of the General Assembly.

Turkmenistan adopted a new, liberal constitution on May 18, 1992. Several amendments have been introduced since then, including the abolition of the death penalty and the proclamation of neutrality.

A significant revision of the constitution was undertaken in 2003 and approved on August 15 that year by the National Council, the supreme state body. Most amendments pertained to the new role and status of the National Council, as the fourth branch of state power superior to the classical legislative, executive, and judicial branches.

A number of legal difficulties still await adequate constitutional solutions. This condition suggests that the ongoing process of constitutional and legal reforms in the country has not yet been completed.

Turkmenistan is a member of the United Nations, the Commonwealth of Independent States, the Economic

Cooperation Organization, the Organization for Security and Cooperation in Europe, and a number of other regional and global organizations.

FORM AND IMPACT OF THE CONSTITUTION

Turkmenistan has a written constitution, codified in a single document. The principles and provisions of the constitution take precedence over all other national law. Laws that contradict the constitution are considered null and void. The constitution clearly acknowledges that because Turkmenistan is a fully admitted member of the world community it recognizes the priority and precedence of the universally accepted norms of international law. The international agreements that Turkmenistan signed and duly ratified have direct effect on national law, and the provisions of international treaties must be incorporated in explicit state laws.

BASIC ORGANIZATIONAL STRUCTURE

Turkmenistan's administrative and territorial structure is that of a unitary state. It is made up of five provinces (*velayats*) and 65 districts (*etraps*). The constitution explicitly grants province status to some cities (such as Ashgabat) and district status to some others. The governors of provinces, districts, cities, and towns are appointed by the president for a term of five years. Smaller towns and settlements elect local self-government bodies (*gengesh*).

LEADING CONSTITUTIONAL PRINCIPLES

Turkmenistan's system of government is a presidential republic. In addition to the executive, legislative, and judicial powers, there is a fourth power, called the National Council (Halk Maslahaty). Although the basic law of Turkmenistan acknowledges checks and balances among the four powers, the Halk Maslahaty takes precedence over the other three. The judiciary is independent.

The leading principles set forth in the Turkmen constitution are that Turkmenistan is a democracy, adheres to the rule of law, and is a secular state. Turkmenistan also has a unique status of permanent positive neutrality that was recognized and supported by the United Nations (UN) General Assembly in 1995. The constitution proclaims neutrality as the basis for the internal and external policies of the country. The constitution spells out that the bearer of the sovereignty and the only source of the state authority is the people of Turkmenistan.

CONSTITUTIONAL BODIES

The predominant constitutional organs are the National Council, the president, the Parliament (Mejlis), the cabinet of ministers, and the Supreme Court.

The National Council (Halk Maslahaty)

The National Council is a permanent organ and the highest representative body of the people. It is the state's supreme authority and government. The National Council consists of 2,507 members and includes the president of the republic; the members of parliament; the chairperson of the Supreme Court; the prosecutor-general; the members of the cabinet of ministers; the governors of all provinces, districts, cities, and towns; representatives of various public and government organizations; and 64 elected National Council deputies.

The National Council adopts and amends the constitution and constitutional laws, calls nationwide referenda, and schedules presidential and parliamentary elections. Council meetings are convened not less than once a year by the council's chair, who is elected in an open vote by two-thirds of the members of the council for a five-year-term.

The President

The president is the head of state and of the executive branch and is the highest official in the country. Within the limits of the constitution, the president exercises the following discretionary powers: The president implements the constitution and laws; leads the external politics of the country; appoints members of the cabinet of ministers; signs laws, decrees, and presidential instructions; and serves as commander in chief of the armed forces of Turkmenistan.

The president is elected in an open, direct election for a five-year-term and may be reelected with no limit. Candidates must be citizens of Turkmenistan, ethnic Turkmen, and 40 to 70 years old. President Saparmurat Niyazov, who has governed since 1990, is the absolutely central political figure of the country.

The Parliament (Mejlis)

The Parliament of Turkmenistan is the state's legislative body. It is unicameral and consists of 50 members who are elected for a five-year term. The Parliament can be dissolved by a decision of the National Council or a nationwide referendum, by self-dissolution, or by the president if the Parliament fails to form its mandated governmental bodies. Members of Parliament elect a chair from among themselves.

The Parliament exercises the following constitutional powers: It adopts, interprets, and amends laws; adopts the

state budget; supervises and observes elections; institutes state awards; and determines the conformity of normative acts adopted by the administration to the constitution. In case of conflict of interests between the Parliament and the cabinet of ministers, these are resolved by the president. Members of Parliament enjoy immunities that may be removed only by a decision of the Parliament.

The Cabinet of Ministers

The cabinet of ministers of Turkmenistan is the chief executive and guiding body of the state. The president of the republic presides over its meetings. The body is formed by the president. The cabinet of ministers supervises the implementation of the laws, of presidential decrees, and of decisions of the National Council. It administers the country's economic and social development policies, monitors the functioning of government institutions and organizations, and implements the country's external economic policies.

The Lawmaking Process

A law is initially drafted in the relevant committee of Parliament. If it is adopted in the plenary, it is sent to the president for approval. The president has the right to veto the law. If vetoed, the law goes back to Parliament. In case the Parliament readopts the law by no less than two-thirds of the members, the president shall sign the law.

The Judiciary

In accordance with the constitutional requirements, the judiciary serves to protect the rights and freedoms of the citizens. The judiciary is independent, and justice is executed only by courts. The highest judicial body is the Supreme Court, followed by the courts of provinces and districts. There are no constitutional courts or military courts. Judges for all courts are appointed by the president for a five-year term. Unfortunately, the judiciary has not played much of a role in the promotion of democracy in the country.

THE ELECTION PROCESS

Turkmen citizens who have attained the age of 18 have the right to vote in the elections. A citizen who has reached the age of 25 may stand for parliamentary and National Council elections. To be eligible to be a candidate in the presidential elections a person has to be between the ages of 40 and 70. All elections are direct, secret, and universal.

POLITICAL PARTIES

Turkmenistan has only one party—the Democratic Party of Turkmenistan.

CITIZENSHIP

Turkmen citizenship is mostly acquired by birth. The constitution provides that Turkmen citizens may not hold the citizenship of another state. However, there are in fact a considerable number of people who hold the dual citizenship of Turkmenistan and the Russian Federation on the basis of a 1991 agreement between the two states.

FUNDAMENTAL RIGHTS

The Turkmen constitution enumerates a number of important fundamental human rights. Turkmenistan guarantees the equality of rights and freedoms of the citizens, and the equality of citizens before the law regardless of nationality, origin, place of residence, religious beliefs, or political opinion. Men and women are equal in their rights.

One of the most visible achievements of the state since the collapse of the Soviet Union was the abolition of the death penalty in 1998. Interestingly, the constitution proclaims that the death penalty has been abolished in Turkmenistan "completely and forever." The basic law also bans torture and cruel and degrading treatment.

Citizens have the right to work and to receive social benefits and free medical assistance and treatment. There is a right to education. Specifically, state-supported institutions are required to provide nine years of elementary and secondary education and higher education free of charge. The constitution also defines the fundamental right to peaceful assembly and protest, and to creation of political parties and public organizations. There is a perceived right to be helped by the state to acquire housing. The home, according to Turkmen tradition, is believed to be sacred and untouchable, a belief also reflected in the basic law.

Any citizen has the right to appeal to a court any administrative decisions that infringe constitutional rights and freedoms. It is also established that any laws that abrogate the rights and freedoms of citizens have no retroactive force.

Impact and Functions of Fundamental Rights

The constitution declares that the human rights and fundamental freedoms of a citizen are untouchable and inalienable, and that nobody may deprive a person of his or her rights and freedoms. Turkmenistan, having proclaimed its neutrality as a state, is committed by its constitution before the world community to "carry out the obligations stemming out of the UN Charter."

Limitations to Fundamental Rights

The constitution states that the exercise of fundamental rights and freedoms cannot infringe the rights and freedoms of other persons, violate the requirements of morals

or public order, or damage national security. However, the exercise of rights and freedoms enumerated in the constitution may be suspended in a state of emergency or martial law.

ECONOMY

The Turkmenistan constitution does not prescribe any particular economic system. In recent years, Turkmenistan has adopted a number of liberal economic laws, particularly concerning entrepreneurship. Currently, Turkmenistan is oriented to a social market economy, although the state sector of the economy still prevails over the private sector, reflecting generations of Soviet totalitarian economic practices.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom of religion and belief and stipulates that all religions and beliefs must be treated equally by the state.

Religious organizations are separated from state bodies and are not permitted to interfere with state policy or exercise any government functions. Education is also separated from religious organizations and is secular. There is no established state church.

MILITARY DEFENSE AND STATE OF EMERGENCY

In Turkmenistan all men over the age of 18 are obliged to perform basic military service of 24 months. Men who have graduated from higher education institutions are conscripted for only 18 months. There is not an alternative to military service, and no right of conscientious objection.

As Turkmenistan follows a policy of neutrality, the country until recently experienced little pressure to build up its armed forces. However, the war on terrorism has prompted Turkmenistan to increase security along its borders and increase the technical capabilities of the armed forces, especially concerning rapid deployment.

In accordance with the Turkmen constitution, a state of emergency can be established by the president of the country.

AMENDMENTS TO THE CONSTITUTION

The basic law can only be changed by the National Council of Turkmenistan.

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Djemshid Khadjiev

TUVALU

At-a-Glance

OFFICIAL NAME
Tuvalu

CAPITAL
Funafuti

POPULATION
11,468 (2005 est.)

SIZE
10 sq. mi. (26 sq. km)

RELIGION
Christian 98%, other 2%

LANGUAGES
Tuvaluan, English, Gilbertese

NATIONAL OR ETHNIC COMPOSITION
Polynesian 96%, Micronesian 4%

DATE OF INDEPENDENCE OR CREATION
October 1, 1978

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
September 15, 1986

LAST AMENDMENT
November 2001

Tuvalu is a nation of nine coral atolls in the South Pacific Ocean, about halfway between Hawaii and Australia. It has been an independent state of the Commonwealth since October 1, 1978.

Tuvalu has a written constitution that provides for a democratic constitutional monarchy. The government has three branches, following the principle of the separation of powers: the Parliament, the executive, and the judiciary.

The head of state is the sovereign of Tuvalu. The sovereign is currently Queen Elizabeth II, who is also the sovereign of the United Kingdom. She is represented in Tuvalu by a governor-general. The head of state is required to act in accordance with the advice of the cabinet and prime minister except in special circumstances prescribed by the constitution.

Tuvalu has a small, essentially subsistence economy. It is isolated and vulnerable to external influences but has with external financial help been successfully managed.

CONSTITUTIONAL HISTORY

Tuvalu (the Ellice Islands) and Kiribati (the Gilbert Islands) were discovered by the British in 1764, and a British protectorate was established over the two island groups in 1892. The Gilbert and Ellice Islands protectorate became a colony in 1915, but in 1975 the predominantly Polynesian Ellice Islands were separated from the predominantly Micronesian Gilbert Islands in response to strong demands from the islanders of Tuvalu. The British Order in Council of September 17, 1975, gave the islands the name of Tuvalu.

The self-government constitution of 1975 established a governor, a cabinet, and a House of Assembly. The cabinet consisted of the chief minister, the attorney-general, the financial secretary, and two ministers from the House of Assembly. The House of Assembly had the power to pass laws for Tuvalu. A High Court for Tuvalu was also created.

In 1978, plans for the independence of Tuvalu from Britain were made in London by the Tuvalu Constitutional Conference. The conference fixed the Independence Day for Tuvalu as October 1, 1978. The Independence Constitution created a 12-member Parliament. In 1986, the constitution was amended to provide for a different conceptual base and some technical alterations, but the essential structure was unaltered.

FORM AND IMPACT OF THE CONSTITUTION

Tuvalu has a written constitution, which is the supreme law of the country. It can be altered by an act of Parliament passed with a special majority of two-thirds of the total membership of Parliament. Any act of the legislature, executive, or judiciary that is inconsistent with the constitution is void to the extent of the inconsistency. The High Court has jurisdiction to enforce the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Tuvalu is a democratic constitutional monarchy whose legislature, executive, and judiciary are provided for in the constitution of 1986. Each of the eight inhabited islands of Tuvalu has a traditional council of chiefs, which is the supreme authority on matters of custom. Increasing autonomy has been given to each island council to set its own priorities within the overall central government's goals in such matters as public service, education, and economy.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution states in Article 1 that Tuvalu is to be governed in accordance with the constitution and particularly with the principles set out in the preamble. These guiding principles for the interpretation and application of the law are respect for Tuvaluan values, culture, and tradition; maintenance of traditional communities and the values of agreement, courtesy, and the search for consensus; and mutual respect and cooperation among the communities and authorities, including the central government, the traditional authorities, local authorities, and religious authorities. Further guiding principles are respect for human dignity, recognition that the expression of values may change with time to account for modern developments, and reliance on the guidance of God.

CONSTITUTIONAL BODIES

The predominant constitutional bodies are the governor-general, the cabinet, the prime minister, Parliament, the judiciary, and the Public Service Commission.

The Governor-General

The sovereign of Tuvalu is the head of state, and the governor-general, appointed by the sovereign on the advice of the prime minister, is the representative of the sovereign. The sovereign has in practice no political power and must act in accordance with the advice of the cabinet, prime minister, or other minister except in a limited number of cases provided by the constitution. The constitution says that the prime importance of the office is as the "symbol of the unity and identity of Tuvalu."

The Cabinet

The cabinet is the main decision-making body of government. It consists of the prime minister, who presides, and the five other ministers appointed by the head of state on recommendation of the prime minister. All cabinet members must be members of Parliament. The cabinet formulates government policies and legislative programs, and ministers are collectively responsible for the decisions made.

The Prime Minister

The prime minister is elected by the members of Parliament in accordance with the constitution and is the head of government.

The Parliament

The Parliament, which currently consists of 15 members, is unicameral and is elected every four years. It has power to make laws not inconsistent with the constitution. It can delegate its lawmaking powers to other bodies.

The Lawmaking Process

A proposed law passed in accordance with the procedures provided by the constitution must be assented to promptly by the head of state; it then becomes law.

The Judiciary

The judiciary is the guardian of the constitution. It interprets and applies the law according to constitutional principles. The system of courts constitutes, in descending order, the sovereign in council, the Court of Appeal for Tuvalu, the High Court of Tuvalu, and subordinate courts.

Public Service Commission

The constitution creates the Public Service Commission with the function of managing and controlling the public service.

THE ELECTION PROCESS

Any Tuvalu citizen over the age of 18 who is qualified to be registered as an elector is entitled to vote in parliamentary elections. A person is entitled to stand for election to Parliament if he or she has Tuvalu citizenship and is 21 years of age or older.

Parliamentary Elections

The constitution provides for an electoral system of universal adult citizen suffrage held by secret ballot and according to the electoral laws.

POLITICAL PARTIES

Tuvalu has no organized political parties. Members of Parliament usually group themselves informally. They have a close relationship with their island constituencies.

CITIZENSHIP

Every person born in Tuvalu is a Tuvalu citizen by birth. A child acquires Tuvalu citizenship if at least one parent is a Tuvalu citizen. Citizenship can be acquired by marriage to a Tuvalu citizen under circumstances prescribed by law.

FUNDAMENTAL RIGHTS

The constitution provides for fundamental rights and freedoms that apply between individuals as well as between governmental bodies and individuals. The principles of the preamble are dominant, and the rights and freedoms are stated to be derived from and based on those principles.

Part 2 provides a nonexhaustive set of human rights including personal liberty, privacy of home and property, freedom of expression, and protection of property rights. The rights and freedoms are not absolute, and provision is made for special exceptions and restrictions in periods of public emergency.

ECONOMY

Article 167 sets up the Tuvalu Consolidated Fund and provides that all government money must be paid to the fund. Article 168 provides that all money under government control must be spent as provided by the constitution or under an act.

Tuvalu has a subsistence economy based on fishing and agriculture. Public service income is a major source of cash in the economy. Remittances from seamen working on overseas vessels have also been an important source of income for Tuvaluan families. Since independence, Tuvalu has demonstrated how a small, isolated, and vulnerable island economy can be successfully managed.

In 1987, the Tuvalu government established the Tuvalu Trust Fund, which is an international investment fund whose purpose is the financing of Tuvalu governmental activities. The Tuvalu Trust Fund was established with major contributions from Australia, New Zealand, and the United Kingdom and with smaller grants from Japan and the Republic of Korea. The trust has developed successfully and has been replicated in an outer islands trust fund that has the special purpose of supporting island development in addition to that provided by the central government.

In the last several years, the Tuvalu government has profited from the sale of the Internet domain name *tv* for use by foreign media companies.

RELIGIOUS COMMUNITIES

The preamble acknowledges that Tuvalu is an independent state based on Christian principles. However, Section 29(5) provides that no action that is reasonably justifiable in a democratic society and contained in a law or performed under the authority of a law shall be considered to be inconsistent with freedom of belief or freedom of expression.

Christianity is the predominant religion: 97 percent of the population are members of the Church of Tuvalu (Congregationalist) and approximately 1.5 percent are members of the Seventh-Day Adventist Church. A small number are Baha'i.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution provides that the prime minister can proclaim a state of public emergency for a period not exceeding six months, which can be extended by resolution (for example, when Tuvalu is at war). Special provisions for that period relate to restrictions on certain rights and freedoms (e.g., life, personal liberty, and detention).

AMENDMENTS TO THE CONSTITUTION

A bill to alter the constitution must be passed at its final reading in Parliament by the votes of two-thirds of the total membership of Parliament. Special requirements are provided for amendments related to alterations to the description of the land areas of Tuvalu or to the constitution that are needed to implement United Kingdom constitutional arrangements.

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Anthony Angelo

UGANDA

At-a-Glance

OFFICIAL NAME
Republic of Uganda

CAPITAL
Kampala

POPULATION
24,700,000 (2002)

SIZE
93,070 sq. mi. (241,040 sq. km)

LANGUAGES
English (official); Bantu and Nilotic languages

RELIGIONS
Christian 66%, Muslim 16%, traditional and other 18%

NATIONAL OR ETHNIC COMPOSITION
African 99%, European, Asian, or Arab 1%

DATE OF INDEPENDENCE OR CREATION
October 9, 1962

TYPE OF GOVERNMENT
Mixed presidential and parliamentary

TYPE OF STATE
Republic

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
October 8, 1995

DATE OF LAST AMENDMENT
August 18, 2005

The constitution declares Uganda a sovereign republic. It establishes a mixed presidential and parliamentary system and creates a system of checks and balances among the three branches of government.

A unique feature of the 1995 Uganda constitution is the choice of political systems it offered the people. For the first five years after implementation, it mandated that a "Movement" or nonpartisan political system be in force. After that time, the people would be free to retain the Movement system, choose a multiparty system, or adopt any other democratic and representative arrangement through an election or referendum. They could change systems at any time thereafter via another referendum. The Movement system was retained in a referendum in 2000.

The Movement system is defined as "broad-based, inclusive, and non-partisan," embracing all the people of Uganda regardless of their political or other affiliations. Anyone standing for political office must do so on the basis of "individual merit" and not as a member of a political party. Other political organizations than the Movement are, in effect, suspended.

A Political Parties and Organizations Act that imposed stringent restrictions on parties was passed; it was nullified by the Constitutional Court, on grounds that it amounted to the creation of a one-party state around the Movement organization. Despite this decision, the functioning of political parties is still subject to stringent restrictions. A recent national referendum endorsed the return to a multiparty system, and it is expected that restrictions on political parties will cease.

The constitution guarantees far-reaching human rights and contains detailed provisions on the economy. The state and religions are separated. As the supreme law of the land, the constitution has had an impact on the governance and other spheres of Uganda's life.

CONSTITUTIONAL HISTORY

Uganda became independent of Britain on October 10, 1962. Its postindependence constitutional and political history has been turbulent and unstable. Uganda has had four constitutions and several coups and military take-

overs. The major flaws of past constitutions were the lack of popular participation in their crafting, poor allocation and division of power, and the absence of checks and balances.

The first constitution in 1962 was drafted at the Constitutional Conference in London under the auspices of the former colonial rulers. It created a quasi-federal arrangement between the central government and five regions. It gave more powers, however, to the Buganda region than to other regions. That constitution created a parliamentary system, dividing power between a ceremonial president and an executive prime minister. Most members of the National Parliament were directly elected under universal suffrage, while those from Buganda were indirectly elected from the local *lukiiko* or council.

The constitution was violently abrogated by Prime Minister Milton Obote, who declared himself president under an interim constitution of 1966 that merged the posts of prime minister and president. Obote imposed a new constitution in 1967 that abolished the traditional kingdoms in favor of a republic and vested virtually all executive powers in the president with few, if any, checks. Idi Amin overthrew the government in 1971 and instituted a reign of terror until his overthrow in 1979. The bloody civil war that followed lasted until 1986. The 1967 constitution remained in force until 1995, amended several times by successive regimes to legitimize their violent or unconstitutional usurpation of power.

The "Movement no-party" government, which gained power in 1986 as a temporary government, began a process of extensive consultation with the people of Uganda that produced the 1995 constitution. The consultation process was undermined by the government's determination to ban political parties. Uganda's constitution was enacted on September 22, 1995, by a Constituent Assembly after seven-year national consultations conducted by a Constitutional Commission appointed by the president of Uganda.

In 2001, the government appointed a Constitutional Review Commission (CRC) to solicit views from the public on amending the constitution. The CRC's report was presented to the cabinet. The cabinet presented to the CRC a list of suggestions, including the introduction of a full multiparty system and, controversially, an increase in the powers of the executive authority vis-à-vis other branches of government and the lifting of the two-term limit on the president, with the risk of creating a "life" presidency. Parliament has passed an amendment to the constitution lifting the two-terms limits on the president; that amendment is yet to come into force.

FORM AND IMPACT OF THE CONSTITUTION

The constitution is contained in one major instrument with 287 provisions and seven schedules. It may be amended and parliament may pass, and has passed, legislation to give effect to its various provisions. It is the supreme law of the land and binds all authorities and persons in the country. Any law or custom that conflicts with the constitution has no legal force.

The constitution is friendly to international law; it incorporates in the bill of rights many of the rights recognized in international human rights treaties and mandates the Human Rights Commission to monitor Uganda's compliance with its international human rights obligations. The Constitutional Court, however, has held that international human rights treaties are not part of the constitution and that a provision of an act of Parliament cannot be interpreted in their light. By and large, the constitution has been respected by government. The results are, however, mixed. Autocracy and abuse of office, particularly by the presidency, have been curbed, and the involvement of the people, particularly through local councils, is noteworthy. The bill of rights has been invoked by victims and applied by the courts and the Human Rights Commission to offer redress and curb human rights violations. The no-party movement system, however, has suffocated free political participation, while an instance of attacks by some members of the executive against judges undermines their role. There is widespread corruption in public office despite the existence of an ombudsperson. In some parts of the country, particularly those affected by civil war, widespread and gross human rights violations continue to be committed.

BASIC ORGANIZATIONAL STRUCTURE

Uganda is a unitary state. Traditional kingdoms and institutions are recognized but may not participate in partisan politics or exercise any powers of government or local administration. Local governance is based on more than 70 districts, including Kampala, the capital, which are further subdivided into counties, subcounties, parishes, and villages. Governance of each district and subdivision is based on councils with a chairperson and other members. They receive revenue through local taxes and from the central government. The president appoints a resident district commissioner to coordinate the administration of government services in the district, and to advise the chairperson on matters of a national nature that may affect the district, particularly the relations between the district and the government.

LEADING CONSTITUTIONAL PRINCIPLES

In response to the past turbulence, autocracy, tyranny, constitutional instability, and gross violations of human rights, the constitution seeks to embrace and commit itself to several principles and values in order to create a

free, democratic, self-sustaining, and peaceful society in which government is based on the will of the people and everyone is protected by the law. The preamble recalls Uganda's dark history and proceeds to affirm the commitment of the people to build a better future based on the principles of unity, peace, equality, democracy, freedom, social justice, and progress.

The sovereign and inalienable right of the people to determine the way they should be governed is also underscored. These and other values, such as human rights, gender balance, fair representation of marginalized groups, accountability, the right to development, and the role of both the state and the people in development, are reiterated or expounded in the National Objectives and Directive Principles of State Policy. An extensive bill of rights, as well as other provisions underscoring the sovereignty of the people, the supremacy of the constitution, and the prohibition of a one-party state, enshrine fundamental values. These values are meant to inform and guide the interpretation of the constitution.

CONSTITUTIONAL BODIES

The major arms of the government are the executive, legislative (Parliament), and judiciary. The fundamental roles of the executive, composed mainly of the president, vice president, and cabinet, are to formulate and implement the policy of the administration and to maintain and implement the constitution and all laws passed by parliament.

The President

The president is elected by universal adult suffrage through a secret ballot for a term of five years and may be reelected once. A recent amendment to the constitution (which is yet to come into force) lifts the two-term limit to allow any person to be reelected as president without limits. He or she is the head of state, head of government, and commander in chief of the army and is not liable to be sued in any court while in office. With approval of the Parliament, he or she appoints, among others, the vice president, cabinet ministers, the attorney-general as the chief legal adviser of government, the director of public prosecutions, members of the Human Rights Commission, and an ombudsperson in the form of an inspector general who aims to check abuse of office and corruption. The president may be removed from office for abuse of office, willful violation of his or her oath, misconduct, or physical or mental incapacity.

The Parliament

The constitution provides for the single-chamber Parliament of about 300 members as the supreme lawmaking institution. Representatives are directly elected in constituencies on the basis of universal suffrage. There are also some indirectly elected representatives of certain groups: one woman for each district, and youth, workers, persons with disabilities, and the army. The president may also appoint up to 10 nonvoting ex officio members. The members of the Parliament elect a speaker and deputy speaker from among their number. The term of parliament is five years. A member of parliament may lose his or her seat upon absence for 15 sittings without permission, if he or she is recalled by the electorate, or if he or she is found guilty of a violation of the Leadership Code.

The Lawmaking Process

Parliament can pass laws on any matter, but this power is not absolute. It cannot pass a law that alters a court's decision or judgment or establish a one-party state. In practice, parliament has sometimes violated these limits. Once passed, the bill is sent to the president, who assents to it.

The Judiciary

Judicial power is exercised by the following courts in order of hierarchy: the Supreme Court, Court of Appeal, High Court, and subordinate courts, including magistrate's courts. The Court of Appeal also serves as the Constitutional Court with original jurisdiction to interpret the constitution. The findings of the Constitutional Court may be appealed to the Supreme Court. The chief justice, deputy chief justice, and justices of the Supreme Court, the Court of Appeal, and the High Court are appointed by the president on the advice of an independent Judicial Service Commission and with approval of the Parliament.

In exercising judicial power, courts shall be independent and are not to be subject to any control by anyone or authority. By and large, their independence is respected, but sometimes the administration has attacked judges for making decisions antithetical to its interests. Judicial officers are not liable for any action or omission while exercising judicial power. Their salaries, allowances, gratuities, and pensions are charged directly to the Consolidated Fund and are not to be changed to their disadvantage. The judiciary is self-accounting and deals directly with the ministry of finance in relation to its finances.

The judiciary has delivered several major judgments. Some reflect an activist judiciary willing to check and control abuse of power by the executive and parliament and give effect to the constitutional values discussed, especially the bill of rights. Other judgments are more in line with the current government system.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Every citizen of Uganda 18 years or older has the right to vote. The main elections are for parliament and the presi-

dency, but political participation also takes place at the local levels through local councils. A citizen is qualified to be a member of the Parliament if, among other qualifications, he or she is a registered voter and has completed a certain minimal level of education. He or she must not be of unsound mind, hold office connected with the conduct of elections, be a traditional or cultural leader, be a bankrupt, or be under the sentence of death or of imprisonment exceeding nine months without the option of a fine. A person is qualified for election as president if he or she meets the stated qualifications and is between 35 and 75 years old.

The constitution establishes an independent Electoral Commission with extensive powers and functions, including organizing, conducting, and supervising elections and referenda; demarcating constituencies; hearing election petitions arising before and during polling; and declaring the results of elections or referenda. Any person aggrieved by a decision of the commission with regard to an election complaint may appeal to the High Court. Any aggrieved candidate in presidential elections can petition the Supreme Court and challenge the outcome of presidential elections.

The suspension of political parties during the tenure of office of the Movement government has limited political participation. It is anticipated that the recent endorsement by a national referendum of a return to the multiparty system will enhance political participation.

POLITICAL PARTIES

While providing for the freedom of assembly and association and the right to form political parties, the constitution in effect suspends the operation of parties and other political organizations during the tenure of office of the Movement system of government. They may continue to function but may not open or operate branch offices, hold delegates' conferences, hold public rallies, sponsor, offer a platform to or in any way campaign for or against a candidate for any public elections, or carry out any activities that may interfere with the Movement political system. With the endorsement through a referendum of a return to a multiparty system, it is expected that restrictions on political parties will cease.

CITIZENSHIP

Rights and freedoms inuring only to citizens are contained in the bill of rights and Chapter 5 (right to vote). All persons who were citizens of Uganda prior to the entry into force of the constitution retain that status.

A person acquires Ugandan citizenship by birth. This applies to any person born in Uganda one of whose parents or grandparents is or was a member of any of the indigenous communities provided for in the constitution, and every person born in or outside Uganda one of whose parents or grandparents is a citizen. A child under the age of 18 who is adopted by a citizen of Uganda shall, on application, be registered as a citizen, and a child of not more than five years old found in Uganda whose parents are unknown shall be presumed to be a citizen by birth.

Citizenship can also be acquired by registration. Some classes of persons are entitled to be registered if they apply, namely, non-Ugandans born in Uganda who have lived continuously in Uganda since independence, those married to Uganda citizens for three years, persons who have legally and voluntarily migrated to and lived in Uganda for at least 10 years, and any person who since the commencement of the constitution has lived in Uganda for at least 20 years. There is also citizenship by naturalization. The constitution prohibits dual citizenship. Parliament has passed an amendment to allow dual citizenship. That amendment is yet to come into force.

The constitution prescribes various duties for citizens, including respecting the rights and freedoms of others, protecting children and vulnerable persons, paying taxes, creating and protecting a clean and healthy environment, and defending the constitution.

FUNDAMENTAL RIGHTS

Unlike Uganda's past constitutions, the current constitution contains an extensive bill of rights that embraces civil and political rights; economic, social, and cultural rights; and some group or solidarity rights.

Civil and political rights include the right to life; respect for human dignity; protection from torture, and cruel and inhumane treatment; equality and freedom from discrimination; protection from slavery, servitude, and forced labor; the right to a fair hearing; freedom of conscience, expression, movement, religion, assembly, and association; and the right to privacy of person, home, and property. The constitution is remarkable for guaranteeing the equality of men and women and for guaranteeing the right to affirmative action for marginalized groups, including women, children, and people who have disabilities.

Social, economic, and cultural rights include the right to education and employment rights such as equal payment for equal work; work under satisfactory, safe, and healthy conditions; the right to rest and to reasonable working hours; the right to form or join trade unions and engage in collective bargaining and representation; and the right to withdraw one's labor. Rights to housing, food, health, and an adequate standard of living, are, however, omitted.

Some rights, such as the right to development, are contained in the National Objectives and Directive Principles of State Policy. This document may guide an understanding of the scope and content of rights but is generally not legally enforceable.

The constitution guarantees the right of every person to belong to, enjoy, profess, and promote any culture, cultural institution, language, tradition, creed, or religion in community with others. Group rights include the right to a clean and healthy environment and the protection of the rights of minorities. The constitution also incorporates any rights and freedoms that are not specifically mentioned, which may include rights and freedoms guaranteed in regional and United Nations human rights treaties.

Impact and Functions of Fundamental Rights

Most of the guaranteed rights and freedoms benefit "everyone" or "every person" regardless of sex, age, nationality, or religion. Juristic or unnatural persons, such as media companies, political parties, or religious bodies, benefit from some rights and freedoms that inure to natural persons as well, such as expression, association, and assembly. Some rights are enjoyed only by defined groups, such as women, children, or the disabled (e.g., the right to affirmative action); minorities; citizens of Uganda (e.g., freedom of movement, access to information); or accused persons (e.g., the right to a fair trial).

Uganda's bill of rights applies not only vertically in relation to the individual and the government, but also horizontally, regulating relations between individuals in the private arena. The rights guaranteed by the constitution shall be respected, upheld, and promoted by all organs and agencies of the government and by all persons. Any individual or group whose rights are violated or threatened may seek redress from a competent court. This article covers violations or threats of violation by anyone.

The Human Rights Commission has adjudicated cases alleging human rights violations by private individuals such as employers or parents and has afforded redress. The constitution assigns duties to private individuals; some rights are protected and promoted by the discharge of these duties, such as the duties of parents to children.

Limitations to Fundamental Rights

Many of the rights and freedoms guaranteed by the constitution are not absolute. They are subject to limitations, exceptions, or subtractions. For instance, freedom of assembly and demonstration must be exercised peacefully and without arms; the right to life may be deprived in execution of a sentence passed in a fair trial. The constitution thus preserves the death penalty, unlike countries such as South Africa and contrary to the tendency in international law toward its abolition.

Freedom of assembly and association is limited or overridden by the constitution, which in effect suspends the operation of political parties during the tenure of the Movement system. The constitution also contains a general limitation clause that applies to the exercise of the various rights and freedoms. It provides that when enjoying rights and freedoms, every person must respect the rights of others or the public interest. Public interest does not extend to political persecution, detention without trial, or any limitation to rights and freedoms beyond what is demonstrably justifiable in a free and democratic society or is provided in the constitution.

Some rights are absolute and cannot be restricted under any circumstances. These are freedom from torture; cruel, inhumane, or degrading treatment or punishment; slavery or servitude, and the right to a fair hearing and, unless one is released, the right of any person arrested to be taken before a court of law.

ECONOMY

The constitution contains various provisions dealing with the economy. It underscores the role of both the state and the people in development. Government is enjoined to protect natural resources. Private property, such as land, may be compulsorily acquired for public use, but government must pay fair and adequate compensation. Government may regulate the use of land and the exploitation of minerals. A Land Commission is mandated to hold and manage any land in Uganda that is vested in or acquired by the government. The constitution also provides for collection of government revenue through taxation. Revenue collected or received for the government is deposited in a Consolidated Fund and its expenditure is regulated. Every year, a national budget is prepared and presented before the Parliament. Government may borrow or lend money if authorized by or under an act of Parliament. The central bank is authorized to issue currency and to promote and maintain the stability of the value of the currency of Uganda. An auditor-general is mandated to audit the public accounts of Uganda and of all public offices and organizations.

RELIGIOUS COMMUNITIES

The constitution provides for a secular state, prescribing no state religion. Freedom of religion and belief is guaranteed, but its practice or manifestation must be consistent with the constitution. This provision may include respect for the rights and freedoms of others. Under a separate law governing all nongovernmental organizations, all such organizations, including religious ones, must register with a special board. Religious bodies, among others, may found and operate educational institutions but must comply with the educational policy of the country and maintain national standards. An attempt by church leaders to express themselves on issues, such as amending the constitution to remove the two-term limit for the presidency, has attracted criticism from the government, creating friction between the two institutions.

MILITARY DEFENSE AND STATE OF EMERGENCY

The national defense and security of Uganda are entrusted to a national army, the Uganda Peoples' Defense Forces. It is composed of only citizens who do not belong to any political party and is subordinated to civilian authority. The president is the commander in chief of the army. The constitution also provides for the Uganda police force, Uganda prison services, and intelligence services.

The constitution provides for exceptional situations when the life of the country or part thereof is threatened to an extent that necessitates the declaration of a state of emergency by the president in consultation with the cabinet. The following circumstances may justify a declaration of a state of emergency: threat of war or external aggression; threat against the economic life of the country by internal insurgency or natural disaster; necessity to take measures to secure public safety, the defense of Uganda, and the maintenance of public order, supplies, and services essential to the life of the community. The president must submit the proclamation declaring an emergency before Parliament for approval as soon as practicable, and in any event not later than 14 days after it is issued. Parliament has the power to extend the duration of an emergency. Parliament or the president may revoke the proclamation if satisfied that the circumstances justifying it have ceased to exist.

During the period of emergency, the president must submit to Parliament regular reports on actions taken for the purpose of the emergency and Parliament may pass laws necessary for taking effective measures for dealing with the emergency. Such actions may include the arrest and detention of persons, but such persons are entitled to protection, including being informed of the grounds of their detention and having access to their spouse or next of kin. The Human Rights Commission is authorized to review their cases and may order their release.

The constitution provides for conscientious objection to military service.

AMENDMENT TO THE CONSTITUTION

The constitution states stringent rules for its amendment. To amend some parts (e.g., supremacy of the constitution, sovereignty of the people, rights that are not subject to limitation, the political system, and the functions of parliament), a referendum is required; any such amendment must be supported by at least two-thirds of members of the district council in each of at least two-thirds of all the districts of Uganda.

A special two-thirds majority of the Parliament is required to amend any other part of the constitution. Parliament must strictly observe the requirements prescribed by the constitution when passing any law, including laws amending the constitution. Failure to do so invalidates any law passed.

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George William Mugwanya

UKRAINE

At-a-Glance

OFFICIAL NAME
Ukraine

CAPITAL
Kiev

POPULATION
47,425,336 (2005 est.)

SIZE
233,090 sq. mi. (603,700 sq. km)

LANGUAGES
Ukrainian (official) 67%, Russian 24%; small Romanian-, Polish-, and Hungarian-speaking minorities

RELIGIONS
Ukrainian Orthodox Church—Moscow Patriarchate 10.7%, Kiev Patriarchate 14.8%; Ukrainian Autocephalous Orthodox Church 1.0%, Ukrainian Greek Catholic Church (Uniate, Byzantine, or Eastern Rite church) 6.4%, Roman Catholic 0.8%, Protestant 0.9%, other 24.9% (2005 est.)

NATIONAL OR ETHNIC COMPOSITION
Ukrainian 77.8%, Russian 17.3%, Belarusian 0.6%, Moldovan 0.5%, Crimean Tatar 0.5%, Bulgarian 0.4%, Hungarian 0.3%, Romanian 0.3%, Polish 0.3%, Jewish 0.2%, other 1.8%

DATE OF INDEPENDENCE OR CREATION
August 24, 1991 (from the Soviet Union)

TYPE OF GOVERNMENT
Parliamentary-presidential system

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
June 28, 1996, 9.00 a.m.

DATE OF LAST AMENDMENT
May 25, 2006

Ukraine is a mixed parliamentary and presidential republic, based on the rule of law with a clear division of executive, legislative, and judicial powers. Organized as a unitary state, it is made up of 24 regions, two municipalities, and the autonomous republic of Crimea.

The constitution provides for far-reaching guarantees of human rights. Affirming and ensuring these rights and freedoms are the main duty of the state. The post-Soviet state is constitutionally prevented from recognizing any ideology as mandatory. Another unique feature of the Ukrainian constitution is the state's duty to preserve the gene pool of the Ukrainian people. Constitutional norms are of direct effect and there is a guarantee of appeals to the court. There is a strong Constitutional Court.

The president is the directly elected head of state and a powerful figure, vested with broad executive and some legislative powers. The prime minister is the head of the administration and manages the work of the cabinet. Ministers are responsible to the president and accountable to the unicameral Supreme Council, which is the representative body of the people. Elections are guaranteed as free and are held on the basis of universal, equal, and direct suffrage by secret ballot. There is a pluralistic system of political parties.

The economic system can be described as tending toward a social market economy, with a major state role as a legacy of the Communist era. Religious freedom is guaranteed and the church and religious organizations are separated from the state. The military is subject to the civil government in terms of law and fact. Ukraine is constitutionally obliged to maintain peaceful and mutually beneficial cooperation with the international community.

CONSTITUTIONAL HISTORY

During the 10th and 11th centuries the Ukrainian territory, situated on lucrative trade routes, became the cen-

ter of an important state in Europe, the Kievan Rus'. The term *Rus'* originally referred to many of the East Slavic principalities in the Ukrainian regions. Kiev as the center of the Kievian Rus' was the seat of the grand prince of the Rurik dynasty, who effectively ruled all Rus' principalities. Originally a geographic term, *Ukraine* dates to this era, referring to Rus' or to the central portion of the territory. The Kievian Rus' declined during the Mongol invasion (1223).

The state was succeeded by principalities that were first merged and then ruled by Poles (Polish-Lithuanian Commonwealth). During the 17th century, Zaporozhian Host was established as a Cossack state after an uprising against the Poles. Eastern Ukraine was eventually integrated into the Russian Empire as the Cossack Hetmanate (*hetman,* leader). This was a consequence of the controversial Treaty of Pereyaslav (1654). The Hetmanate was a system of government whereby individual status was determined by membership in a particular social group or estate. It was led by senior Cossack officers until abolished by the Russian government. Previously, Hetman Ivan Mazepa had negotiated with Charles XII, king of Sweden, to fight the Russians, but both were defeated in the decisive Battle of Poltava (1709).

Ukraine's independence from Russia and Poland was reclaimed in a famous constitutional document prepared by Hetman Pylyp Orlyk (1672–1742). It included the ideas of a separation of powers and a democratically elected parliament and became known as the Constitution of Bendery, Moldavia (1710).

After the partition of Poland by Prussia, Austria, and Russia, Western Ukraine was taken over by Austria (1772). In the 19th century, the Ukrainian territory was still under the control of the Austro-Hungarian Empire in the extreme west (Kingdom of Galicia and Lodomeria) and the Russian Empire elsewhere.

When World War I (1914–18) and the Russian Revolution (1917) shattered these empires, Ukrainians declared independent statehood. At least three different Ukrainian state formations were established in central Ukraine. The Central Council (Ukrainian = Rada, Russian = Soviet) in Kiev declared autonomy and reciprocal recognition with the Russian provisional government, and went on to proclaim the independent Ukrainian National Republic (UNR). It ratified a constitution and elected a president in 1918.

A Ukrainian National Rada was also formed in the western territory of Galicia and proclaimed the Western Ukrainian National Republic (ZUNR), which then merged with the UNR. At the same time, a Hetman government was formed in Kiev. It replaced the UNR and decreed the "Laws for the Provisional Regime in Ukraine." Furthermore, the revolutionary Bolsheviks created their own council, the All-Ukrainian Congress of Soviets in 1917. It was an assembly of pro-Russian workers', peasants', and Red Army deputies and adopted constitutions in 1919, 1929, and 1937 (the latter two after incorporation into the Soviet Union).

After years of war, the western part of Ukrainian territory was incorporated into Poland. The larger central and eastern regions were incorporated into the Union of Soviet Socialist Republics (USSR) as the Ukrainian Soviet Socialist Republic (Ukrainian SSR). After the consolidation of individual land and labor into co-operatives and state farms by the Soviet government, a major famine was responsible for millions of Ukrainian deaths (1932–33). The highest governing body of the Ukrainian SSR was the All-Ukrainian Congress of Soviets, until its functions were taken over in 1937 by the Supreme Soviet of the Ukrainian SSR (Verkhovna Rada).

After World War II (1939–45), Ukrainian borders were extended to the west (as was stipulated in the 1939 Hitler-Stalin Pact). The Russian Republic (Russian SFSR, today Russian Federation) transferred the southern peninsula of Crimea to the Ukrainian Republic in 1954, completing its current boundaries.

Until 1995, Ukraine's supreme law was the constitution of the Ukrainian SSR adopted in 1978, with numerous later amendments. In 1986, the infamous accident at the Ukrainian nuclear power plant of Chernobyl helped undermine the Soviet regime.

With the collapse of the USSR in 1991, Ukrainian independence was declared. The Supreme Council of the Ukrainian SSR, however, retained most of its powers, losing some powers to the president in the 1995 interim constitutional agreement. A parliamentary commission was named to prepare a constitution, which was adopted the following year.

A peaceful mass protest in the closing months of 2004 forced the authorities to overturn a rigged presidential election and to allow a new internationally monitored vote. This vote swept into power a reformist government led by President Viktor Yushchenko. Protesters adopted orange as the official color of the movement because it was the predominant color in Yushchenko's election campaign (Orange Revolution).

Ukraine is a cofounder of the Commonwealth of Independent States (CIS). Since 1995, it is a member of the Council of Europe (CoE).

FORM AND IMPACT OF THE CONSTITUTION

Ukraine has a written constitution, codified in a single document called the Fundamental Law of Ukraine. It consists of 161 articles, divided into 14 chapters, and is accompanied by a special transitional chapter with 14 points. It takes precedence over all other national law. International law must be in accordance with the constitution to be applicable within Ukraine.

Laws that are adopted prior to the constitution remain in force as long as they do not contradict the constitution. There is also a decree, On the Order of Temporary Validity of Some Legal acts of the Former USSR on the Territory of Ukraine.

BASIC ORGANIZATIONAL STRUCTURE

Ukraine is a unitary state made up of 24 regions (oblasts), two municipalities (Kiev and Sevastopol), and an autonomous republic (Crimea). The territorial structure is constitutionally based on the principles of territorial unity and indivisibility, the combination of centralization and decentralization in the exercise of state power, and the balanced socioeconomic development of regions.

In 1992, the Crimean and Ukrainian parliaments determined that Crimea would remain under Ukrainian jurisdiction while retaining significant cultural and economic autonomy. The 1996 constitution states that it is an "inseparable constituent part of Ukraine." Legal acts of the Crimean parliament and governmental decisions may not contradict the Ukrainian constitution. The constitution also provides for a Representative Office of the president of Ukraine in Crimea.

Local self-government is constitutionally acknowledged. Heads of local government administrations are appointed and removed from office by the president on the proposal of the cabinet of ministers. Local councils and their heads are elected by the residents of the local communities on the basis of universal, equal, and direct suffrage by secret ballot.

LEADING CONSTITUTIONAL PRINCIPLES

Ukraine's system of government is a mixed presidential and parliamentary republic. There is strong division of the executive, legislative, and judicial powers, based on checks and balances. The judiciary is independent and includes a Constitutional Court.

The Ukrainian constitutional system is defined by a number of general principles: Ukraine is a sovereign and independent, democratic, social, law-based state (Article 1). The people are the bearers of sovereignty and the only source of power. Political participation is predominantly shaped as an indirect democracy. Constitutional law provides that people elect delegates to parliament, who then decide on political questions (representative democracy). It also provides for a referendum on certain issues, including referendum on people's initiative.

The principle that Ukraine shall be a social state provides that the government must take action to ensure a minimal standard of living for everybody. The principle of republican government simply indicates that there shall be no monarchy. Rule of law entails that all state actions must have a legal basis and the judiciary must be independent and effective. Article 92 enumerates the areas that are exclusively controlled by acts of parliament, including citizens' rights and freedoms, as well as the state budget.

The constitution envisages the principle of political, economic, and ideological diversity of social life. No ideology shall be recognized by the state as mandatory. The state shall ensure ecological safety and maintain ecological balance. The infamous accident at the Chernobyl nuclear reactor is explicitly mentioned as a catastrophe of global scale. Furthermore, the state shall preserve the gene pool of the Ukrainian people; this provision refers to the severe famine of 1932–33 that Ukrainians officially regard as an act of genocide by Stalin's totalitarian regime against the Ukrainian nation.

Ukraine is constitutionally obliged to a foreign policy of "national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community." The country gained considerable experience in international affairs while a part of the USSR, thanks in part to United Nations membership under the flag of the Ukraine.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president, the Supreme Council, the prime minister and his or her cabinet ministers, and the Constitutional Court of Ukraine. A number of other bodies complete this list, such as the Central Election Commission and the Council of National Security and Defense.

The President

Chapter 5 proclaims the president to be the head of state, vested with broad executive and some legislative powers. As an executive, for instance, the president appoints and dismisses some of the state officials such as the prosecutor general, and may revoke acts of the cabinet of ministers. Legislative powers include the right to initiate legislature and to veto laws adopted by the Supreme Council. The president issues decrees (*ukazy*) and directives (*rozporiadzhennia*) on the basis and for the execution of the constitution and relevant laws. Certain acts of the president are to be countersigned by the prime minister. In the event of an early termination of authority of the president, the speaker of the Supreme Council assumes some of the president's duties.

In order to prevent a conflict of public and private interests, the president must not hold any shares in enterprises that aim at making profit.

Supreme Council

Chapter 4 defines the powers and duties of the parliament, called the Supreme Council of Ukraine. It consists constitutionally of 450 national deputies elected for a five-year term.

The Supreme Council has the power to adopt laws, approve the budget, and elect the prime minister on a proposal by a parliamentary majority that has been submitted by the president. It may also introduce amendments to the constitution. Jointly with the president, it

declares war and concludes peace. It may also remove the president from office by means of impeachment. The Supreme Council can override a presidential veto in the lawmaking process by a two-thirds majority.

The regular term is five years. In certain cases the president may terminate the council's authority prior to the expiration of term, for example, if within 30 days of a single regular session the plenary fails to commence. However, the council cannot be terminated within one year of a previous special preterm election, or within the last six months of the term of the Supreme Council or of the president.

The Executive Administration

Chapter 6 provides for the cabinet of ministers and lesser organs of executive authority. The cabinet is composed of the prime minister, the first vice prime minister, three vice prime ministers, and the ministers. Ministers are responsible to the president and accountable to the Supreme Council.

The prime minister is the head of the executive administration and manages the work of the cabinet. The president appoints the minister for foreign affairs and the minister for defense; the Supreme Council can approve or reject the appointments. The prime minister assembles the rest of the cabinet and presents the names to the Supreme Council, who appoints them, and to parliament, who approves or rejects them. The resignation of the prime minister or the adoption of a no confidence motion results in the resignation of the whole cabinet.

The Supreme Council considers a no confidence motion if proposed by one-third of the 450 deputies or by the president. The motion then requires a majority to pass. However, only one such motion can be entertained during a regular session, and none during the first year after approval of the cabinet's program.

In practice, the executive powers of the prime minister and the president occasionally overlap and cause competition, which has contributed to a high turnover among prime ministers since independence.

As for the president, cabinet members and heads of central and local executive agencies may not hold any shares in profit-seeking enterprises.

The cabinet issues resolutions (*postanova*) and orders (*rozporiadzhennia*) within the limits of its competence.

The Lawmaking Process

The right of legislative initiative belongs to the president of the republic, the national deputies, and the cabinet. Approved legislation is sent to the president for signing and promulgation. The president may return the bill accompanied by his or her objections and proposed changes. The Supreme Council can overrule the objections by a two-thirds vote of all its members. If the president simply fails to sign or return the bill within 15 days, it is deemed to be approved and is signed and promulgated.

A law enters into force within 10 days of the day of its official promulgation, unless otherwise provided by the law itself.

Legislative acts include not only laws (*zakon*), but also various other legal, normative acts of various state bodies. On the other hand, legal custom, ecclesiastical rules, and judicial practice have only very limited authority in Ukraine. Legal doctrine, as developed in commentaries, articles, books, and encyclopedias, is not recognized as a source of law.

The Judiciary

The judicial power consists of two components, the procuracy and the courts. Chapter 7 provides for the procuracy, which is entrusted with prosecution in court on behalf of the state. The procuracy does not belong directly to the judicial branch.

The courts or justice system are treated in Chapter 8. The Supreme Court of Ukraine is the highest judicial body among courts of general jurisdiction. In parallel, the respective high courts are the highest judicial bodies of specialized courts. These are supplemented by courts of appeal and local courts.

The independence and immunity of judges are guaranteed by the constitution and the laws of Ukraine. The state is constitutionally obliged to ensure the personal security of judges and their families.

The Constitutional Court of Ukraine is a separate body outside the regular court system. It is not an appeals court or supervisory authority. The court decides on the conformity of laws and other legal acts with the constitution and provides the official interpretation of the constitution and the laws of Ukraine. Legal acts that are deemed unconstitutional lose legal force from the day the court so deems.

The Constitutional Court consists of 18 judges, appointed in equal number by the president, the Supreme Council, and the Congress of Judges of Ukraine. They serve for a term of nine years; they cannot be appointed for a second term, a rule aimed at bolstering their independence.

The court has ruled on some highly controversial and political issues. Nevertheless, it enjoys one of the highest levels of public esteem of all constitutional bodies, and its decisions are widely accepted. For example, in 2000 the court ruled the death penalty unconstitutional and ordered the criminal code to be changed accordingly.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The expression of the will of the people is exercised through elections, referendums, and other forms of direct democracy. Elections are free and are held on the basis of universal, equal, and direct suffrage, by secret ballot. All

Ukrainians at 18 years of age have the right to vote in the election and referendums. Referendums on certain issues, such as taxes, the budget, and amnesty, are prohibited, whereas they are obligatory on issues related to altering of the territory.

The Supreme Council appoints the members of the Central Electoral Commission on the recommendation of the president.

Presidential Elections

The citizens of Ukraine elect the president for a five-year term by means of universal, equal, direct suffrage and by secret ballot. A presidential candidate must speak the national language and be Ukrainian, must be 35 years of age, and must have lived in the country for the previous 10 years.

Regular elections are to be held on the last Sunday of the last month of the fifth year of the term. Extraordinary elections are held within 90 days of the day of termination. The same person cannot be reelected president after two consecutive terms.

The results of the 2004 presidential vote were annulled by the Supreme Court on grounds of fraud by the administration, which supported one of the candidates. According to international observers, this decision, and the second, less disputed election, made Ukraine substantially closer to meeting international standards for democratic elections.

Parliamentary Elections

Ukrainians elect their 450 deputies by a system of proportional representation. The seats are allocated from parties' lists. To become elected as a deputy, one must be 21 years of age and must have resided in Ukraine for the previous five years.

Regular elections take place on the last Sunday of March of the fourth year of the term. Special elections designated by the president are held within 60 days after early dissolution is officially proclaimed.

POLITICAL PARTIES

The 1996 constitution marks a striking departure from the Soviet era, when the Communist Party played the leading role in society. Ukraine today has a pluralistic system of political parties. Citizens have the constitutional right to freedom of association in political parties and public organizations. For the purpose of parliamentary elections, most parties form voting blocs, which provide greater representation than they would otherwise receive. Ukrainian law requires that a party must receive at least 3 percent of the vote in order to get any of the proportional representation seats.

Political parties can be constitutionally banned through a judicial procedure. This may happen if their program aims to end Ukraine's independence or territorial indivisibility; promote violent change of the constitutional order; undermine security; unlawfully seize state power; spread propaganda of war and of violence; incite ethnic, racial, or religious enmity; or threaten human rights, freedoms, or the health of the population.

CITIZENSHIP

Ukrainian citizenship is primarily acquired by birth. The principle of *ius sanguinis* is applied: A child acquires Ukrainian citizenship if at least one parent is a Ukrainian citizen, wherever the place of birth.

A foreigner can also acquire Ukrainian citizenship if he or she does not possess any foreign citizenship, has resided in Ukraine for at least five years, is able to function in the Ukrainian language, and is knowledgeable about the Ukrainian constitution. Dual citizenship is not recognized by the constitution. A citizen of Ukraine may not be deprived of citizenship, be expelled, or be surrendered to another state.

FUNDAMENTAL RIGHTS

According to Article 3 of the constitution, "[t]he human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value." Human rights and freedoms are the constitutional means to preserve this value, and the state is constitutionally obliged to do so. In fact, it is the "main duty of the state" to affirm and ensure human rights and freedoms.

Chapter 2 details the rights, freedoms, and duties of individuals and citizens. The Ukrainian constitution guarantees the full traditional set of human rights. Social human rights, such as the right to work or the right to an education, are strongly represented. The constitution states that its explicit list of rights is not exhaustive, thereby acknowledging that human rights are regarded as inalienable and based on natural law.

Article 21 explicitly links human rights to the idea of human dignity: "All people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable." The constitution acknowledges that human rights are the basis of every community.

The rights guaranteed by the constitution can be classified either as freedom rights or as equality rights. Article 23 protects the free development of the personality and functions as a general guarantee of personal freedom in a broad sense. Article 24 contains a general equal treatment clause, which guarantees that all citizens are equal before the law. There can be no privileges or restrictions based on race, color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic, or other characteristics. Equality of the rights of women and men is ensured

by a number of affirmative actions, such as efforts to create conditions that allow women to combine work and motherhood.

The constitution distinguishes between those rights that apply to everybody and those reserved for Ukrainian citizens. For instance, freedom of opinion or freedom of belief is guaranteed for everybody, whereas only citizens of Ukraine have the right to freedom of association in political parties.

Foreigners living in Ukraine are protected by the human rights specified in the constitution, including the right to the free development of personality. Foreigners and stateless persons may be granted asylum by the procedure established by law.

The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) were already in force in 1976, when Ukraine still was a republic of the USSR. These covenants influenced the rights language of the Ukrainian constitutions. Ukraine took on additional obligations to legislate stronger protections for human rights when it joined the Council of Europe.

Despite significant improvements, several human rights organizations regularly report abuses. Political activity by organized crime and connections between government officials and organized crime often blur the distinction between political and criminal acts and impede criminal investigations. For example, a killing of a prominent journalist in 2000 remains unresolved, as accusations continue that senior officials in the former government were implicated. Even the purported poisoning of Viktor Yushchenko when he was a presidential candidate in 2004 remains unresolved.

Impact and Functions of Fundamental Rights

According to the constitution, human rights are of fundamental importance. The success of the Ukrainian constitution will depend on the impact and functions of the rights in contains. In Ukraine, the day the constitution was adopted is a national holiday.

Fundamental rights are often considered defensive rights. The state must not interfere with the legal position of the individual unless there is a good reason to do so. Official bodies are obliged to act only “within the limits of authority” and in the manner envisaged by the constitution and the laws.

In the Ukrainian concept, however, the state itself is obliged to establish freedom as a positive reality.

Fundamental rights in Ukraine do involve the right to participate in the democratic political process. This especially applies to freedom of assembly, of the press, and of opinion. Citizens also have the right to participate (or not to participate) in a strike, to participate in elections, and to participate in the administration of state affairs and in the justice system.

Many fundamental rights entitle an individual to services from the state, such as the right to social protection, housing, an adequate standard of living, and medical care. In practice, some of these rights have remained unfulfilled for the many Ukrainians whose income is lower than the subsistence minimum.

Fundamental rights are also a guarantee of due process. A person in temporary custody must be taken to a court within 72 hours or immediately released.

The state in all its agencies is bound to uphold fundamental rights. Constitutional norms are of direct effect. Constitutional appeals based on the constitution are guaranteed. However, individuals are not entitled to appeal directly to the Constitutional Court. As a result, many of the enumerated rights and freedoms have remained purely theoretical.

Everyone is, however, entitled to appeal to the human rights commissioner of the Supreme Council for the protection of rights. The commissioner exercises parliamentary supervision over the observance of human and citizens’ rights and freedoms. The commissioner can ask the Constitutional Court to consider the constitutionality of laws and regulations that may violate human rights.

Finally, everybody has the right to petition or appeal to all bodies of state power. These bodies are constitutionally obliged to consider the complaint and to provide a substantiated reply.

Limitations to Fundamental Rights

Constitutional rights are not without limits. There is no general limitation clause, but some rights are explicitly limited to protect the public interest and the rights of others.

For instance, freedom of expression can be restricted for a number of qualified reasons, such as national security, territorial indivisibility, public order, prevention of disturbances or crimes, protection of health, the reputation or rights of other persons, protection of confidential information, or support for the authority and impartiality of justice. Freedom of belief may be restricted, but only by a law in the interest of protecting public order, the health and morality of the population, or the rights and freedoms of other persons.

A large number of rights, such as the right to life, are explicitly declared as nonrestrictable even in a case of emergency.

Each limit to a fundamental right faces limits itself. The scope of rights and freedoms cannot be diminished by new laws or changes in the law; nor can constitutional rights and freedoms be abolished completely.

Another guarantee that limits the limitations is the requirement that everyone is guaranteed the right to know his or her rights and duties. All normative legal acts that determine the rights and duties of citizens must be brought to the notice of the population by the procedure established by laws. Normative legal acts can have

no retroactive force, except when they mitigate or annul individual responsibility.

The constitution does not contain many provisions that explicitly aim at preventing the abuse of fundamental rights. There is a general principle, however, that no one can usurp state power. The military forces of the state may not be used by anyone to restrict the rights and freedoms of citizens or to try to overthrow the constitutional order, subvert the bodies of power, or obstruct their activity.

ECONOMY

The Ukrainian constitution no longer specifies any particular economic system. On the other hand, certain provisions act as guidelines for state action, in effect obliging the state to ensure a social orientation for the economy. While private property is guaranteed, it entails responsibilities; it may not be used to the detriment of the person and society. The foreign investment law allows anybody to purchase businesses and property. However, foreign and local investors must compete with a large number of favored state enterprises; they also complain about corruption and lax law enforcement against powerful economic oligarchs.

Taken altogether, the economic system can be described as a socially oriented market economy.

RELIGIOUS COMMUNITIES

Freedom of religion is legally guaranteed, although religious organizations are required to register with local authorities and with the central government. The dominant religions are the Ukrainian Orthodox Church and the Ukrainian Greek Catholic Church. The Ukrainian Orthodox Church is divided between a Moscow Patriarchy and an independent Kiev Patriarchy, which was established after Ukrainian independence in 1991.

The church and religious organizations in Ukraine are separate from the state and from the school system. No religion is recognized by the state as mandatory.

MILITARY DEFENSE AND STATE OF EMERGENCY

Defense of the motherland and of the independence and territorial indivisibility of Ukraine and respect for its state symbols are made constitutional duties of all Ukrainians. Males are subject to conscription from age 18, and women may volunteer for military service at age 19. Alternative or nonmilitary service is constitutionally acknowledged. Conscientious objectors can file a petition to be excluded from military service.

The president is commander in chief of the armed forces and head of the Council of National Security and Defense, which is the coordinating body and adviser to the president on issues of national security and defense.

In 2000, Ukraine adopted laws regulating future states of emergency and martial law, which are permitted by the constitution. Certain restrictions can be imposed during those times, for periods that must be specified. For instance, the state may execute certain expropriations, order citizens to perform certain work or services, and limit specified rights and freedoms.

A large number of rights are explicitly declared as nonrestrictable in Article 64. Furthermore, the constitution cannot be amended under conditions of martial law or a state of emergency.

AMENDMENTS TO THE CONSTITUTION

Chapter 8 provides for a two-stage process of amending the constitution. After the Supreme Council adopts an amendment by simple majority, it must be approved a second time at the next regular session of the council by two-thirds majority of the deputies. The procedure also requires the permission of the Constitutional Court. The constitution is thus more difficult to change than ordinary laws, but the degree of difficulty varies, depending on the chapter or article being amended.

A bill to amend ordinary provisions of the constitution may be submitted by either the president of the republic or one-third of all the members of the Supreme Council. It is then reviewed by the Constitutional Court for conformity to the constitution. In the first vote, a simple majority of the deputies is needed for passage; at the second session, it needs a two-thirds vote. If the amendment is not passed, it may not be reintroduced for at least a year.

Amendments to general principles (Chapter 1), elections and referendum (Chapter 3), or the amendment process itself (Chapter 13) can be introduced either by the president or by two-thirds of all the members of the Supreme Council. Furthermore, after approval by a two-thirds majority, it needs further approval by an all-Ukrainian referendum. If the amendment does not pass, it may not be reintroduced after until the next Supreme Council elections.

Certain matters are not subject to change at all. Articles 157 and 158 give the Constitutional Court authority to disallow any change that might abolish or restrict human and citizens' rights and freedoms or tend toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine. Furthermore, no amendment may be passed during periods of martial law or state of emergency. Finally, a Supreme Council cannot amend the same provisions twice during one term.

A series of fundamental amendments were passed in 2004. They aimed to alter the balance of powers between the executive and legislative branches, in part by providing further grounds for the president to dissolve the Su-

preme Council. They extended the term of the Supreme Council to five years, established elections on a purely proportional basis, and allowed deputies to be removed when they leave their parliamentary faction. Other changes included reforms in local self-government and provisions to prevent conflicts of public and private interests.

The law was approved by a 90 percent majority in the council. Most of the amendments took effect on September 1, 2005. The remaining amendments will take effect on the day a new parliament assembles after the 2006 elections.

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Michael Rahe and Lidiya Syvko

UNITED ARAB EMIRATES

At-a-Glance

OFFICIAL NAME
United Arab Emirates (UAE)

CAPITAL
Abu Dhabi

POPULATION
3,400,000 (2005 est.)

SIZE
30,000 sq. mi. (77,700 sq. km)

LANGUAGES
Arabic

RELIGION
Islam

NATIONAL OR ETHNIC COMPOSITION
Arab, Asian, Far Eastern

DATE OF INDEPENDENCE OR CREATION
December 2, 1971

TYPE OF GOVERNMENT
Monarchy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral *majlis* (council)

DATE OF CONSTITUTION
December 2, 1971

DATE OF LAST AMENDMENT
January 10, 2004

The United Arab Emirates (UAE) consists of a central government and seven federal states or emirates—Abu Dhabi, Dubai, Sharjah, Ras-al-Khaimah, Ajman, Umm-al-Quwain, and Fujairah. It is a member of the Arab League, the United Nations, and the Gulf Co-Operation Council (GCC).

The political system is dominated by a series of ruling families who have presided over the emirates since the beginning of the 19th century.

The UAE constitution was not designed to rationalize the distribution of power or to introduce a "representative democracy" within the federation. Instead it accepted the existing constitutional position of the rulers and provided certain legislative and political improvements.

CONSTITUTIONAL HISTORY

Britain's connection with the territories of the UAE may be traced back to 1820, when it concluded a peace treaty with 10 sheikhs or tribal chiefs. In 1853, after a series of short-term treaties, Britain imposed the Perpetual Maritime Truce on the emirates, and the area became known as the "Trucial States." The final step in the British plan to control the Trucial States was taken in 1892, when the sheikhs signed the Exclusive Agreement, agreeing on behalf of themselves and their heirs "not to enter into any agreement or correspondence with any power other than Britain."

Britain's presence and its treaty arrangements effectively split the two major political units—the Qawasim and the Bani Yas confederations—into several smaller units. The final result that emerged by 1952 was a weak political mosaic of seven emirates.

In January 1968, the British prime minister, Harold Wilson, announced that British troops would be withdrawn from east of Suez by the end of 1971. The seven rulers of the Trucial States together with the rulers of Bahrain and Qatar met in Dubai on February 25–27, 1968, and announced an agreement to establish a new nine-member Union of Arab Emirates.

The addition of Bahrain and Qatar was not successful; on December 2, 1971, the United Arab Emirates, consisting only of the seven original emirates, was declared a new independent state. A constitution was established

under the direct authority of the seven rulers. The constitution owes its authority to royal edict.

FORM AND IMPACT OF THE CONSTITUTION

The UAE constitution is contained in a single written document. A notable feature is its federal nature. The constitution largely preserved and legitimized the pre-1971 traditional government. The framers labeled the document a Provisional Constitution and set a five-year goal for drafting a permanent constitution. In 1996 the word *provisional* was removed from the title.

The federal government represents the state in the international arena. The central federal government has exclusive powers in the field of foreign policy. It concludes international agreements and treaties, appoints diplomatic representatives, and can declare war. The supremacy of the federal constitution and laws over local laws and legislation is guaranteed by the constitution.

BASIC ORGANIZATIONAL STRUCTURE

The UAE is a federal state composed of seven emirates, which differ considerably in geographical area, population, and economic size.

There is a division of functions between the federation and the states. The federation has a monopoly in certain areas with regard to lawmaking and executive functions. Individual states have been assigned legislative and administrative functions.

LEADING CONSTITUTIONAL PRINCIPLES

The UAE constitutional system is defined by a number of leading principles: The UAE is an Arab state, an Islamic state, and a federation. The constitution preserves the rule of law; yet there is no clear division between the legislative and executive powers. The constitution is unique—a modern quasi-democratic basic law that governs a traditional society rooted in its premodern history.

CONSTITUTIONAL BODIES

There are not three but rather five branches of power in the federation. They are the Supreme Council, the president of the union and the president's deputy, the Council of Ministers, the Federal National Council (FNC), and the judiciary. The constitution was modeled neither on a parliamentary nor on a presidential system.

THE SUPREME COUNCIL

The Supreme Council consists of the rulers of the seven emirates. It forms the general policy of the union, sanctions the federal laws, ratifies international agreements and treaties, and approves the appointment or resignation of the prime minister, the president, and the judges of the Supreme Court. It retains vast powers in the legislative and executive realms.

Decisions in the Supreme Council on substantive matters need a majority of five, of whom two must be from Abu Dhabi and Dubai.

The Federal President

The federal president and the president's deputy are elected for a five-year term from among the members of the Supreme Council. There is no limit on reelection. The president is responsible for appointing the ministers and diplomatic representatives to foreign states.

The Council of Ministers

The Council of Ministers heads the administration of the federation. It consists of the prime minister, the prime minister's deputy, and a number of ministers. Ministers are forbidden to engage in commercial, professional, or financial affairs; to be a party to commercial dealings with the union; or to be a member of the board of directors of any financial or commercial institution. The ministers while in office are forbidden to hold any post in local government or the Federal National Council.

The Federal National Council

The Federal National Council (FNC) consists of 40 seats proportionally distributed among the emirates according to their influence, affluence, and population. Its term of office is two years.

The constitution provides that each emirate shall be free to determine the method of selection of its representatives in the FNC. All of the emirates have chosen to appoint their representatives instead of electing them.

The Lawmaking Process

Under the UAE constitution, the legislative process passes through four stages: the initiation of a bill, debate and discussion, ratification, and promulgation.

The Council of Ministers holds a monopoly over initiating a bill. The constitution restricts the role of the FNC in the debate and discussion of bills introduced by the Council of Ministers. No bill may become a law without the consent of the Supreme Council.

The Judiciary

The federal judiciary functions at three levels: the courts of first instance, the appeals courts, and the Supreme

Court. Local justice is administered in either civil or sharia courts.

The Supreme Court is composed of a president and a number of judges, not to exceed five. The judges are appointed by the president with the consent of the Supreme Council. Supreme Court judges are immune from dismissal during their term of office. The constitution permits the local authorities in the emirates to transfer all judicial matters to the federal courts if they so choose. Five emirates have taken advantage of this provision; the remaining two (Dubai and Ras al-Kaimah) retain their local courts.

THE ELECTION PROCESS

The traditional form of political participation in the UAE consists of consultations between the ruler and prominent public figures. There are no elections.

POLITICAL PARTIES

There are no political parties in the country.

CITIZENSHIP

Original citizens are those who acquired citizenship through *jus sanguinis*—a child born to a UAE father acquires citizenship regardless of the place of birth. Under certain circumstances a child can have UAE original citizenship if he or she is born to a UAE mother.

Naturalized citizens are those who have met certain conditions established by law. An applicant for UAE citizenship must have lived in the country for a long period; the residency period required by the law varies. A naturalized person must also relinquish his or her previous nationality.

FUNDAMENTAL RIGHTS

Most international human rights norms are incorporated in the UAE constitution, including both individual liberties and social rights. The constitution regulates fundamental rights in its second and third chapters, in some 23 articles.

Human dignity and the right to safety, security, peace, and the enjoyment of individual freedoms are guaranteed in several clauses. The right of free movement and residence is also a basic right that has been secured for all citizens.

Impact and Functions of Fundamental Rights

The constitution gives legally binding effect to the fundamental rights. Since the constitution is the supreme law of the land, fundamental rights share this position.

Limitations to Fundamental Rights

The constitution of UAE contains several limitation clauses that give the government the discretion to regulate or restrict certain fundamental freedoms included therein. Such limitations may be related to public order, public morals, and national security.

ECONOMY

The UAE constitution does not specify an economic system. However, the economic system embodied in the constitution can be described as a social market economy. It safeguards community interests as well as the freedom of property, the freedom of occupation, and the freedom of association.

The right to work is a cornerstone of the progress achieved by the federation. Moreover, the constitution regulates the relationship between employers and employees, rendering this a responsibility of the state.

Natural resources are owned by the individual states, and not by the federation or by any individuals.

RELIGIOUS COMMUNITIES

The UAE constitution states in Article 7 that “Islam is the official religion of the Union. The Islamic sharia shall be a main source of legislation in the Union.” Sharia (Islamic law) is recognized as *a* main but not *the* main or *only* source of legislation in the country. Most federal laws, such as civil and penal laws, criminal procedures, and personal status laws, are based upon Islamic jurisprudence.

Freedom of religion or belief is guaranteed as a human right, as is freedom of worship, in accordance with the established customs. No Islamic communities regulate and administer their affairs independently.

MILITARY DEFENSE AND STATE OF EMERGENCY

The creation and maintenance of armed forces for defense are a responsibility of the federal government. There is no general conscription in the UAE. All members of the military are professional soldiers who serve for life.

The military is subject to civil government. The federal president is the head of the armed forces.

AMENDMENTS TO THE CONSTITUTION

The constitution is rigid; in other words, it cannot be amended as simply as ordinary legislation; certain key points are entrenched.

The constitutional body that has the right to issue constitutional amendments is the Supreme Council. The constitution insists that the "topmost interest of the Union," a term that is somewhat vague, must be consulted before any constitutional amendment is made. As a final safeguard, a special two-thirds majority in the Federal National Council is required to pass the amendment.

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Mohamed A. Al Roken

UNITED KINGDOM

At-a-Glance

OFFICIAL NAME
United Kingdom of Great Britain and Northern Ireland

CAPITAL
London

POPULATION
59,542,000 (2005 est.)

SIZE
92,248 sq. mi. (244,101 sq. km)

LANGUAGES
English, Welsh, Gaelic

RELIGIONS
Christian (Anglican 67.2%, Catholic 13.8%, all others 19%) 71.6%, Muslim 2.7%, Hindu 1.0%, Sikh 0.6%, Jewish 0.5%, other or none 23.6%

NATIONAL OR ETHNIC COMPOSITION
British white 87%, other white 3%, Asian 4%, black 2%, mixed, other, and unknown 4%

DATE OF INDEPENDENCE OR CREATION
Great Britain: May 1, 1707 (union of England and Scotland); United Kingdom: August 1, 1801 (union with Ireland)

TYPE OF GOVERNMENT
Constitutional monarchy

TYPE OF STATE
Unitary state with some devolved powers

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
No written constitution

The United Kingdom is unusual among major countries in having no written constitution. The country's constitutional arrangements are based on a large number of ordinary acts of Parliament and on "constitutional conventions" that have developed over the centuries and are still evolving. The last century has seen the creation of devolved assemblies in different parts of the United Kingdom, created again by ordinary acts of Parliament.

Formally, legislative and executive powers are vested in the reigning sovereign, who appoints the prime minister and other ministers, senior judges, and members of the House of Lords; the sovereign also summons and dissolves Parliament and is supreme governor of the Church of England. In practice, the constitutional conventions ensure that the queen acts almost wholly on the advice of the administration, which is formed to reflect the result of the elections to the House of Commons.

The absence of a written constitution entails that there is no constitutional court and no constitutional guarantees of human rights. Since 1999, the European Convention on Human Rights has been part of the law of the United Kingdom and has strengthened the powers of the courts, which have always been vigorous in checking any improper use of executive power.

CONSTITUTIONAL HISTORY

The major portion of the United Kingdom consists of the island of Great Britain. The southern part forms the Kingdom of England, unified under King Athelstan in about 927 C.E. The northern part is the Kingdom of Scotland, similarly unified under King Malcolm II in 1016 C.E. The Principality of Wales had its own native Welsh princes from early times, with Rhodri the Great ruling from 844 C.E. By the 13th century, Wales was under English rule, and it was formally united with England by the Act of Union of 1535. Since that date, England and Wales have for most purposes formed a single unit of government. In 1603, King James VI of Scotland inherited the English throne as King James I of England, but despite the union of the Crowns the two countries retained their own political institutions until 1707, when a single Parliament for the whole of Great Britain was established. Scotland retained

its own legal system and its own established church (the Church of Scotland), but the principal features of constitutional practice post 1707 were clearly derived from the traditions developed in England.

The island of Ireland has had its own, troubled history. King Henry VIII of England declared himself king of Ireland in 1541, but the English controlled only parts of the country. A separate Irish parliament was created in the 18th century (still under British suzerainty) but was short-lived: Ireland was united with Great Britain to form the United Kingdom of Great Britain and Ireland in 1801. After the establishment of the Irish Free State in 1922, only the six counties of Northern Ireland remained in the United Kingdom.

The constitutional history of England is one of gradual transfer of royal power to more representative bodies. The origins of Parliament are to be found in the gathering of courtiers, judges, bishops, and others that had taken a recognizable shape by the 13th century and evolved into the House of Lords. An elected House of Commons emerged later, with the first speaker of that house appointed in 1377. Parliament met only when summoned by the king, and there were often intervals of some years between parliaments. However, the two houses and especially the Commons gradually asserted control over the grant of "supply," that is, the authorization of taxation to finance the work of government.

The relationship between the king and the Houses of Parliament was fundamentally changed as a result of three critical events in the 17th and 18th centuries. The first was the republican interlude between 1649 and 1660. The second was the overthrow of James II by Parliament in the so-called Glorious Revolution of 1688, which installed William III and Mary II as joint sovereigns the following year; their rule clearly depended on the will of the people as expressed by Parliament. Finally, in 1714, again by virtue of an act of Parliament, a German prince (George, elector of Hanover) succeeded to the British Crown. He was not fluent in English and so took a much-reduced part in the business of government. It was under William III and George I that the office of prime minister and the cabinet, drawn from the majority group in the House of Commons, first appeared.

Although this process produced the main features of the modern constitutional arrangements, a fully democratic system was yet to emerge. In the 19th century, representation in the Commons was reformed and the secret ballot introduced, but it was only in the 1920s that the franchise was extended to women. Finally, in 1999 the hereditary right of peers to sit in the House of Lords was removed. Thus, despite the absence of constitutional documents with their resounding statements of high principle, there did emerge a centralized, democratic state, respecting the rule of law and playing a leading part in the development of international law.

In recent decades, the centralization of power in Westminster (where Parliament meets) and Whitehall (the home of the civil service and government departments) has been thrown into reverse. Membership since 1972 in what is now the European Union has led to a significant transfer of power to European institutions, a development disliked by many in the United Kingdom. Within the United Kingdom itself, several regional parliamentary assemblies have emerged, with their own devolved powers and regional administration.

FORM AND IMPACT OF THE CONSTITUTION

The absence of a written constitution is a striking feature of the United Kingdom. In one sense it is a historical accident: the result of the slow evolution of the system of government in a group of islands whose boundaries are defined by geography, and the greater part of which has never had to declare its independence of any other state. It may also reflect, and help to maintain, an essentially pragmatic tradition in much of British intellectual life. If there is a theory of the British constitution, it is that of the sovereignty of Parliament: that Parliament has unlimited power, that no court can declare its acts void, and that no one Parliament can bind its successors.

There is, nonetheless, much public reference to the conventions of the constitution, for example, that the queen must invite the leader of the majority party in the House of Commons to form an administration. The effect of that particular convention is that the administration almost always controls the House of Commons, so there is a sense in which it is unrealistic to speak of the executive as subject to the legislature.

There are many conventions of lesser importance (for example, that legislation relating to the Church of England should be introduced into the church's own legislative body, the General Synod, rather than into Parliament). Some conventions are disputed (for example, that a cabinet minister should resign if a serious mistake is made by his or her officials, even if the minister is not personally implicated).

BASIC ORGANIZATIONAL STRUCTURE

The United Kingdom has a parliamentary rather than a presidential system. It is one of the conventions that ministers should be members of one or the other house of Parliament. Typically, in a cabinet of about 20 members, two or three ministers will be in the Lords and the rest in the Commons. Junior ministers are drawn from both houses, so that there is a responsible minister to answer questions in each house.

In times when the government party has a large majority in the Commons (such as the years after 1997), there is a tendency for ministers to adopt a more "presidential" style; there have even been occasions when the

speaker of the House of Commons has publicly rebuked ministers for making important announcements to the media and not to the house. The House of Commons seeks to make ministers accountable by the daily question hour, by the ombudsperson system for complaints of maladministration, and by a series of select committees dealing with the affairs of each department. Those committees can summon witnesses, including ministers and civil servants from the department concerned, and their reports are often highly critical, even though the committees are dominated by administration supporters. The House of Lords has a similar system of committees but on broader themes, such as European affairs, and science and technology.

Although classified as a unitary rather than a federal state, the United Kingdom does consist of three distinct parts: (1) England and Wales (and for some purposes Wales may be seen as a distinct, fourth part); (2) Scotland; and (3) Northern Ireland. The United Kingdom Parliament in London can legislate for any part, but there are subordinate legislative assemblies in Scotland, Northern Ireland, and Wales, each with an executive headed by a first minister.

The events in Ireland in the early 1920s left Northern Ireland with its own bicameral parliament. After civil unrest in Northern Ireland, the local parliament was suspended and eventually replaced in 1999 by the unicameral Northern Ireland Assembly with a "power-sharing" executive representing all the major political parties. Certain matters were not devolved to the assembly, including police and security matters, criminal justice, international relations, and taxation; these remained the responsibility of the secretary of state for Northern Ireland, a U.K. cabinet minister. Continuing difficulties led to the repeated suspension of the assembly, with all ministerial responsibilities reverting to the secretary of state.

A unicameral Scottish Parliament was introduced in 1999. It has power to legislate on a range of topics including education, health, agriculture, and justice, and has limited taxation powers. Foreign affairs, defense, and national security remain a U.K. responsibility.

In the same year, the National Assembly for Wales (colloquially known as the Welsh Assembly) was established. It has responsibilities for what are essentially executive functions in certain areas, such as health, local government, and agriculture, but very limited legislative powers, essentially restricted to those items of secondary legislation that U.K. ministers can make in England.

In each part of the United Kingdom, there is a system of local government. The historic counties, each with a lord lieutenant representing the monarch and (in England) a high sheriff with ceremonial duties associated with the courts, remain the primary unit in much of England, where local government responsibilities are divided between county and district councils. In London and the major urban areas, these have been replaced by unitary authorities such as the 32 London Borough Councils. Wales, Scotland, and Northern Ireland also now have single-tier systems. There are also parish or community councils in many small local areas. The major sources of income for all these local councils are the council tax levied on property in the area and grants from central government funds. Local government leaders frequently complain that their activities are more and more circumscribed by parliamentary legislation and ministerial guidelines, and that additional obligations placed on local authorities are not matched by increased grants to enable these obligations to be discharged. There are proposals for elected regional assemblies to assume some of the responsibilities of county councils, on the model of the Greater London Authority, which has strategic responsibilities for the whole London region.

It should be mentioned that some of the small islands within the geographical entity of the British Isles are not part of the United Kingdom, although the monarch is head of state and the U.K. government is responsible for defense and international relations. The Isle of Man has its own legislature, the Tynwald, the oldest parliament in the world with a continuous existence, and the two Bailiwicks of Guernsey and Jersey (in the Channel Islands) have assemblies known as the States. The remaining overseas dependent territories of the United Kingdom have their own constitutions and legislatures.

LEADING CONSTITUTIONAL PRINCIPLES

In the United Kingdom democracy and the rule of law are enshrined in constitutional practice, though not in any single document; however, some other characteristics of many constitutions are absent. There is no doctrine of the separation of powers: the lord chancellor and other senior judges sit in the House of Lords, of which the lord chancellor is Speaker, and the House of Lords is both part of the legislature and the highest court of appeal. The lord chancellor is also a cabinet minister, and so has a place in the executive, the legislature, and the judiciary. In 2003, controversial proposals were announced for the abolition of the office of lord chancellor and the transfer of the judicial functions of the lords to a new Supreme Court. At the time of writing (beginning of 2006) these proposals were still under consideration in Parliament.

CONSTITUTIONAL BODIES

The main state bodies are the Crown, the Privy Council, Parliament, and the cabinet.

The Crown

The monarchy retains its importance as a symbol of unity and a focus of loyalty. The monarch receives all major state papers, presides at the largely formal meetings of the

Privy Council, and receives the prime minister in a weekly private audience to receive and to give advice and information. There are from time to time suggestions that the system of honors awarded by the queen or king should be changed or abolished, but the monarchy remains very popular.

The monarchy is hereditary, under the system of male primogeniture, with male descendants of the sovereign taking precedence over female descendants, the senior line of descent always taking precedence over the junior line. So the male children of the sovereign succeed in preference to their older sisters.

The overthrow of King James II in 1688 was largely due to a fear that he might restore the Catholic faith, and in the following years Parliament was at pains to ensure the succession of Protestants to the throne. The Act of Settlement of 1700, which is still in force, declared Princess Sophia, electress of Hanover, as the next heir and provided for the succession to be to "the heirs of her body being protestants," excluding from succession to the throne anyone who "is are or shall be reconciled to or shall hold communion with the See or Church of Rome or shall profess the popish religion or shall marry a papist." Some members of the royal family have been excluded from the order of succession on this basis, but this provision has not affected anyone who had a realistic chance of inheriting the Crown.

The Privy Council

Apart from the monarchy itself, the most ancient part of the constitutional structure is the Privy Council, the successor of the inner council that advised the sovereign before the full development of cabinet government. It consists of several hundred persons, including all present and past cabinet ministers, other senior parliamentarians, senior judges, the archbishops of Canterbury and York, the bishop of London, and some other eminent individuals; membership is for life though there is power to remove an individual for some grave cause.

The Privy Council meets every few weeks, with a usual attendance of three or four cabinet ministers. Its meetings are traditionally conducted standing, a practice that no doubt helps ensure their brevity. The proceedings are almost entirely formal, as the monarch indicates approval of each item. The most important business is the making of orders-in-council, a form of secondary legislation made under statutory authority and considered too important to be dealt with by ministerial regulations.

The Privy Council has a number of "working" committees, the most important of which is the Judicial Committee: a court of law hearing appeals from the remaining overseas dependencies and some independent Commonwealth countries; it also has jurisdiction to resolve issues as to the powers of the devolved assemblies of Scotland, Wales, and Northern Ireland, to hear appeals in some ecclesiastical matters, and from some professional regulatory bodies. There is also a Universities Committee, dealing with the grant and amendment of charters and statutes to universities. Another committee deals with proposed legislation from the States of Guernsey or Jersey.

The Parliament

Technically, the United Kingdom Parliament consists of the sovereign and the two Houses. Legislation is enacted "by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same." Each Parliament is formed after a general election to the House of Commons. Its maximal life is five years, but it is usually dissolved earlier at a time selected by the prime minister. There are annual sessions opened by the sovereign, normally in November of each year, and business unfinished at the end of one session (a few days before the opening of the next) must, in the absence of some special arrangement, begin again in the next session.

The House of Lords now consists of the 26 lords spiritual (the Anglican archbishops and bishops), 92 hereditary peers elected as an interim measure after the removal from the house of other hereditary peers in 1999, a number of judges appointed as lords of appeal and remaining peers for life, and an unlimited number (usually about 550) of other life peers. All are formally appointed by the monarch on the advice of the prime minister. Almost a third sit as crossbenchers, independent of any of the political parties; that and the life tenure of the members give the house a considerable degree of independence. The lord chancellor is currently the speaker, but the occupant of the woolsack, the seat for the presiding officer, has little control over debates, which are a matter for the house as a whole. Members are unpaid but have various expense allowances.

The House of Commons is wholly elected, with 659 members all representing single-member constituencies. In 2003, members received a pensionable annual salary of £56,000 and various expense allowances totaling up to £113,000 a year. The house elects its own Speaker. A cabinet minister serves as leader of the house, and the leader of the largest minority party becomes leader of the opposition. Most votes are subject to party "whips," but free votes are allowed on some matters. In any event, a member can vote as he or she wishes and defy party instructions; members may also change party allegiance without losing their seat.

There are a number of practices designed to ensure the integrity and probity of members. Members must declare their financial and other interests, a register of which is made public each year; a parliamentary commissioner for standards examines any alleged misconduct or impropriety; and the house has its own Committee on Standards and Privileges, which can discipline offending members. Similar arrangements apply in the other regional assemblies and local councils.

The Lawmaking Process

Bills may be introduced in either house of Parliament, by the responsible minister or by individual members. In each house, a bill receives a formal first reading and, if its principles are generally approved after debate, a second reading. It is then examined line by line by an appointed committee in the Commons or by the whole house in the Lords. The results are then reported to the house, and further amendments may be moved at this "report stage." Final approval is in the form of a vote on the third reading of the bill. The bill then goes to the other house and the process is repeated.

If, as is usually the case, the bill has been amended during its progress through the second house, the house in which it was first considered is asked whether it accepts the amendments. If it does not (for example, if the government uses its majority in the Commons to reverse decisions made in the Lords), the bill goes back to see whether the amendments are insisted upon. If there is no agreement, the bill falls at the end of the annual parliamentary session; there is no form of joint committee in which a compromise text can be negotiated.

It follows that the House of Lords can "block" a government bill. By a convention, this power is not used in the case of financial bills or when the government's proposals were clearly stated in its last election manifesto. In any event, if the House of Commons passes the same bill in two successive sessions, it may be presented for the royal assent without the endorsement of the House of Lords. The royal assent is the last formal stage; assent to a bill has not been withheld at any time during the last 300 years.

A large amount of legislation is in the form of statutory instruments: secondary legislation made by the sovereign-in-council or the relevant government minister in the exercise of a power conferred in an act of Parliament. In a typical year there may be some 40 acts of Parliament and over 3,000 statutory instruments. A small number of laws require that the statutory instruments issued under their authority must be laid before each house of Parliament in draft and approved by a vote in each house. The great majority of statutory instruments are simply reported to Parliament before they go into force; they may be blocked by a "negative resolution" of either house. Specialist committees scrutinize instruments that appear to raise issues of principle, but in practice very few indeed are objected to.

The Cabinet

Once the sovereign has invited a party leader to form a government as prime minister, usually after an election, it is for the new prime minister to select the other members of the cabinet and junior ministers. Cabinet ministers receive their seals of office from the monarch, but there is no requirement of parliamentary approval of the new cabinet or its program. Should a vote of "no confidence in Her Majesty's Government" be passed in the House of Commons, the government must either resign or advise the monarch to dissolve Parliament and call fresh elections.

The cabinet consists largely of secretaries of state for the various departments, with responsibilities determined by the prime minister. In recent years there has been a deputy prime minister, but this post is not formally established. The chancellor of the exchequer (effectively the minister of finance), the home secretary (responsible for matters such as the police and immigration policy), the foreign secretary, and until now the lord chancellor are seen as the senior ministers, but the prime minister is clearly the dominant figure. The cabinet usually meets weekly and has a number of standing committees, but the personality of the prime minister of the day determines whether decisions are genuinely decisions of the cabinet as such.

The Judiciary

In England and Wales there are High Court, circuit, and district judges appointed from the ranks of barristers (lawyers admitted to plead at the bar) and, less frequently, solicitors (lawyers with limited rights to practice before the courts). They preside over the civil courts (the High Court and the county courts) and the Crown Court, which deals with serious criminal cases. Lay magistrates, called justices of the peace, deal with minor criminal cases and some family cases. Appeals are heard by the Court of Appeal with a limited further appeal to the House of Lords. Northern Ireland has a similar but separate system.

Scotland has its own system of courts, with the same judges sitting in the Court of Session to deal with civil cases and in the High Court of Justiciary for criminal cases. Appeals lie to the Inner House of the Court of Session, with a limited further appeal to the House of Lords. Lower courts are presided over by sheriffs, each serving six geographical sheriffdoms.

Judges are appointed with full security of tenure until their retirement age, though powers do exist (but are rarely used) to remove a judge for incapacity or gross misconduct. The senior judges are treated with enormous respect: Every High Court judge becomes a knight or dame, and every Court of Session judge has the judicial title of lord. By a procedure known as judicial review, the judges can examine any administrative decision, for example, by a government minister, and can reverse any decision that is procedurally flawed or unreasonable. Ministers sometimes complain that the courts are frustrating their policies by such decisions, but respect for the judges and the rule of law overrules their complaints.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

The right to vote in parliamentary, local government, and European Parliament elections is given to anyone duly registered on the electoral roll for the relevant constitu-

ency. To be registered a person must be 18 years of age and a British citizen or a citizen of a Commonwealth country or the Republic of Ireland. Citizens of other EU countries may vote in local government and European Parliament elections. Convicted prisoners and members of the House of Lords have no vote. Voters must normally be resident in the constituency, but certain former residents living or serving in the armed forces abroad may also vote. In recent years, voting by post or via the Internet has been used on an experimental basis in selected areas. Voting is not compulsory; turnout for general elections has been falling in recent years and is now about 60 percent. The turnout in local government and European Parliament elections is much lower, typically 30 percent.

Elections to the House of Commons are conducted on the "first-past-the-post" system in single-member constituencies; the same system is used in most local government elections. Elections to the European Parliament are on a party list system with multimember constituencies. The Scottish Parliament, the Welsh Assembly, and the Greater London Assembly all have a dual system, with single-member constituencies and "additional members," the latter using the party list system. The Northern Ireland Assembly has multimember constituencies and uses the single transferable vote system, which is also used in the rest of Ireland.

There is no state funding for election campaigns, but there are tight limits on the amount that can be spent by any candidate: the figure varies with the size of the constituency, but in the 1997 election to the House of Commons it was about £40,000.

There is no regular practice of referendums, though several have been held under special acts of Parliament. Approval of the treaty for a European Union Constitution as drafted in 2004 will be the subject of a referendum.

POLITICAL PARTIES

The United Kingdom has a pluralistic system of political parties, which have no formal constitutional status. There is a system of registration of parties, but it exists mainly to protect the name and emblem of each party and to ensure proper financial control. It is only in recent times that the ballot papers for elections have identified the party allegiance of candidates. One consequence of registration is that it gives the registered party access to the times allocated for party political broadcasts on radio and television; these are typically five- or 10-minute broadcasts in the period before elections.

Since the early part of the 20th century there have been three major national parties: Labour, Conservative, and Liberal, now Liberal Democrat. The House of Commons also has members from regional parties: Plaid Cymru from Wales, the Scottish National Party, four Northern Ireland parties, and one or two Independents elected on particular issues. The United Kingdom Independence Party has seats in the European Parliament.

Parties represented in the House of Lords or the House of Commons receive some state financial support for their parliamentary work: The Conservative opposition received some £4 million in 2003–4, plus £500,000 for the expenses of the leader of the opposition's office.

The political parties have an influence that extends beyond their formal role. Appointment to public bodies, for example, health authorities serving local areas, is influenced by known party allegiance. Such appointments are not, however, formally political appointments, and a member's tenure survives any change in government.

CITIZENSHIP

The rules governing British nationality are very complex, with a number of categories resulting from the existence of dependent territories overseas. The principal type of citizenship, British citizen status, is enjoyed by anyone born in the United Kingdom, the Isle of Man, or the Channel Islands who has a parent who either (1) is a British citizen or (2) is or becomes settled in the United Kingdom. A child born overseas to a British citizen who was born in the United Kingdom also receives British citizen status. Persons in the other categories, such as British overseas territories citizens, can generally acquire full British citizenship by registration after a period of legal residence in the United Kingdom.

The principal significance of citizenship is associated with the right to reside permanently in the United Kingdom and to enter and leave it at will. The relationship between nationality and immigration law is, however, complex. For most purposes, Irish citizens and those from other European Union countries have rights very similar to those of British citizens.

FUNDAMENTAL RIGHTS

The absence of a written constitution necessarily means that there is no single legal document guaranteeing fundamental rights. The United Kingdom was an early party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. This gave the right of access to the European Court of Human Rights, but since 1999 the convention has been incorporated in an act of Parliament and can be made the basis of claims in U.K. courts. There is no power to strike down an act of Parliament as inconsistent with the convention, but statutory instruments can be declared invalid on this basis. Legal provisions derived from the European Community have enhanced the law against discrimination on grounds of gender, age, race, and sexual orientation. These developments have had a considerable impact, but the absence of a constitution and a Constitutional Court means that there is little to say about the formal position of fundamental rights in U.K. law.

ECONOMY

Similarly, there can be no constitutional statements about the economy. The nationalization measures of the late 1940s and 1950s and the privatizations 20 years later raised no formal constitutional issues. If anything, financial institutions are being distanced from government: Interest rates are now set by the Monetary Policy Committee of the Bank of England; the Office of Fair Trading and the Office of Communications are examples of a growing number of regulatory bodies that enjoy some measure of independence.

RELIGIOUS COMMUNITIES

The United Kingdom now enjoys freedom of religion; the last restrictions on Roman Catholics were removed in the 19th century. That does not prevent, however, the existence of two established churches. There are an established church in England (the Church of England), of which the sovereign is supreme governor (but its associated Anglican churches in Wales and Northern Ireland have been disestablished), and an established church in Scotland (the Church of Scotland). The sovereign, supreme governor of an Episcopal church in the southern part of the kingdom, is a member of a reformed Presbyterian Church, the Church of Scotland, in the north.

The definition of the term *establishment* differs between the two countries. In Scotland, the church is declared by statutory law to have complete autonomy, while the Church of England is much more closely tied to the state. Its two archbishops and 24 other bishops sit in the House of Lords and its bishops are nominated by the sovereign on the advice of the prime minister. In practice, the church has real freedom. For example, the choice of bishops is restricted to those proposed by a church commission, and the General Synod of bishops and elected clergy and laity can enact legislation of equal force to acts of Parliament subject only to a single affirmative vote in each house of Parliament.

The churches play a fairly prominent part in public life despite the limited church attendance: Only some 3.5 million claim to be churchgoers. Each day's sitting of the House of Lords begins with prayers led by an Anglican bishop, and an Anglican priest performs a similar duty as speaker's chaplain in the Commons. The annual meeting of the General Assembly of the Church of Scotland is a significant national event. Hospitals, prisons, and the armed forces all have Christian chaplains paid for out of the relevant state budget, and provision is made for the spiritual needs of followers of other faiths. Particularly in rural areas, the parish church is the center of much community activity.

Neither of the two established churches receives funding from the state. There is no church tax, and the clergy must be paid, housed, and provided with pensions from the church's own resources. Church buildings are owned and maintained by the churches. The only exception is that repairs to churches listed as of historic or architectural interest are not subject to value-added tax at the usual rate, and various grants are made to pay for the repair of such churches, including the great cathedrals, and for the maintenance of redundant churches that are part of the architectural heritage.

All churches other than the two established churches and all groups of followers of other faiths are technically private charitable bodies, subject to the general law governing such bodies. There is no category of registered or recognized churches.

The churches, especially but not exclusively the two established churches, play a major part in the educational system, especially at primary school level (ages four to 11). Many schools are provided by a partnership of the church and the local education authority. There is provision for a daily act of worship in all schools; as some areas have a majority of children from non-Christian immigrant groups, the worship need not be exclusively Christian, but over the school year the predominant emphasis must be Christian. Religious education on a nondenominational Christian syllabus forms part of the basic school curriculum, though children may be withdrawn from those classes. Schools that have a distinctive religious foundation may teach on a denominational syllabus, and there are significant numbers of Anglican and Catholic schools that operate on this basis.

MILITARY DEFENSE AND STATE OF EMERGENCY

The sovereign is commander in chief of the Royal Navy, the army, and the Royal Air Force, but these standing forces are allowed only by act of Parliament and are controlled by the government through the secretary of state for defense. There is no compulsory military service. Total personnel in the forces number some 200,000 plus some 85,000 civilian support personnel. It is unclear whether the constitutional conventions require any parliamentary authorization of any major deployment of the forces outside the United Kingdom, but this has been sought in recent cases.

The administration has the right to take emergency powers when it finds that there is an event or situation that threatens serious damage to human welfare, the environment, or the security of the United Kingdom or any part of it. All these terms are closely defined, but include cases of disruption of the supply of money, food, water, energy, or fuel, or of services relating to health; contamination of land, water, or air with harmful biological, chemical, or radioactive matter, or flooding; war or armed conflict; and terrorism.

Where it is necessary to make new provision for the purpose of dealing with an actual or imminent emergency, the monarch may by order in council make emergency

regulations; a senior minister may act if there would be serious delay in arranging a meeting of the Privy Council. Emergency regulations may make any provision that the person making the regulations thinks is for the purpose of preventing, controlling, or mitigating an aspect or effect of the emergency. They may deploy the armed forces; authorize the requisition, confiscation, or destruction of property (with or without compensation); prohibit or require movement to or from a specified place; prohibit assemblies of specified kinds; and prohibit travel and other specified activities. These powers were created in their present form in 2004; the earlier legislation had been used, apart from wartime, only to deal with the effects of serious industrial disputes.

AMENDMENTS TO THE CONSTITUTION

Since there is no written constitution, there is a continuing process of evolution in the workings of the political system. Some changes are brought about by formal means, for example, the changes in the composition of the upper House of Parliament, which were effected by statute. Others, often more subtle and gradual, may pass almost unnoticed until political leaders or commentators begin to identify a new constitutional convention.

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David McClean

UNITED STATES

At-a-Glance

OFFICIAL NAME
United States of America

CAPITAL
Washington, D.C.

POPULATION
295,734,134 (2005 est.)

SIZE
3,679,192 sq. mi. (9,529,063 sq. km)

LANGUAGES
English

RELIGIONS
Christian 77.25%, Jewish 1.0%, Muslim 1.0%, Buddhist 0.38%, Hindu 0.27%, Native American 0.04%, Baha'i 0.03%, Taoist 0.01%, no religion/atheist and other 20.02%

NATIONAL OR ETHNIC COMPOSITION
White 81.7%, African American 12.9%, Asian 4.2%, Native American 1.0%, Native Hawaiian and Pacific Islander 0.2%

DATE OF INDEPENDENCE OR CREATION
July 4, 1776

TYPE OF GOVERNMENT
Representative democracy

TYPE OF STATE
Federal republic

TYPE OF LEGISLATURE
Bicameral congress

DATE OF CONSTITUTION
June 21, 1788

DATE OF LAST AMENDMENT
May 7, 1992

The United States of America is a federal state comprising 50 autonomous regional provinces, called states, plus the District of Columbia, which serves as the capital.

The federal legislature, called Congress, is made up of the Senate and the House of Representatives and is located in the Capitol Building in Washington, D.C. The president of the United States is head of the executive branch of the federal government. Executive functions of the federal government are executed through a number of departments. Executive departments are headed by a member of the cabinet, most of whom are called the secretary of the department concerned. (The attorney general, who heads the Department of Justice, is a notable exception.).

The judicial function at the federal level is executed by a hierarchy of federal courts, including district courts, circuit courts of appeal, and the United States Supreme Court. The Supreme Court, apart from its role as final appeals court, has jurisdiction to consider the constitutionality of laws and of executive acts and decisions, both at the federal and at the state level.

Each of the 50 states has its own constitution; legislature; executive government, headed by a governor; and court system. Leaving aside the institutions of local (municipal) government, state authority in the United States is consequently made up of 51 legislatures, systems of law, governmental structures, and judicial institutions.

The United States has a common law legal system based on English law, except, that is, Louisiana, which has in part a civil law system. Much of the common law has been superseded by legislative provisions. Common law crimes have all been replaced by statutory crimes, and criminal prosecutions can therefore no longer be based on the common law.

CONSTITUTIONAL HISTORY

The history of the United States begins with the discovery of the New World by Christopher Columbus (1451–1506), who set foot on the Caribbean islands off the coast of North America in 1492. Although an Italian by birth

(as Christoforo Columbo), he sailed under the banner of Spain.

Columbus's three journeys to America opened the door for several European countries, notably England, France, Holland, Spain, and Portugal, to establish colonies in the Americas, some under the auspices of private corporations rather than the state.

The first permanent British settlement in North America was established in 1607 by Captain John Smith at Jamestown, Virginia. In 1620, a group of religiously motivated immigrants led by William Brewster and William Bradford, first known as Separatists but later as Pilgrims, crossed the Atlantic Ocean in the *Mayflower* and established a British colony at New Plymouth, Massachusetts. This settlement soon expanded to include all of what are now the New England states (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut).

Tensions between the motherland and the North American colonies emerged in the 18th century. The colonists lamented that though compelled by the British Parliament to pay taxes, they had no representation in the legislature. The conflict founded on the principle of "no taxation without representation" reached a peak with the Boston Tea Party of December 16, 1773, when a group of people disguised as Native Americans boarded three ships in Boston harbor and threw a valuable consignment of tea overboard in protest against the tea tax. The British authorities retaliated in 1774 by closing the harbor.

This led to a call for civil disobedience, which finally sparked the American Revolution (1775–83), during which 13 North American colonies on July 4, 1776, collectively declared themselves independent of British rule. Independence of the United States of America was recognized by Britain through the Treaty of Paris of September 3, 1783.

The newly established state extended its borders during the 18th and early 19th centuries, eventually to embrace the entire mainland of North America from the Atlantic Ocean in the east to the Pacific Ocean in the west and between the Gulf of Mexico and Mexico in the south and Canada in the north. New Amsterdam, a Dutch possession, was annexed by the English in 1664 and included in the original 13 states as the state of New York; through the Louisiana Purchase of 1803 the United States acquired from France a vast stretch of land that today includes all or part of the states of Louisiana, Missouri, Arkansas, Iowa, Nebraska, North Dakota, South Dakota, Montana, Minnesota, Kansas, New Mexico, Texas, Wyoming, Colorado, and Oklahoma; Florida was initially under Spanish rule, was ceded to England in 1763, was returned to Spain in 1783, and was finally purchased by the United States in 1819 to become the 27th state in 1845; after the Mexican War (1846–48), the United States acquired New Mexico and California and established a clear title to Texas; Utah was developed by members of the Church of Jesus Christ of Latter-day Saints (Mormons) in the mid-19th century and admitted to the union in 1896. Further states beyond the boundaries mentioned became part of the United States in the mid-20th century: Alaska, purchased from Russia in 1867, became a state in 1959, and Hawaii, which ceded itself to the United States in 1898, became the 50th state in 1959.

The unity of the United States was placed in peril by the American Civil War (1861–65) between the southern Confederate States of America and the (northern) Union states, better known in the southern states as the War between the States. Central to the tensions that culminated in the war was the question of slavery; a dispute that in part was fueled by a decision of the U.S. Supreme Court in the *Dred Scott* case of 1857 that held unconstitutional a law of Congress that prohibited slavery in a defined part of the United States. The Confederate States claimed jurisdiction in matters related to the institution of slavery and a right to secede from the union, while the Union states primarily opposed the right to secession but also favored emancipation of the slaves. Upon the election of Abraham Lincoln (1809–65) in 1861 as the 16th president of the United States, the Confederate States seceded from the union, and the newly elected president thereupon took military action to preserve the union. President Lincoln in 1863 announced the Emancipation Proclamation granting freedom to all slaves. The war cost the lives of 359,528 Union and 258,000 Confederate troops. In the end, the Union forces triumphed after the surrender by the Confederate commander, Robert E. Lee (1807–70), on April 9, 1865. Five days later, on April 14, President Lincoln was assassinated by a Confederate sympathizer.

In 1781, the 13 states in a first attempt to establish a national government ratified the Articles of Confederation. This constitutional instrument provided the national government with very little power and was for that reason quite impractical. The Articles of Confederation were superseded by the U.S. Constitution of 1788, which reflected a desire for more centralized political coordination. The Constitution was for that reason opposed by antifederalists.

The land now constituting the United States of America was at the time of European settlements occupied by numerous Native American tribes, who had lived in that part of the world for probably many millennia. It is believed that these peoples migrated to North America during the Ice Age when a geological land bridge connected Siberia and Alaska. Native American tribes are today largely located in reservations in Arizona, New Mexico, Utah, Oklahoma, Texas, Montana, Washington, North and South Dakota, and Wyoming by the terms of treaties concluded between the United States and several of the tribes. The Native Americans gained U.S. citizenship in 1924, but those living in a tribal setting are precluded from the protections afforded by the American Bill of Rights. Instead, they are protected from excesses of tribal authorities by the Indian Civil Rights Act of 1968. Though the civil rights of Native Americans are modeled on those listed in the U.S. Bill of Rights, their application is somewhat different.

The United States is a founding member of the United Nations Organization and of the North Atlantic Treaty

Organization. It is a permanent member of the Security Council of the United Nations and plays a leading role in international relations. It is a member of the Organization of American States and is as such subject to the jurisdiction of the Inter-American Commission on Human Rights.

The United States has ratified several international human rights conventions, namely, the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). It should be noted, though, that the United States subjected the ratification of those international instruments to a package of reservations, understandings, and declarations to ensure, among other points, that its international obligations will not require the United States to change any of its existing laws or practices. The United States is one of only two countries in the world that have not ratified the Convention on the Rights of the Child, although in 2003 it did ratify two protocols to that convention dealing with involvement of children in armed conflict and the prohibition of the sale of children, child prostitution, and child pornography.

FORM AND IMPACT OF THE CONSTITUTION

The Constitution of the United States is contained in a single document, which has the highest legal and political impact on the life of the nation.

Although the United States upholds a principle that renders judicial precedents binding on courts lower in status and generally controlling subsequent decisions of the same court (*stare decisis*), constitutional questions, ultimately the preserve of the U.S. Supreme Court, are considered always to be open to reinterpretation.

Justices of the U.S. Supreme Court have not upheld a consistent doctrine of statutory interpretation. Two major schools have emerged in this regard: the strict interpretationists and the revisionists.

Strict interpretationists emphasize the restrictions imposed on the judiciary by the actual language and history of the Constitution. An extreme brand of interpretationism has favored a literal construction of the Constitution. Another seeks to uncover the meaning of constitutional provisions as actually contemplated by the drafters at the time of their enactment. There is a general tendency among Supreme Court justices to subject at least the religion clauses of the First Amendment to such an "original intent" construction.

The most radical variety of revisionism, commonly referred to as judicial activism, reflects a desire to conform to major trends of public opinion and a commitment to respond to social injustices as perceived by the judges. In some instances, judicial activism ignores the drafters' original intent and reflects little regard for the actual wording of the Constitution.

Central to the idea of the rule of law as a basic principle of the U.S. legal system is the concept of legality: that the rights and duties of anyone subordinate to state authority, *as well as* the powers and responsibilities of governmental agencies, ought to be prescribed by, and executed subject to, clearly defined rules of law. The opposite of the rule of law in this sense is arbitrary powers of the repositories of state authority.

In principle, the legal system of the United States complies with the rule of law in the sense that all governmental powers, including those of the legislatures and executive institutions, must be exercised subject to the substantive and procedural provisions of the federal and state constitutions. On the other hand, the individual rights provisions of the United States Constitution clearly lack the measure of precision required by the legal certainty prong of the principle of legality. Given the wide powers of interpretation of courts of law that attend such generalities in statutory language (especially as construed by judicial activists), the United States Constitution is perhaps conducive to a *gouvernement des juges,* a government of judges, rather than to strict constitutionalism.

The president of the United States while in office can probably not be prosecuted for criminal conduct other than through impeachment and removal from office. The president furthermore enjoys sovereign immunity that precludes injunctions and civil actions for money damages based on acts committed while in office. However, the Nixon tapes case dramatically illustrated that even the president is not above the law, that the privilege of confidentiality of his conversations and correspondence "must be considered in light of our historic commitment to the rule of law" and weighed against "the inroads of such a privilege on the fair administration of criminal justice," and that "the legitimate needs of the judicial process may outweigh presidential privilege" (*United States v. Nixon,* 1974).

In terms of the Eleventh Amendment to the Constitution of the United States, a state enjoys sovereign immunity from "suits in law or equity" in federal courts commenced or prosecuted by a citizen of another state or of a foreign country. Under broader constitutional principles, the sovereign immunity of states extends further, to include all civil actions by private persons. Except for the power of Congress to enforce, by appropriate legislation, the provisions of the Fourteenth Amendment, the federal legislature cannot abrogate a state's sovereign immunity by affording a cause of action to private persons to bring suit against a state without the state's consent (*Seminole Tribe of Florida v. Florida,* 1996).

BASIC ORGANIZATIONAL STRUCTURE

The United States of America is made up of 50 autonomous states, plus the District of Columbia, which is the capital.

The United States also has several possessions outside its national borders that do not form part of the union as states. It upholds special relations with Puerto Rico, an island commonwealth in the West Indies, which was ceded to the United States after the Spanish-American War of 1898 and acquired commonwealth status with local self-government in 1952. The population is divided on the question whether the islands should become independent or be fully incorporated into the United States as a separate state. Other unincorporated territories of the United States include Guam, the Northern Mariana Islands, and the Virgin Islands.

The United States in 1788 selected for itself a federal constitution, described by Chief Justice Marshall as "the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all powers not delegated to the Union" (*Gibbons v. Ogden,* 1824).

Defining the powers of the federal government and vesting all residual powers in the states derived from a belief that the central governmental authorities were the ones that would most likely be inclined to abuse those powers. However, it emerged over the years that the states could also abuse their powers. In part for that reason perhaps, the federal structure envisioned by the founding fathers was considerably eroded. The power of Congress "[t]o regulate Commerce … among the several States" (U.S. Constitution, art. 1, sec. 8, clause [3]) has thus been applied to justify federal jurisdiction over a wide range of issues that are not expressly mentioned among the enumerated powers of the Congress and may not be of an obviously commercial nature.

Federalism is probably more broadly practiced in the United States than in any other state in the world. The union and the 50 states are each regarded as distinct sovereign entities. In terms of the doctrine of multiple sovereignties, the legal systems of each political component constituting the United States are treated as distinct sovereign regimes.

The executive and legislative systems of the states in many respects resemble those operating at the federal level, including, for example, the institution of a single and separately elected head of government, called a governor. All the states but one (Nebraska) also have a bicameral legislature, with a state Senate and a state House of Representatives or Assembly.

The legislative process also resembles that applicable to federal legislation, and state legislation can also be vetoed by the executive. When a bill has been passed by the state legislature, the executive can return the bill with a veto message. If the executive does not sign the bill or return it with a message of disapproval, the bill becomes law after a prescribed number of days. If the legislature adjourns before the governor's time for signing the bill has expired, the bill does not become law unless it is signed by the governor.

The demarcation of functions between the federal and state governmental authorities is fraught with difficulties. The Constitution enumerates the specific powers of Congress, and in terms of the Tenth Amendment to the Constitution (1791), the powers not delegated to the federal executive and legislature vest in the states.

The question whether the Tenth Amendment can be invoked to invalidate congressional legislation that intrudes upon the states' "right to federalism" is controversial. Two different views seem to predominate in this regard, the one holding that the Tenth Amendment was not intended to limit the legislative powers of Congress but merely serves as a reminder that Congress can only legislate on matters stipulated in Article 1 of the Constitution, the other maintaining that the Tenth Amendment protects the sovereignty of states against intrusions by the federal legislature.

According to the first view, one cannot rely on the Tenth Amendment per se to contest the constitutionality of federal laws but must instead base one's case on the federal legislature's having exceeded the powers of Congress stipulated in the Constitution. The second view would have it that the Tenth Amendment does reserve a zone of powers for the states and can therefore be used to substantiate a finding of unconstitutionality of congressional legislation. At different times, the U.S. Supreme Court has supported one or the other of these two views. In recent times it has demonstrated a renewed leaning toward the second approach.

There has been a general tendency to extend federal powers over a fairly wide spectrum, relying mainly on the power of Congress "[t]o regulate Commerce . . . among the several States," as proclaimed in Article 1, section 8, clause [3]. Matters held to lie within the commerce clause included a wide range of subject matters, some of which have at best a remote effect on interstate commerce, such as racial discrimination in restaurants, hotels, and other public places. More recently, the U.S. Supreme Court, relying more on the Tenth Amendment, has tended toward restricting federal powers founded on the commerce clause in three distinct areas.

Congress cannot rely on the commerce clause to "commandeer" the governmental functions of the states. The U.S. Supreme Court therefore invalidated a provision in the Low-Level Radioactive Waste Policy Amendment Act (1985) that mandated states to "take title" to any privately owned hazardous waste within their borders that was not disposed of in accordance with requirements specified in the act (*New York v. United States,* 1992), as well as a federal law that required local sheriffs to conduct background checks on gun purchasers (*Prinz v. United States,* 1997).

Congress cannot rely on the commerce clause to regulate activities that have very little effect on interstate commerce or any sort of economic enterprise. The U.S. Supreme Court therefore declared unconstitutional the federal Gun-Free School Zones Act (1990), which prohibited the possession of a firearm in or near a school (*United States v. Lopez,* 1995), as well as the Violence against Women Act (1994), which rendered punishable "crimes

of violence motivated by gender" (*United States v. Morrison,* 2000).

Congress cannot abrogate the sovereign immunity of states, which renders them immune from private suits for money damages, except when acting to enforce the Reconstruction amendments. The U.S. Supreme Court therefore invalidated provisions in the Indian Gaming Regulatory Act (1988) that (1) authorized Native American tribes to conduct certain gaming activities under the terms of agreements with state governments, (2) imposed a duty on states to negotiate such agreements, and (3) authorized a tribe to bring suit in a federal court to compel a state to comply with that duty (*Seminole Tribe of Florida v. Florida,* 1996). After this decision, the Court also held that Congress overstepped its powers when it authorized actions by private persons, even in state courts, for damages incurred through a state's violation of the Fair Labor Standards Act (1938) enacted under the commerce clause (*Alden v. Maine,* 1999).

In terms of the "full faith and credit clause" in the Constitution (art. 1, sec. 1), each state is obliged to respect and to uphold "the public Acts, Records, and judicial Proceedings of every other State." Federal legislation similarly requires federal courts to respect state acts, records, and judicial proceedings to the extent that they are valid in state courts. Recently, the question arose whether or not states would be bound to afford "full faith and credit" to same-sex marriages legally concluded in another state. The Defense of Marriage Act (1996) answered this question in the negative. A constitutional amendment to bar such marriages in any state failed in 2006.

LEADING CONSTITUTIONAL PRINCIPLES

The Declaration of Independence of July 4, 1776, spelled out the kind of social institution the United States of America aspired to become:

> We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying the foundation on such principles, and organizing its powers in such form, as to them shall seem likely to effect their safety and happiness.

The Constitution of the United States of America ratified in 1788 bears testimony of the founding fathers' distrust of the concentration of political power by the central government. The Constitution indeed differed from the earlier Articles of Confederation in being more conducive to centralized political coordination, but precautions to prevent the abuse of powers by the state remained a general characteristic of the American constitutional system.

The Constitution can be said to uphold the basic principles of representative democracy, separation of powers, federalism, the rule of law, and separation of church and state.

CONSTITUTIONAL BODIES

The predominant constitutional organs at the federal level are the federal executive administration, headed by the president and vice president; Congress as the federal legislature; and the U.S. Supreme Court. The courts, including the U.S. Supreme Court, have immense impact on the legal system.

The constitutional structure of the United States does indeed comply to a large degree with the contemporary notion of the separation of powers. It differentiates among the legislative, executive, and judicial components of state authority and applies the principle that persons serving in the one branch of state authority may not serve in any of the others. Members of the executive government are therefore disqualified from also being part of the legislature or the judiciary, and the same exclusionary rule applies to members of the other two branches.

However, the constitutional system of the United States ordains an elaborate system of checks and balances, which has resulted in a certain overlap of functions. The power of the president to veto congressional legislation, for instance, amounts to the performance of a legislative function by the head of the executive; the power of the Senate to impeach the president and members of the judiciary, to performance of judicial function by a legislative organ; the courts' power of substantive review, seen in conjunction with the sweeping language of the Constitution of the United States and of the constituent states, vests in the judiciary elaborate law- and rule-making powers.

The Federal Executive Government

The president of the United States is the executive head of government. The president appoints and presides over the cabinet, consisting of a secretary as the political head of each state department, or in the case of the department of justice, the attorney general. The president is commander in chief of the armed forces and of the militias of the states. The president enjoys executive privileges in respect of communications with advisers and may not be sued in civil proceedings for conduct while in office. The president can pardon offenses against the United States. The president enters into treaties with foreign governments, subject, however, to ratification by a two-thirds majority in the Senate. The president can enter into inter-

national agreements with another head of state, without Senate approval, although Congress decides what matters can be included in such agreements. The president annually delivers a state of the union address to Congress, outlining the administration's domestic and foreign policy for the coming year.

The major political parties (the Democratic Party and the Republican Party) designate their candidates for the presidency primarily via primary elections held in each state, or until a clear trend in favor of one candidate drives the others from the contest. Nothing prevents any person not associated with the major parties to present him- or herself for election to the presidency, although in most states it is difficult for such an independent to win a place on the ballot. In many states, the right to vote for a candidate of a particular party in primary elections is not limited to members of the party. The major parties nominate their candidates for president and vice president at a national convention convened after the primaries have been held.

The president is elected by an electoral college composed of representatives of the 50 states. The number of electors from each state equals the combined total of the state's representatives in the Senate and the House of Representatives; the latter number in turn depends on the state's population at the most recent decennial census. Though not required by law, by convention the electors cast the state's vote for the candidate who won the most votes there. In two states only, electors are chosen by congressional districts rather than statewide; the state's electoral votes may thus be split between two candidates.

The presidential candidate who receives an absolute majority in the electoral college is president. Because of the composition of the electoral college and the winner-takes-all system that applies in a vast majority of states, the person elected as president may not have the support of a majority of the voters who participated in the elections. Should no candidate receive an absolute majority (50 percent plus one) of the electoral votes, the president is elected by the House of Representatives from among the top three contenders for the presidency, with the representatives of each state casting only one vote.

The vice president is by a constitutional convention elected together with the president on one joint "ticket" and is nearly always a member of the same party.

The president and vice president hold office for a period of four years and can be reelected. However, the president can be reelected for only one further term of office. Should the president through death or otherwise vacate the office of head of state, the vice president automatically becomes the president for the unexpired term of the presidency.

The president and vice president may be removed from office on impeachment by the House of Representatives on grounds of "treason, bribery, and other high crimes and misdemeanors." The actual impeachment trial is conducted in the Senate. Conviction of the president requires a two-thirds majority of the senators present.

Impeachment proceedings have been brought against Presidents Andrew Johnson (1865–69) and William Jefferson Clinton (1993–2001). President Johnson's impeachment was based on the dismissal from office of the secretary of war, Edwin Stanton, in violation of a statute of Congress. He escaped conviction and removal from office by only one vote in the Senate. President Clinton's impeachment resulted from an affair the president had with a White House intern, Monica Lewinsky. He was acquitted in the Senate. In 1974, impeachment proceedings were also initiated against President Richard Nixon (1969–73) in the House of Representative's Judicial Committee, but he resigned before the house could put the matter to a vote. These proceedings were based on a cover-up by the president in the so-called Watergate scandal.

The Federal Legislature

The United States has a bicameral federal legislature, the Congress, which consists of an upper house, the Senate, and a lower house, the House of Representatives.

There are 100 senators: two for each state. Senators are elected by the electorate of the state that they represent in Congress. Each senator is elected to serve for a term of six years and can be reelected without limit. In order to ensure continuity, only one-third of the senators are subject to election every two years.

A senator must be at least 30 years of age, be a U.S. citizen for a period of no fewer than nine years, and be a resident of the state from which he or she is elected (though residency requirements vary between the states, almost vanishing in some cases). A candidate may be placed on the state ballot by either a major or a minor political party or present him- or herself for election as an independent candidate. If a candidate is opposed within the same party, primary elections are held to designate the party's candidate. Each voter has one vote, and the person who receives the most votes will be duly elected to the Senate.

The vice president of the United States is through the office president of the Senate. He or she has no vote in the Senate, unless there is a tie vote on any issue, in which event the vice president can cast a vote.

In impeachment proceedings, a decision to bring charges originates in the House of Representatives, but the Senate has sole power to try all impeachments. A decision of the Senate to impeach a president requires a two-thirds majority of all members present. Ratification of all treaties made by the United States also requires a two-thirds majority of all senators present. The Senate must give its consent for the appointment of ambassadors, other ministers and consuls, judges of the Supreme Court, and other officers of the United States by a simple majority.

The House of Representatives consists of 435 members, each serving for a period of two years. They can be reelected without limit. A representative must be at least 25 years of age, be a citizen of the United States for no fewer than seven years, and be resident in the state from which he or she is elected.

The number of seats in the House of Representatives allocated to each state depends on the state's population in the previous census (which is held every 10 years). Each state is divided into congressional districts based on the number of representatives of the particular state.

Nearly all representatives are elected from single-member districts within each state, which must be of equal population. "Gerrymandering" is the practice of demarcating electoral districts so as to benefit one party, often by concentrating the other party's votes in a handful of lopsided one-party districts. Gerrymandering has long been commonplace in state legislative as well as congressional districts; minority parties within each state have frequently called for nonpartisan commissions to take over the process.

Candidates for election to the House of Representatives may be members of one of the major political parties or a minor party or may run for office as independent candidates. Many states hold primary elections to designate candidates. Only voters registered in a particular congressional district may vote for a representative of that district in a primary or general election.

All laws with taxation implications must be introduced in the House of Representatives first. The House of Representatives must initiate impeachment proceedings, which then go before the Senate for adjudication.

The Federal Lawmaking Process

The Senate and the House of Representatives must approve federal laws in identical form. If the two houses pass different versions, consensus is sought via a "conference committee" with three to five members from each house. A compromise report may then be referred to both houses, which must both approve the compromise without amendment for the bill to pass.

Bills adopted by Congress are signed into law by the president of the United States, who may veto a bill adopted by Congress. Congress, in turn, can override a presidential veto by adopting the bill in a subsequent session with a two-thirds majority in both houses of Congress.

The Judiciary

The highest court in the United States is the U.S. Supreme Court. There are nine Supreme Court justices, comprising the chief justice and eight associate justices. They are appointed for life by the president of the United States and must be approved by the Senate. Supreme Court justices can be removed from office by impeachment for serious misconduct.

The Supreme Court hears appeals from decisions of the U.S. Court of Appeals and from the supreme courts of states. It also has appellate jurisdiction to resolve disputes between the executive and legislative branches of the federal government. The main focus of litigation in the U.S. Supreme Court concerns the interpretation of statutes and the constitutionality of legislation and of executive acts and decisions.

Federal courts lower in status are divided into district courts and courts of appeal. Judges of the federal courts are appointed for life by the president of the United States and must be approved by the Senate. They can be dismissed from office by impeachment for serious misconduct.

In 1968, a new lower tier was added to the federal court system, that of United States magistrates. Magistrates are appointed by the district judges of each district. They assist the district courts in the administration of justice by executing a variety of powers, such as issuing warrants, conducting preliminary examinations, and imposing conditions for the release on bail of a criminal defendant. They can also try misdemeanors, but the defendant can insist on being tried by the district court.

The states have their own court systems, comprising one or more trial courts (Indiana, Louisiana, and Michigan have two or more courts of general jurisdiction), intermediary courts of appeals (in 39 states), and supreme courts. These courts have jurisdiction in both civil and criminal cases.

There is a rich variety of systems in place to designate judges to state courts. In many states, judges, or some of them, are appointed by the governor; in other states they are elected by the voters.

Some states where judges are appointed have adopted the so-called merit plan or commission plan. Typically, a permanent, nonpartisan commission composed of both lawyers and nonlawyers recruits and screens persons to be considered for judicial appointment and forwards a list of several names to the executive, which appoints one person from the list to the judicial office. In most cases the appointee serves for a probation period of one or two years, upon which the appointee's name is submitted to the electorate in an unopposed ballet for confirmation. The question put to the electorate simply inquires whether the person concerned should be retained in office.

There are four states (California, Maine, New Hampshire, and New Jersey) where the governor appoints judges without inviting nominations from a commission. In three states (Hawaii, Louisiana, and Illinois) sitting judges appoint some of the newcomers to the bench. In Virginia, the legislature appoints all the judges.

In 21 states judges to the state supreme court are elected: eight of those in partisan elections and the remainder in nonpartisan elections. Of the 39 states that have intermediate courts of appeal, 17 have systems for the election of those judges, of which seven abide by partisan elections and 10 put candidates forward for election on a nonpartisan basis. As far as trial court judges are concerned, 13 states hold partisan elections for the designation of judges to those courts, and 17 prefer nonpartisan elections.

In most of the states one also finds a variety of special jurisdiction courts. The jurisdiction of those courts may in criminal matters be limited to preliminary proceedings or lesser offenses. A special jurisdiction court might be confined to a certain subject matter, such as water law.

Justices of the peace preside in civil matters in which the issue in dispute falls below a certain pecuniary limit.

Federal courts have limited subject matter jurisdiction in civil cases. In many cases, federal and state courts have concurrent jurisdiction, but there are several categories of civil cases in respect of which jurisdiction has been reserved by Congress for the federal courts, such as cases dealing with bankruptcy, copyright, or patent law. Besides their concurrent jurisdiction to hear civil matters, state courts have a substantial realm of exclusive jurisdiction in criminal cases.

Plaintiffs thus often have discretion to bring an action in either the federal or the state courts. If a case involves diversity jurisdiction—the plaintiff and the defendant reside in different states, or one party is a citizen of the United States while the other is a citizen of another country—or the case has "arisen" under federal law, either party to the dispute can place the case before the federal court. If the plaintiff has elected to proceed in a state court, the defendant may in almost all circumstances "remove" the case to the federal court.

The dual system of adjudication also applies to criminal cases. Federal courts have exclusive jurisdiction to hear criminal charges based on the law of nations (customary international law) or international crimes incorporated in the criminal code of the United States by implementing legislation. Federal courts have jurisdiction to try crimes enacted by Congress, while charges deriving from laws enacted by state legislatures must be brought in state courts. Federal crimes and state crimes do, however, overlap to a great degree. The dual system of criminal laws deriving from the federal structure of the United States has discreet implications for the rule against double jeopardy.

In the United States, the rule against double jeopardy precludes a subsequent prosecution "for the same crime," and not, as in many other jurisdictions, for the same conduct. American courts have interpreted the federal structure of the United States to afford to different states as against one another, and to the union as against a state or a state as against the union, separate sovereign status. The dual sovereignty doctrine has led the U.S. Supreme Court to decide that successive prosecutions by two states for the same conduct are not barred by the rule against double jeopardy, and that prosecution in the federal courts is not precluded by the conviction or acquittal of the same accused for the same conduct, or vice versa. As stated in *Heath v. Alabama,* 1985: "The dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. When a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he or she has committed two distinct 'offenses.'"

Criminal procedure in the United States is founded on the adversarial system with the burden of producing evidence and of proof resting on the state. The rules of procedure and evidence are founded on basic principles of criminal justice (the due process of law) and require the state to prove the guilt of a defendant beyond reasonable doubt. The prosecutor has the discretion to press charges. The judge functions as an independent arbiter but must uphold the presumption of innocence that applies to all persons charged with criminal conduct. Many criminal cases are disposed of through plea bargaining, whereby the prosecution and defense counsel agree on a plea of guilty to be entered by the defendant and the punishment to be imposed for the offense, the latter subject to confirmation by the judge.

In many jurisdictions in the United States, courts hearing civil cases are entitled to award to a successful plaintiff punitive damages in addition to the damages awarded for actual pecuniary loss or compensation granted for harm suffered.

In civil cases, each party to the dispute may pay his or her own legal expenses irrespective of the outcome of the case. Alternatively, a contingency fee system relieves the plaintiff from paying legal fees but entitles legal counsel to a percentage of the award made by the court in favor of his or her client or upon reaching a favorable settlement of the dispute out of court. A reverse contingency fee would make the fee of counsel for the defendant dependent in whole or in part on the amount saved by his or her client, given his or her potential liability in the case.

Civil procedure in the United States also makes allowance for class actions that permit a single person or a small group of persons to take action in the interest of a larger group. A class action is only feasible if members of the group have the same cause of action and the legal and factual questions of the case are common to the class.

The system of civil procedure of the United States is also unique in that it applies the principle of universal jurisdiction to civil suits for compensation. By virtue of the Alien Tort Statute (2004), formerly the Alien Tort Claims Act (1789), federal courts have original jurisdiction to award damages to an alien for a tort committed by an alien in a foreign country in violation of the law of nations (customary international law) or of a treaty ratified by the United States.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

Representative government in a democratic polity rests on the assumptions that persons in authority ought to be designated by those subject to their power, and that a government that does not comply with the popular demands of the people may be deprived of its power in periodic elections.

In the United States special precautions prevail to uphold the essential components of democracy: universal suffrage irrespective of wealth, race, or gender; a free press and unrestrained canvassing of persons running for office to ensure the exercise of an informed choice by the voters; free and regular elections; equal weighting of votes; and accurate calculation of votes.

In the United States there are also instances of direct democracy. Referenda are held fairly regularly at the state level in conjunction with general elections to obtain the consent of the people for a (state) constitutional amendment or to gain popular support for state legislation or on matters of important public interest. A number of states, notably California, also apply the initiative, by which a certain percentage of voters proposes legislation stipulated in a proposition or compels a vote on the subject matter of the proposition by the state legislature or by the full electorate.

On the other hand, however, the power of courts of law—composed at the federal level and in some state courts of unelected judges who are not directly responsible to the people—to invalidate legislation and executive acts of democratically elected legislators and administrations might be seen as a decidedly undemocratic element within the governmental structures of the United States.

CITIZENSHIP

American law makes a distinction between citizens of the United States and nationals. All citizens are nationals, but not all nationals are citizens. Nationals are those who owe allegiance to the United States, including persons who are not citizens but were born in outlying possessions of the United States, such as Wake Island or Midway Island.

Citizenship derives from birth or naturalization. All persons born in the United States are citizens by birth of the United States. If a person has been born outside the territorial borders of the United States, that person becomes a U.S. citizen by birth if both parents are U.S. citizens. If one parent is a U.S. citizen and the other is a national but not a citizen, the child born in a foreign country becomes a citizen by birth if the citizen parent was physically present in the United States or in one of the outlying possessions for a continued period of one year prior to the child's birth. In cases of a child born out of wedlock in a foreign country, citizenship by birth attaches to the child if the mother was a U.S. citizen at the time of giving birth and had formerly been present in the United States or an outlying possession for a continued period of at least one year.

A child of non-U.S. citizens born in a foreign country can claim U.S. citizenship if the parents become naturalized, the child is taken to the United States before acquiring adult status, and the child upon becoming an adult claims U.S. citizenship.

A person can become a citizen of the United States through naturalization after having resided in the United States for a period of at least five years as an alien resident (someone who has permanent resident status). Naturalized citizens enjoy all the rights attaching to citizenship but one: A citizen through naturalization cannot become president of the United States.

The U.S. Constitution also attributes to U.S. citizens citizenship of a state, depending on the state where the person resides.

Citizens of the United States have a number of special rights, including the right to enter and to depart from the United States. Citizens therefore have a right to obtain a passport for travel abroad. The Unites States can prevent its citizens from traveling in hostile countries where such travel could endanger the safety of U.S. citizens.

Citizens traveling abroad retain the protection of the United States. If the U.S. citizen is arrested in a foreign country, the U.S. embassy in that country seeks to ensure that his or her rights are properly protected.

The primary obligations of citizens of the United States are loyalty and allegiance to the country.

Certain constitutional rights, such as the right to vote, are reserved for citizens of the United States. Other rights belong to every person, irrespective of nationality. It has been decided that individual rights protections afforded by the Fourteenth Amendment to the U.S. Constitution also apply to nondocumented (illegal) immigrants and that such persons cannot be treated as a "suspect class" merely because their presence in the United States is not legal (*Plyler v. Doe,* 1982).

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, which granted elaborate welfare and public benefits, including child support, to aliens. Nondocumented aliens who are not "qualified aliens" as defined in the act are not eligible for "federal public benefits" but are, on the other hand, not precluded from benefits such as primary and secondary education.

FUNDAMENTAL RIGHTS

The 1789 Constitution is a cryptic document outlining purely formal matters such as the composition and legislative powers of Congress, the election and functions of the president, the institution and jurisdiction of courts of law, autonomy of the states and admission of new states to the union, amendment of the Constitution, and the status of international law in the United States.

In 1791, 10 amendments were added to the constitution and came to be known as the Bill of Rights. The substantive provisions of the Bill of Rights guarantee (1) certain freedoms, such as freedom of religion, freedom of speech, and freedom of the press; (2) certain rights, such as the right to assemble peaceably and the right to carry arms; (3) the absence of certain restrictions, such as the quartering of soldiers in a private dwelling without the consent of the owner, unreasonable searches and seizures, and the taking of property (expropriation) without just compensation; and (4) procedural rights associated with the due process of law, such as indictment by a grand jury, a jury trial in criminal and in some civil cases, the rule against double jeopardy, the privilege of not being compelled to be a witness against oneself, and finally the right in criminal cases to a speedy and public trial, to be tried by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted by the wit-

nesses for the prosecution, to have a compulsory procedure established for obtaining witnesses in favor of the accused, and not to be subjected to excessive fines or to cruel and unusual punishments.

The Ninth Amendment to the Constitution of the United States provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This provision must not be taken to create particular rights of the people but may serve as justification for the U.S. Supreme Court to define rights not expressly mentioned in the Constitution and constitutional amendments. The amendment has been invoked to proclaim a right to privacy as the basis for declaring unconstitutional a law that prohibited the use of contraceptives (*Griswold v. Connecticut,* 1965) and to proclaim the right of women to an abortion (*Roe v. Wade; Doe v. Bolton,* 1973).

American constitutional history has been blemished by institutionalized racial discrimination. Before the Civil War, slavery was widely practiced in the southern states. Slavery was abolished in the United States in 1865, but racial discrimination, including legally enforced segregation in public and private facilities, remained part of the American social, economic, and political structures for many more years.

Over the years, legislation in the form of Civil Rights Acts was enacted by Congress in an attempt to wipe out the remnants of slavery. The Civil Rights Act of 1866 was aimed at the so-called black codes of some southern states that were enacted to restrict the newly emancipated slaves in various ways. It enumerated the equal rights of citizens "of every race and color, without regard to any previous condition of slavery, or involuntary servitude," such as the right to enter into and enforce contracts, standing to institute civil actions, and the right to inherit, purchase, lease, sell, hold, and convey real and personal property. The Civil Rights Act of 1870 extended franchise rights in connection with a great variety of elections to all citizens "without distinction of race, color, or previous condition of servitude." The Civil Rights Act of 1871 (also known as the Ku Klux Klan act) promised criminal and private law sanctions for a variety of actions that would infringe a person's constitutional rights.

After the judgment of the U.S. Supreme Court in the case of *Plessy v. Ferguson* (1896), the doctrine of "separate but equal" was applied in public education to uphold the constitutionality of racially segregated schools until the U.S. Supreme Court in *Brown v. Board of Education* (1954) held that separate educational facilities were inherently unequal. This momentous decision set the tone for a concerted effort to eradicate all lingering manifestations of racism in the laws and practices of the United States. Those efforts included "bussing" of schoolchildren of a particular race to schools with a predominant enrollment of students from the other race and affirmative action programs designed to obliterate the persisting effects of past discrimination and to promote equal opportunities for disadvantaged sections of the community, by giving preferences in employment, education, contracts, and other social goods to disadvantaged groups.

Although great progress has been made over the years, racial differences in average levels of education, economic means, and living conditions are still evident. The issue has been complicated by the dramatic increase in racial and cultural diversity due to massive immigration from South America, the Caribbean, Asia, and Africa.

The American Civil War had a decisive influence on constitutional litigation in the United States. Prior to the end of the war, the Bill of Rights placed restrictions on the exercise of powers by federal authorities only. In consequence of the war, Congress enacted the Thirteenth Amendment (1865), Fourteenth Amendment (1868), and Fifteenth Amendment (1870), jointly known as the Reconstruction amendments, abolishing slavery; proclaiming the citizenship of all persons born or naturalized in the United States; outlawing the deprivation of life, liberty, or property without the due process of law; proclaiming the equal protection of the laws; and guaranteeing the right to vote of all citizens irrespective of race, color, or previous condition of servitude.

These provisions were made applicable to the states. The U.S. Supreme Court in subsequent judgments "incorporated" most of the specific provisions of the Bill of Rights in the general language of the Fourteenth Amendment, prohibiting the states from abridging "the privileges or immunities of citizens of the United States," and from depriving "any person of life, liberty, or property, without the due process of law." Certain provisions of the Bill of Rights have not been incorporated. The U.S. Supreme Court has decided against incorporation in the case of the right to carry arms, the right to a grand jury indictment in criminal cases, and the right to a jury trial in civil cases. The U.S. Supreme Court has thus far not made a ruling as to the incorporation of the right not to have troops quartered in one's home or the prohibition of excessive fines. Through incorporation, the other Bill of Rights provisions were made applicable to the states via the Fourteenth Amendment.

Impact and Functions of Fundamental Rights

Constitutional protection of human rights in the United States is in essence founded on a libertarian system, in which the First Amendment freedoms, notably freedom of speech, are of special significance. In case of a conflict between different constitutional rights and freedoms, the courts always attempt to "balance" those conflicting rights so as to give each a place in the Sun. However, should freedom of speech be in irreconcilable conflict with any other constitutional right, the former freedom trumps the other conflicting right. In terms of the doctrine of "preferred freedoms," the courts would find it easier to hold that legislation curtailing the First Amendment freedoms is unconstitutional than it would, for instance, if the economically qualified rights enunciated in the Fifth

and Fourteenth Amendments (protecting property rights) were at stake.

The American Bill of Rights only affords protection to civil and political rights and does not contain express guarantees of the basic natural rights of the human person, such as the right to life and to human dignity. Under its federal system, the competence to deal with these matters is within the jurisdiction of states. Because of that, the United States has been condemned by the Inter-American Commission on Human Rights for not upholding the principle of equal treatment in respect of the most basic human rights and fundamental freedoms.

In 1803, in the case of *Marbury v. Madison,* the U.S. Supreme Court decided that it had the power of substantive review. In virtue of that power, which has been repeatedly reaffirmed and extended, both federal and state courts of law are competent to declare null and void legislation and acts and decisions of the executive found to be in violation of the federal and state constitutions, respectively.

Constitutional cases are brought before the U.S. Supreme Court by way of an appeal against the ruling of a court lower in status. However, the U.S. Supreme Court is not obliged to hear all cases. The U.S. Supreme Court must as a general rule grant certiorari for the case, that is, the case must be admitted to be argued before, and decided by, the Supreme Court, taking into account whether or not the matter appealed to the Court raises a "moot question," whether or not the matter is "ripe" for adjudication by the U.S. Supreme Court, and so on.

Limitations to Fundamental Rights

The rights and freedoms protected by the American Bill of Rights are drafted in general language without denoting any limitations to which those rights are to be subjected or specifying the circumstances in which limitations can be imposed. This matter is left entirely to the discretion of the U.S. Supreme Court.

ECONOMY

The United States upholds the essential principles of a free-market economy. In earlier times, the idea of a free-market economy was interpreted to limit drastically the role of federal and state authorities in the economic life of the nation. In *Lochner v. New York* (1905), the U.S. Supreme Court accordingly declared unconstitutional a state law that imposed maximal working hours for employees in a bakery on the grounds that it placed an undue limitation on freedom of contract. The Court held that freedom of contract could only be restricted to serve a legitimate "police power" (executive competence) for the protection of public health, public safety, or public morals, and that legislation curtailing freedom of contract would be carefully scrutinized to assure that it would not overstep this mark.

In consequence of the Depression of 1929, President Franklin D. Roosevelt (1933–45) introduced New Deal legislation, which put formerly unregulated aspects of the U.S. economy under federal control. As a mechanism to counteract the devastating consequences of the Depression, the legislative initiatives made provisions for employment in public works, low-interest farm loans, old age and unemployment insurance, prohibition of utilizing of child labor, protection of workers against unfair labor practices, encouragement of trade union membership, loans to local authorities to upgrade slum areas, and many more. In the period 1933–37, the U.S. Supreme Court invalidated many New Deal regulations.

However, in 1937 the majority in the Court changed to favor the New Deal initiative, and since then no federal or state law has been held unconstitutional on the grounds of the freedom of contract rationale. Roosevelt's New Deal policy (and similar initiatives that began earlier in the states) transformed the United States into a modern welfare state, whose government wields extensive regulatory powers over commerce, industry, and labor.

RELIGIOUS COMMUNITIES

The First Amendment to the Constitution of the United States of America provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The wording reflects the history of the colonies, many of them founded and peopled by dissenters fleeing persecution by established churches in Europe. Furthermore, no one church could claim majority status in the nation as a whole, as New England was largely Congregationalist, Pennsylvania Quaker and German Evangelical, Maryland Catholic, and the South Anglican.

The establishment clause and the free exercise clause embodied in this provision have been interpreted, in the words of Thomas Jefferson (1743–1826), to create a "wall of separation between church and state," which the United States Supreme Court has decided must be "kept high and impregnable" (*Everson v. Board of Education,* 1947).

In order to establish whether state action reflects the measure of religious neutrality required by the separation of church and state, the U.S. Supreme Court in the case of *Lemon v. Kurtzman* (1971) developed a three-prong test. In order to withstand constitutional scrutiny, the enactment in question (1) must serve a secular purpose, (2) must have a primary effect that neither advances nor inhibits religion, and (3) must avoid excessive governmental entanglement with religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the United States is "Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States" (art. II, sec. 2, clause [1]).

The Department of Defense includes the army, navy, air force, Marine Corps, and reserve units comprising 1 million volunteers. It has its headquarters in the Pentagon building in northern Virginia just outside Washington, D.C. It is headed by the secretary of defense.

The Joint Chiefs of Staff consists of a chair and vice chair, the chief of staff of the army, the chief of naval operations, the chief of staff of the U.S. Air Force, and the commandant of the Marine Corps. The chair is the principal military adviser of the president, the National Security Council, and the secretary of defense.

The Department of Defense is primarily responsible for providing military forces needed to protect the security of the United States against acts of aggression and civil unrest. After the terrorist attack of September 11, 2001, which, among other things, destroyed the World Trade Center in New York City, the Department of Defense reviewed some of its strategies for the protection of the United States from foreign militant threats. The president in 2001 created by executive order the Homeland Security Department to coordinate government efforts to protect the people of the United States against terrorist attacks. The executive order was subsequently endorsed by the Homeland Security Act of 2002. Since 2002, members of the national guard have been deployed to provide security at airports and border posts.

Congress enacted legislation authorizing the president "to use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, committed, or aided the terrorist attacks …, or harbored such organizations or persons" (Authorization for Use of Military Force, 2001). The military operations in Afghanistan that commenced toward the end of 2001 to topple the Taliban regime and against the al-Qaeda terrorist network led by Osama bin Laden was executed pursuant to this legislation.

Pursuant to the powers vested in the president by the same legislation, and in virtue of the office as commander in chief of the armed forces, the president may, by executive decree, proclaim a person to be an "enemy combatant," thereby condemning that person to indefinite detention and depriving him or her of constitutional protection. The U.S. Supreme Court did afford to those labeled enemy combatants the right to a hearing to produce evidence showing that they were not "enemy combatants" (*Hamdi v. Rumsfeld,* 2004).

The United States has become probably the most powerful military force in the history of humankind. Its military capabilities include one of the mightiest land and sea forces, an unprecedented arsenal of high-tech weaponry that includes nuclear weapons, and highly sophisticated strategic maneuverability. It is the most potent member state of the North Atlantic Treaty Organization (NATO) and, when required, a main contributor to the armed forces and peacekeeping operations of the United Nations.

The United States played a major role in the United Nations–sponsored military operations against Iraq in the Gulf War of 1991 that was sparked by the attempted annexation of Kuwait by Iraq. It was a main contributor to the NATO forces in the bombing campaign that commenced on March 24, 1999, against targets in Serbia and Montenegro in order to end the atrocities committed by Serbian forces against ethnic Albanians in Kosovo.

The United States has also proved willing to apply its military might, without United Nations or NATO authorization or concurrence, to topple what it perceived to be repressive regimes in countries that are of economic or strategic importance to the United States. On January 20, 2000, Senator Jesse Helms (Republican of North Carolina), at the time chair of the Foreign Relations Committee of the U.S. Senate, in a speech before the Security Council of the United Nations explained the so-called Reagan doctrine:

> In some cases, America has assisted freedom fighters around the world who are seeking to overthrow corrupt regimes. . . . We have provided weaponry, training and intelligence. And in other cases, the United States has intervened directly. And in other cases, such as in Central and Eastern Europe, we supported peaceful opposition movements with moral, financial and covert forms of support.
>
> The democratic expansion of freedom in the last decade of the 20th century is a direct result of those policies. In none of those cases, however, did the United States ask for, or receive, the approval of the United Nations to legitimize its actions.

In 1986, the International Court of Justice, in the case of *Nicaragua v. United States,* condemned the United States for affording military assistance, in violation of international law, to the contras—a militant group that sought to overthrow the government of Nicaragua. The "Reagan doctrine" seems to be the only credible explanation for the military invasion of Iraq by the United States on March 19, 2003, to topple the regime of Saddam Hussein.

The term *state of emergency* is reserved in the United States for situations prompted by a natural disaster. After an earthquake, tornado, flood, or similar catastrophe, proclamation of a state of emergency by the president in the region affected by the disaster authorizes the application of federal funds to provide relief to victims of the disaster.

Military intervention to deal with situations of military aggression or civil unrest or martial law on a national scale can be proclaimed by the president or by Congress. The president derives his or her authority from article II, section 2, clause [1] of the Constitution, which proclaims him or her to be commander in chief of the armed forces of the United States. The competence of Congress derives from article I, section 8, clause [15], which gives it the power "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Governors have a similar competence to declare martial law within their respective states.

Martial law may include the use of military force; the authority of military personnel to make and enforce civil and criminal law; and the suspension of certain civil liberties, such as freedom of speech and of association, freedom of movement, and the writ of habeas corpus for challenging the legality of one's detention. In *Ex parte Merriman* (1861), the U.S. Supreme Court proclaimed its power to review the propriety of a declaration of martial law and held that only Congress can suspend the writ of habeas corpus.

Congress has never used its power to declare martial law. Martial law has only once been declared on a national scale, and once on a regional scale. During the Civil War, President Abraham Lincoln declared martial law, authorizing Union military forces to arrest persons and conduct trials. During World War II (1939–45), the Department of War implemented military law in all the states along the Pacific coast. Imposition of curfews to be observed by German and Italian aliens and by all persons of Japanese extraction was upheld in *Hirabayashi v. United States* (1945), and the random internment of people of Japanese extraction was declared lawful in *Korematsu v. United States* (1944).

After the attack by Japan on Pearl Harbor on December 9, 1941, Governor Joseph B. Poindexter declared martial law (subsequently approved by the president) in the Hawaiian Islands. All courts were closed, the writ of habeas corpus was suspended, and military personnel were authorized to arrest, try, and convict persons without the requirement to follow the rules of evidence. Military personnel conducting trials were furthermore not bound by sentencing laws. In *Duncan v. Kahanamoku* (1946), the U.S. Supreme Court decided that military tribunals could not assume jurisdiction over common crimes.

AMENDMENTS TO THE CONSTITUTION

The Constitution of the United States is said to be particularly inflexible in the sense that extraordinary and difficult to achieve procedural requirements must be satisfied for its formal amendment through the medium of legislation.

Under Article V, proposals to amend the Constitution must first be endorsed by a two-thirds majority in both houses of Congress. They must then be ratified by the legislatures of three-quarters of the states or by a constitutional convention in the same number of states. The convention method for the ratification of an amendment was only applied when the Twenty-first Amendment was adopted in 1933 to repeal the Eighteenth Amendment of 1919, which had prohibited the "manufacture, sale, or transportation" of intoxicating liquor in the United States.

An alternative method, never used, allows two-thirds of the state legislatures to petition Congress to call a national convention to propose amendments. Once proposed, they go back to the states for ratification, through either of the methods detailed.

A proposed constitutional amendment can stipulate the time within which ratification of the amendment must be finalized. If the prescribed number of state ratifications falls short of the three-fourths requirement by that date, the amendment does not become law. The Equal Rights Amendment proposed in 1972, which sought to outlaw discrimination based on sex, did not gain the required number of ratifications even after a 39-month extension expired on June 30, 1982. The Twenty-seventh Amendment, which regulates salary increases of members of Congress, was introduced in 1789 as part of the original Bill of Rights and only after 203 years had gained sufficient state ratifications to become law (1992).

Although the procedures attending the formal amendment of the Constitution render the constitutional system of the United States extremely inflexible, constitutional changes can be brought about by a system of interpretation that leaves ample scope for flexibility. The almost unbridled competence of the U.S. Supreme Court to reinterpret and to expand the general provisions of the Bill of Rights so as to accommodate the Court's evaluation of public opinion, changing circumstances, and current demands renders the constitution quite flexible.

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Johan D. van der Vyver

URUGUAY

At-a-Glance

OFFICIAL NAME
Oriental Republic of Uruguay

CAPITAL
Montevideo

POPULATION
3,399,000 (2005 est.)

SIZE
68,039 sq. mi. (176,220 sq. km)

LANGUAGES
Spanish

RELIGIONS
Catholic 66%, Jewish 1%, Protestant 2%. no religion 31%

NATIONAL OR ETHNIC COMPOSITION
White 88%, Mestizo 8%, black 4%, Amerindian practically nonexistent

DATE OF INDEPENDENCE OR CREATION
August 25, 1825

TYPE OF GOVERNMENT
Democratic republican

TYPE OF STATE
Unitary state with broad inner decentralization

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
November 27, 1966

DATE OF LAST AMENDMENT
October 31, 2004

The Uruguayan constitution, endorsed in a plebiscite in 1966 and effective since 1967, with four subsequent amendments (1989, 1994, 1997, and 2004), is a democratic constitution approved directly by a vast majority of the electoral body. Notwithstanding its amendments, this document, considered a model for South America in the 1960s, now often appears old-fashioned and difficult to apply to new realities.

CONSTITUTIONAL HISTORY

At the time of the Spanish colonization the territory of the present republic was almost uninhabited. A group of native tribes, generally related to the Guarani, lived in the country, the Charrúa the most important of them.

Although the Banda Oriental (the former name for Uruguay) belonged to the Spanish Crown, the first European settlement, Colonia del Sacramento, founded in 1680, was Portuguese. It was, however, quickly seized by Spanish troops.

Until 1811, the Banda Oriental was ruled by Spain. A governor was assigned to the city port of Montevideo, subordinated to the viceroy of the Río de la Plata, who was located in Buenos Aires, the capital of the viceroyalty. In 1811 a revolutionary movement coalesced around leaders called *caudillos,* especially José Gervasio Artigas (1764–1850).

Of Spanish descent, Artigas became the most important caudillo in the Banda Oriental, spreading his influence even to territories that now belong to the Argentine provinces of Santa Fe, Entre Ríos, Corrientes, and Córdoba. Artigas gave the revolutionary movement clear ideas that led to a confrontation not only with Spain and Portugal, but also with Buenos Aires. Artigas stood for independence from any European power and wanted to organize the Banda Oriental and the other provinces into a federal state similar to that of North America. He rejected the centralism of Buenos Aires

and called for respect for human rights and for a democratic government elected by the people.

Independence from Spain was achieved in 1813, when a provisional government was installed under the guidance of Artigas. The Portuguese invaded the country in 1816, and after Brazil became independent of Portugal, Brazil ruled what now is Uruguay. An authentic national government followed between 1825 and 1828. In 1828, the Preliminary Peace Convention ended the armed conflict between Brazil and Argentina and called for an independent state in the conflicted territory of the old Banda Oriental. A new constitution became effective on July 18, 1830.

Nineteenth-century political life in Uruguay was highly complex, as it was in almost all South American countries. Under the pressure of international wars, such as the Great War (1839–52), which also involved Argentina, England, France, and Italy; internal revolts; coups d'état; and a sequence of military governments, the constitution was not seriously enforced.

In 1904 the last civil war, pitting the Colorado Party government of José Battle y Órdoñez (1856–1929) against the National (previously the Blanco) Party commanded by the caudillo Aparicio Saravia (1856–1904), took place; it ended with the latter's death. A Constitutional Convention in 1916 drafted a new constitution, which was ratified in a popular referendum and went into force in 1918.

As did its predecessor of 1830, the 1918 constitution called for a state of law and provided a presidential system with a clear division of executive, legislative, and judicial powers. The main difference between the two constitutions was that the 1918 version was actually enforced.

In 1933, Uruguay was hard hit by the world economic crisis. A new Constitutional Convention, even though no such body was foreseen in the 1918 constitution, created a new constitution, approved by a popular plebiscite in 1934, which generated many important changes. It turned to a more parliamentary system of government and strengthened the judiciary with the power to review the electoral process and annul government acts as unconstitutional when challenged. The constitution also laid the grounds for the present system of territorial decentralization and introduced economic, social, and cultural rights.

In 1942, still another new constitution ended the transition from a presidential to a parliamentary style of government and introduced the present Article 332, which states that constitutional provisions have direct impact even when due legal regulation has not yet been passed. A decade later, in 1952, yet another constitution was passed; it set up the collegiate National Council of Government as head of the executive power. The council was formed by nine members distributed as follows: six for the political party with the most votes in the elections and three for the party with the second-largest number of votes. This collegiate formula of government caused many problems and was replaced in 1966 by the constitution that is still in force today.

FORM AND IMPACT OF THE CONSTITUTION

The Uruguay constitution is a rigid one, difficult to change. It is contained in a single written document. Nowadays, there is full enforcement of the constitution, and its content is reasonably coincident with political practice. The constitution appears to have highest rank in the Uruguayan legal system. However, its relationship with international laws is not completely clear. Although constitutional regulations have higher rank than international law, methods for resolving contradictions between international and national laws are not clearly specified.

BASIC ORGANIZATIONAL STRUCTURE

The constitution creates a unitary state, with guaranteed territorial decentralization. Three levels of jurisdictions are established: national, departmental (with a superintendent and a departmental council), and local (with local authorities). The departmental governments have broad autonomous jurisdiction and have the authority to impose special taxes.

LEADING CONSTITUTIONAL PRINCIPLES

The constitution establishes a democratic government, acknowledging that the nation is the holder of sovereignty (Articles 4 and 82), which is exercised through the representative powers of government.

The system is based on a clear division of powers, in which the exercise of the legislative function belongs mainly to the legislative branch; there are no exceptions, and the executive is barred from issuing any form of delegated or emergency legislation. The judicial power is also largely exclusive, although there are constitutional exceptions, specifically the military justice system (Article 253), political trials (Articles 309, 312, 313, and 320), and the Electoral Court (Articles 77 and 322). The executive function belongs to the executive power.

The state is defined as nonreligious (unlike in the 1930 constitution, which acknowledged the Roman Catholic Church as the official religion), independent, and with a pacifist orientation (Article 6). Although the constitution is more than 35 years old, it can be considered to have founded a social democratic state based on the rule of law.

CONSTITUTIONAL BODIES

The main constitutional bodies are the two-chamber parliament, the executive administration, the president of the republic, and the judiciary.

The Parliament

At the national level, a bicameral legislature (including a Senate with 31 members and a Chamber of Deputies with 99), called the General Assembly, is elected directly by the people in a mandatory and secret ballot under a system of proportional representation. Senators are chosen in one constituency covering the entire national territory, while deputies are chosen with a mixed procedure that includes national and departmental constituencies.

The Executive Administration

The executive power functions differently than in other parliamentary systems in the world. As in other countries, it is composed of the president of the republic and cabinet ministers chosen by the president from among people who have parliamentary support. And as in other systems, many decisions are made by the Council of Ministers, a meeting of all the cabinet ministers presided over by the president of the republic (who has a double vote in case of a tie; in the case of tie votes the president has a double vote).

However, the system can also take action through individual "agreements" between the president and the cabinet minister or ministers who have jurisdiction on a matter requiring a decision. Certain matters are mandatorily reserved by the constitution to the Council of Ministers: a declaration of war, introduction of budget bills and financial reports, the introduction of bills that change the number of ministries, appointment and removal of directors of independent agencies, and delegation of jurisdiction.

The Presidency of the Republic

The presidency of the republic is, according to the most accepted doctrine, both a part of the executive power and independent of it. The president is elected directly by the people, in the same elections as are senators and deputies, by an absolute majority of the votes. If no presidential candidate obtains this majority, a second round must take place 30 days later between the two candidates who receive most votes in the first round.

The president has the ordinary jurisdiction of a parliamentary head of state: the internal and foreign representation of the state, the designation of the cabinet ministers, and the dissolution of parliament. The electoral system gives the president great legitimacy; he or she is the main political actor and the central figure of national political life.

The Lawmaking Process

It is the exclusive prerogative of the legislative power to make laws, although other organs have the power to pass bills. The executive has the authority to promulgate laws and the right to veto them and thus force their reconsideration; the deputies may overrule the veto by a qualified majority of three-fifths.

There are three different lawmaking procedures: the ordinary process; the process used when there is a declaration of "urgency," in which each chamber has less time to vote; the process of passing the five-year budget and the annual rendering of accounts.

In all these cases each chamber debates and votes separately. If the second chamber approves a different bill, the amended version goes back to the first chamber for reconsideration. If the disagreement persists, the General Assembly has to approve a version of the bill in joint session with two-thirds of the votes.

The Judiciary

The highest court is the Supreme Court of Justice. It has five members, who are elected by a majority of two-thirds of the General Assembly for a period of 10 years. The constitution establishes exclusive jurisdiction for the Supreme Court in matters such as declarations of unconstitutionality, prosecution of all violators of the constitution, admiralty cases, and cases related to international treaties. If a member of the Supreme Court violates the constitution or perpetrates another high crime, he or she is subject to impeachment. The constitution also provides for appellate courts and other courts to be established by law.

Judicial independence is guaranteed. The main problem faced by the Uruguayan judicial power is its inadequate budget. Economic problems that affect its functioning have become a tradition, as have the courts' repeated complaints on the subject.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

With reference to political participation, the constitution distinguishes three classes of individuals: citizens by birth, legal citizens (those who have acquired citizenship), and residents (noncitizens). The right to vote is granted both to citizens and to noncitizens. Voting is secret and obligatory.

There is a widespread range of matters subject to referenda and popular initiatives for laws. Electors who are not citizens are not allowed to vote in constitutional popular initiatives and constitutional plebiscites.

To be eligible to be president of the republic a person must be a citizen by birth and more than 35 years of age. To be a senator a person has to be a citizen by birth and more than 30 years of age or have been a legal citizen for at least 30 years.

POLITICAL PARTIES

Uruguay has a pluralistic system of political parties. The constitution promotes freedom in the creation and functioning of political parties in Article 77, which estab-

lishes that “the state will watch that the political parties enjoy the most ample freedom.” The constitution also establishes obligations for the parties: to choose their authorities through democratic elections, to publicize their principles and organic structure, and to choose their candidates for the presidency of the republic through internal elections.

The Uruguayan constitution provides that in presidential election years the citizens can take part and vote in internal party elections organized by the Electoral Court, with the same suffrage guarantees as in presidential elections. A citizen can vote in the internal election of only one political party. This system secures great transparency in elections for presidential candidates.

CITIZENSHIP

Natural citizens are those born in the territory of the republic and the offspring of natural citizens born abroad who take up residence in the republic and register in the *Civic Register*. Legal citizens are those foreigners who request legal citizenship and who fulfill the requirements established in the constitution: the proof of a bond with the republic and other indications that the petitioner wants to reside in the country. The General Assembly can grant legal citizenship to those who have rendered outstanding service to the country.

FUNDAMENTAL RIGHTS

Section 2 of the constitution, Rights, Obligations, and Guarantees, deals with human rights. Chapter 1 enumerates the so-called individual rights or first-generation rights (such as the right to live, to work, and to have privacy; freedom of conscience, of religion, of enterprise, and of speech; physical freedom, freedom to travel, freedom of the press, the right to own property, and others). In Chapter 2 the economic, social, and cultural rights or second-generation rights appear (such as protection for the family, children, the disabled, and public health; the right to receive an education, the right to housing, to go on strike, and others), plus some third-generation rights, such as the preservation of the environment. The distribution of rights between the chapters is not perfect.

The constitution clearly reflects a belief in natural law. It acknowledges the existence of rights that precede the constitution and gives constitutional status to human rights even when they are not expressly established in the written text. According to Uruguayan constitutional law any right that is inherent to the human person or the republican way of government has constitutional status.

The principle of freedom is part of the foundation of the constitutional system, as expressed in Articles 7 and 10. Any limitation to fundamental rights must be written in law and must have a restricted interpretation. The principle of equality also appears as a fundamental part of the constitutional structure.

Impact and Functions of Fundamental Rights

Articles 7 and 72 oblige the government actively to protect fundamental rights. Article 332 provides that constitutional regulations go into force even if the supplemental legal regulations have not been passed.

Legal persons are also considered to be holders of fundamental rights. This provision gives standing to business companies to claim violations against their equal right.

Limitations to Fundamental Rights

According to the constitution there are three types of rights: those that preceded the constitution, which cannot be restrained; those established by the constitution that do not allow any limitation by law; and those established by the constitution that can be restricted by a law. In this latter case only a law (and no other type of regulation) can establish a valid limitation; the law must fulfill certain requirements such as being dictated by reasons of public interest or public order, safety, or hygiene.

ECONOMY

The constitution entails some provisions that, although not classified in a systematic way, can be considered as creating what is commonly known as the economic constitution. For example, it assumes the functioning of a free-market economy in the context of economic, social, and cultural human rights.

Article 51 states that the government must guide foreign trade. It also mandates decentralization policies in order to promote regional development and the general welfare.

RELIGIOUS COMMUNITIES

The constitution creates a secular state, stating in Article 5 that it has no religion. In the same regulation it is established that “in Uruguay the exercise of any religion is free.” There are also far-reaching tax exemptions for religious activities.

MILITARY DEFENSE AND STATE OF EMERGENCY

Uruguay has a voluntary military service.

The constitution specifies three emergency situations that allow the use of special powers. In serious and unexpected cases of foreign attack or civil unrest the executive

can exercise special emergency powers; its actions must be explained to the General Assembly within 24 hours.

In the event of high treason or conspiracy against the country, the protection of individual security can be temporarily interrupted but only in order to imprison criminals. Once imprisoned they can exercise their constitutional rights without exception.

In a state of war military courts can expand their jurisdiction. For example, they may try soldiers for the perpetration of ordinary crimes that in times of peace would be judged by regular courts.

AMENDMENTS TO THE CONSTITUTION

Article 331 provides four procedures for introducing amendments: "popular proposals" by 10 percent of the voters; "legislative proposals" by two-fifths of the members of the General Assembly; National Constitutional Conventions, with members elected in general elections; and constitutional laws, which must be approved by two-thirds of the members of each chamber of parliament. All the aforementioned procedures end with a popular plebiscite.

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Martin Risso Ferrand

UZBEKISTAN

At-a-Glance

OFFICIAL NAME
Republic of Uzbekistan

CAPITAL
Tashkent

POPULATION
26,410,416 (2005 est.)

SIZE
172,742 sq. mi. (447,400 sq. km)

LANGUAGES
Uzbek 74.3%, Russian 14.2%, Tajik 4.4%, other 7.1%

RELIGIONS
Muslim (mostly Sunni) 88%, Eastern Orthodox 9%, other 3%

NATIONAL OR ETHNIC COMPOSITION
Uzbek 77%, Russian 5%, Tajik 5%, Kazakh 5%, Karakalpak 1%, Tatar 1.5%, other 5.5%

DATE OF INDEPENDENCE OR CREATION
September 1, 1991

TYPE OF GOVERNMENT
Authoritarian presidential regime

TYPE OF STATE
Centralistic state with federal elements

TYPE OF LEGISLATURE
Bicameral parliament

DATE OF CONSTITUTION
December 8, 1992

DATE OF LAST AMENDMENT
April 24, 2003

Uzbekistan is a presidential autocracy that has a strong president who exercises control over executive, legislative, and judicial powers. The president appoints and dismisses the administration, the judges, and the members of the Senate. Free, equal, direct, fair, and transparent elections are guaranteed by the constitution but have not been implemented. So far, all elections have failed to comply with international standards. There is no pluralistic political party system.

Uzbekistan is made up of 12 provinces, the city of Tashkent, and the Republic of Karakalpakstan. The constitution provides fundamental human rights; however, only selected government institutions, not individuals, may appeal before the Constitutional Court. Although religious freedom and state noninterference in religious matters are formally guaranteed, the state broadly suppresses nontraditional religious groups (e.g., Hizbut Tahrir, Jehovah's Witnesses).

CONSTITUTIONAL HISTORY

Over the centuries, the territory of Uzbekistan has been invaded by various foreign tribes and ethnic groups. In 651 C.E. Arabs started their invasion of Central Asia, conquering Bukhara in 709, Samarkand in 712, and Tashkent in 714. After 500 years of Arab domination, Bukhara and Samarkand were incorporated by the Mongol conqueror Genghis Khan. After his death in 1227, Genghis Khan's empire was split among his sons. In the late 14th century, one of his relatives, Amir Timur (Tamerlane), conquered not only what is today Uzbek territory, but also vast parts of what would become Russia, Persia, and Turkey. Samarkand was proclaimed his capital. Today's Uzbek leadership proclaims Amir Timur the founding "father" of the Uzbek nation-state. However, the name *Uzbek* was introduced later—when a group of Turkish nomadic tribes conquered today's Uzbek territory in the early 16th century. Their

leader, Khan Uzbek, gave his name to the Turkish group, which later established the Khanates Bukhara, Khiva, and Kokand on Uzbek territory. When czarist troops conquered Central Asia in the 19th century, the epoch of the Uzbek khanates ended.

After the establishment of the Soviet Union in 1924, the Uzbek Socialist Soviet Republic was founded. After the failure of the Moscow hardliners' coup in 1991, Uzbekistan reluctantly declared its independence on August 31 of that year. On December 8, 1992, a new constitution was introduced, replacing the 1978 constitution of the Uzbek Socialist Soviet Republic and the 1977 constitution of the Soviet Union. The post-Soviet constitution was amended several times, most recently on April 24, 2003.

FORM AND IMPACT OF THE CONSTITUTION

Uzbekistan has a written constitution, codified in a single document that takes precedence over all other national law. There is no stipulation that international law must be in accordance with the constitution or take precedence over the Uzbek constitution. Often, Uzbek laws contradict the Uzbek constitution and/or international law.

BASIC ORGANIZATIONAL STRUCTURE

The constitution does not stipulate whether Uzbekistan is a federation or a centralistic state. The country is made up of 12 provinces (*viloyatlar*), Tashkent city, and the Republic of Karakalpakstan. The provinces differ considerably in geographical area, population size, and economic strength.

The provinces and Tashkent city are under the authority of the Uzbek constitution, whereas the Republic of Karakalpakstan has its own constitution. The Karakalpakstan constitution, however, must comply with the Uzbek constitution. Karakalpakstan has the right to secede from Uzbekistan on the basis of a Karakalpakstan-wide referendum held by its people.

The provinces and Tashkent city are governed by *khokims,* appointed and dismissed by the president. The *khokims* are expected to implement the laws, presidential decrees, and decisions of the higher bodies of state authority and to participate in the discussion of republic-wide and local matters.

LEADING CONSTITUTIONAL PRINCIPLES

Uzbekistan's system of government is dominated by the president, who controls the executive, legislative, and judicial powers. The judiciary is not fully independent.

The Uzbek constitutional system is defined by a number of leading principles: state sovereignty, democracy, supremacy of the constitution and the law, and a market economy. Political participation is restricted, as key positions (*khokims*) are appointed by the president. The lower chamber of the parliament, the Legislative Assembly, and the Kengashes, the parliaments of the regions, districts, and towns, are all directly elected. Rule of law is a fundamental principle. All state bodies, public associations, and citizens shall act according to the constitution and the law. State and religion are separated.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president; the cabinet of ministers; the parliament, called Oliy Majlis, with its two chambers, the Legislative Assembly and the Senate; and the Constitutional Court.

The President

The president is the head of state and the executive power. He or she acts as "the guarantor of the rights and freedoms of the citizens, the constitution and the laws"; takes necessary measures to protect the sovereignty, security, and territorial integrity of the country; implements the legal decisions of the state; represents the republic in the country and abroad; and appoints and dismisses key governmental figures (prime minister, general prosecutor, judges, *khokims,* etc.). The president is directly elected for a seven-year term and can be reelected only once.

The Administration

The cabinet of ministers implements the executive power. Formed by the president, it is composed of the prime minister, the prime minister's deputies, ministers, and chairpersons of the state committees. It also includes the representative of the Republic of Karakalpakstan.

The cabinet of ministers shall "provide guidance for the efficient functioning of the economy, social, and spiritual areas, and execution of the laws, parliamentary decisions, presidential decrees, and resolutions."

The Oliy Majlis (Parliament)

The Oliy Majlis is the main representative body. It comprises two chambers—the Legislative Chamber and the Senate. The term of the Oliy Majlis is five years.

The Legislative Chamber consists of 120 deputies elected in single-mandate constituencies on a multiparty basis. The Senate has members from the Republic of Karakalpakstan, each of the 12 provinces, and Tashkent city. They are chosen, respectively, by the Jokarghy Kenes (parliament) of the Republic of Karakalpakstan and the *kengashes* (regional, district, and city parliaments), from

among the local deputies. An additional 16 members of the Senate are appointed by the president.

In addition to the adoption of laws, both chambers share the responsibility for defining the direction of internal and external policy, approving the state budget, and confirming ministerial and presidential decisions. While the Legislative Chamber is responsible for initiating legislative, the Senate has been tasked predominantly with filling key government positions.

The Lawmaking Process

The right of legislative initiative belongs to the president, the Jokarghy Kenesh, the Legislative Chamber of the Oliy Majlis, the cabinet of ministers, the Constitutional Court, the Supreme Court, the Highest Economic Court, and the general prosecutor. A law takes effect after it has been adopted by the Legislative Chamber, approved by the Senate, signed by the president, and published in the media.

If the law is rejected by the Senate, a Conciliation Commission may be formed by the two chambers to structure a compromise, which must be approved by both chambers. The president has the right to return the law with objections to the Oliy Majlis, but not the right of veto.

The Judiciary

The judicial system in the Republic of Uzbekistan comprises the Constitutional Court, the Supreme Court, the Highest Economic Court, and the Supreme Civil and Criminal Court. All high-ranking judges are elected by the Senate at the recommendation of the president. All lower-ranking judges are directly appointed and dismissed by the president.

Consisting of 15 judges, the Constitutional Court ranks on a par with the Supreme Court, the Highest Economic Court, and the Supreme Civil and Criminal Court. It deals exclusively with constitutional disputes submitted by those government agencies that have power to initiate legislation. No individual complaints may be considered.

THE ELECTION PROCESS

All Uzbek citizens over the age of 18 have the right to vote in elections. Citizens who have reached the age of 25 by election day and have been permanently resident in Uzbekistan for not less than five years have the right to stand for parliamentary elections. To be registered as a candidate in presidential elections, one must have reached the age of 35, be fluent in the state language, and have lived no less than 10 years in Uzbek territory.

Citizens who have been judicially certified as insane, as well as those who are incarcerated, may neither vote nor be eligible for election. However, citizens whose verdict is outstanding may take part in the elections. According to reports of international organizations, none of the elections held so far has complied with international standards.

POLITICAL PARTIES

The constitutional right to form political parties, and any other public associations, is limited through provisions banning organizations that violate fundamental constitutional principles, aim at changing the constitution, advocate war, or stir up hostility in society. There is no party pluralism in Uzbekistan, as the five registered political parties were all created by the government. A handful of nonregistered political parties operate illegally. In general, political parties play no significant role in public life. Both registered and nonregistered parties are largely unknown in society.

CITIZENSHIP

Until May 1996, all people living on the territory of Uzbekistan were entitled to acquire Uzbek citizenship. Those who did not acquire Uzbek or any other citizenship became stateless. Today, Uzbek citizenship can be acquired by birth from a parent who holds Uzbek citizenship or after residence in Uzbek territory for more than five years.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights in its second chapter. Beyond the traditional set of individual rights, political, economic, and social rights are emphasized. In the third chapter, the relationship between the society and the individual is defined. The family, constituting the primary unit of society, has the right to state and societal protection.

Impact and Functions of Fundamental Rights

According to the constitution, all Uzbek citizens have equal rights and freedoms and are equal before the law, without discrimination based on sex, race, nationality, language, religion, social origin, conviction, or individual or social status. Citizens' rights and freedoms, established by the constitution and law, are not considered inalienable; they may be abolished by a constitutional change. Since 1995, an ombudsperson known as the plenipotentiary of Oliy Majlis of Uzbekistan on human rights is charged with monitoring the human rights situation in the country. In reality the office focuses mainly on violations of social and economic rights, not on fundamental human rights.

Limitations to Fundamental Rights

According to the constitution, only a court decision may limit citizens' rights and freedoms. Nevertheless, the executive and the law enforcement authorities may in practice limit citizens' rights and freedoms on their own initiative.

ECONOMY

The constitution specifies the economic system as an economy "evolving towards market relations," based on various forms of ownership. The constitution provides a set of conditions that must be met while structuring the economic system. Among them are freedom of economic activity, restricted only by consumers' rights, and equality of and legal protection for all forms of ownership. The constitution also defines social rights, including the right to work, to social security, to skilled medical care, and to education.

RELIGIOUS COMMUNITIES

Freedom of religion or belief is guaranteed as a basic human right. According to the constitution, religious organizations and associations shall be separated from the state and are equal before the law. The state shall not interfere with the activity of religious associations. However, it may prohibit public associations from advocating religious hostility, or political parties based on religious principles.

Despite the constitutional separation of religion and state, there are many areas in which the state interferes. The administration appoints the mufti, the supreme religious authority in the country, controls religious communities, and persecutes nonstate religious associations such as the moderate Islamist party Hizbut Tahrir.

MILITARY DEFENSE AND STATE OF EMERGENCY

The creation and maintenance of the armed forces for defense are the responsibility of the president. The armed forces may be used for the defense of the country and the security of the state. There is a Ministry of Emergency Situations to handle exceptional situations.

In Uzbekistan, general conscription requires all men over the age of 18 to perform basic military service of 12 months. There is alternative military service for conscientious objections, which takes 18 months. Women are not eligible for conscription but may serve as professional soldiers. Professional, contracted soldiers serve for fixed periods of up to five years.

The president serves as the supreme commander of the armed forces and appoints the high-ranking commanders. The president has the right to proclaim a state of emergency throughout Uzbekistan or in a particular area, in cases such as imminent outside threats, mass disturbances, or major catastrophes or epidemics. However, parliament must approve the proclamation within 24 hours.

The Uzbek government has obligated itself through international treaties not to produce atomic, biological, or chemical weapons.

AMENDMENTS TO THE CONSTITUTION

The constitution can only be changed by a law adopted by at least two-thirds of the deputies of both chambers of the Oliy Majlis, or by referendum. There are no restrictions on changing the constitution.

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Marie-Carin von Gumppenberg

VANUATU

At-a-Glance

OFFICIAL NAME
Republic of Vanuatu

CAPITAL
Port Vila

POPULATION
196,500 (2005 est.)

SIZE
4,587 sq. mi. (11,880 sq. km)

LANGUAGES
Bislama, English and French, and some 110 local languages

RELIGIONS
Presbyterian 32%, Anglican 14%, Roman Catholic 13%, Seventh-Day Adventist 11%, other 24%, indigenous 6%

NATIONAL OR ETHNIC COMPOSITION
Melanesian 98%, French, Vietnamese, Chinese, other Pacific Islanders

DATE OF INDEPENDENCE
July 30, 1980

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
July 30, 1980

DATE OF LAST AMENDMENT
June 27, 1983

Vanuatu is a republic with a parliamentary democratic form of government, based on the rule of law and a clear separation between the judicial branch of the state and the executive and legislature. It is a unitary government, with six provinces that play, at present, a subordinate role in the government of the country.

There is a written constitution that contains a guarantee of fundamental human rights, which are enforceable by the Supreme Court. The constitution also proclaims certain fundamental duties, which are stated to be nonjusticiable. The constitution provides that the government shall be a parliamentary democracy on the British model, and although the country is a republic, and the head of state is a president, it does not follow the American or French model.

CONSTITUTIONAL HISTORY

During the 19th century the islands of the New Hebrides, as they had been named by Captain James Cook, attracted numbers of British settlers, especially from the British colonies of Australia and New Zealand, and of French settlers, especially from the French colony of New Caledonia. In 1906, Britain and France agreed to establish a joint sphere of influence in the New Hebrides. This arrangement was strengthened and fleshed out by the protocol signed by the two countries in 1914, just before World War I (1914–18), and ratified in 1922.

This joint sphere of influence, styled a condominium (or more derisively, "pandemonium"), continued until the 1970s. At that time, as a result of internal pressure and a desire by Britain to withdraw from its holdings in the Pacific Ocean, the country was granted independence on July 30, 1980.

As a consequence of this history, the legal system is quite complex. First, there is the constitution, which is stated to be the supreme law of the country. Second, there are the laws of Britain and France, written and unwritten, imposed on their respective subjects during the time the country was a condominium. Since independence, these laws have been held to be applicable to every resident in

the country. Third, there are legislation enacted by the joint resident commissioners before independence, the legislation enacted by the parliament of Vanuatu since independence, and the subsidiary legislation authorized by such legislation. Finally, there are the customary laws of each island, which are stated by the constitution to be part of the law of the country.

FORM AND IMPACT OF THE CONSTITUTION

The constitution, which took effect on independence on July 30, 1980, is stated to be the supreme law of the country. Although the constitution does not expressly state so, the courts have held that legislation or executive action that is inconsistent with the constitution is void to the extent of the inconsistency.

The constitution also provides that the president may refer any bill that has been passed by parliament, and any regulation that has been made by the executive, to the Supreme Court for an opinion as to its constitutionality.

BASIC ORGANIZATIONAL STRUCTURE

Vanuatu is a unitary state, although the constitution declares that the republic recognizes the importance of decentralization. The Decentralization Act that parliament has enacted establishes two municipalities and six provinces but does not give them very extensive or independent powers, nor a very strong financial base.

LEADING CONSTITUTIONAL PRINCIPLES

Vanuatu's system of government is a republic based upon a national parliamentary democracy. The legislature, called Parliament, is a unicameral body. It is directly elected from multimember constituencies, in general elections that are organized by an independent electoral commission.

The executive is drawn from, and ultimately controllable by, the legislature. The actual administration of the country is carried out by a public service, which is politically neutral and controlled by an independent public service commission.

The judiciary is required by the constitution to be independent and politically neutral and is appointed by an independent judicial service commission.

Fundamental human rights are recognized by the constitution, and the Supreme Court has power to grant redress for any infringement of those rights. Fundamental duties are also recognized by the constitution, but these are stated to be nonjusticiable unless incorporated into a law.

Because much of the land in the country had been vested, during condominium times, in British or French settlers, the constitution states that all land in the country belongs to the customary owners and their descendants, except those areas that are owned by the government.

CONSTITUTIONAL BODIES

The main bodies established by the constitution are, in order of appearance in the constitution, as follows: the Parliament, the National Council of Chiefs, the president, the executive, the judiciary, the public service, and the ombudsperson.

The Parliament

The unicameral legislature is called the Parliament. It contains 52 members. General elections for parliament are to be held every four years, unless parliament is dissolved sooner on the basis of a resolution passed by parliament or a decision made by the Council of Ministers.

Parliament is authorized to make laws for the peace, order, and good government of Vanuatu. The courts have stated that they will not judicially review parliament's interpretation of those terms. Parliament's approval is required for the expenditure of public funds, and for the ratification of treaties. Parliament also has power, by an absolute majority of members, to remove the executive from office by passing a vote of no confidence in the prime minister.

The Lawmaking Process

Bills are introduced either by one or more members of parliament or by the prime minister or a minister. When a bill has been passed by parliament, it is presented to the president of the republic, who shall assent to it within two weeks. If the president considers the bill inconsistent with the constitution, he or she refers it to the Supreme Court for its opinion. The bill is not promulgated if the Supreme Court considers it inconsistent with a provision of the constitution.

The National Council of Chiefs

The National Council of Chiefs is stated to be composed of customary chiefs elected by their peers in district councils of chiefs. The council has an advisory role only. It can discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages, that is, the culture and languages of the indigenous people of Vanuatu.

The President

The head of state of the republic of Vanuatu is the president, and that officer symbolizes the unity of the nation.

The president is elected by an electoral college that comprises all members of parliament and the chair of the provincial councils. A president may be removed by the same body, acting with a two-thirds majority, for gross misconduct or incapacity. Most of the powers given to the president by the constitution are required to be exercised on the advice of ministers.

The Executive

The executive power of the people of the republic of Vanuatu is vested in the prime minister, who is chosen by the members of Parliament from among their number, and the members of the Council of Ministers, who are appointed by, and dismissible by, the prime minister. The constitution reinforces the parliamentary nature of the executive by providing that members of Parliament who are appointed as ministers shall retain their membership in Parliament. In addition, the Council of Ministers is collectively responsible to Parliament and may be removed by a vote of no confidence in the prime minister passed by an absolute majority of the members of Parliament.

The Judiciary

The administration of justice is vested in the judiciary, who are required to resolve proceedings according to law, and, if there is no law available, then according to substantial justice, and whenever possible, according to custom. The judiciary is stated to comprise the chief justice, who is appointed by the president after consultation with the prime minister and the leader of the opposition, and other judges who are appointed by the Judicial Service Commission. Judges hold office until retirement and can be removed by the president only on grounds of criminal conviction, or a determination by the Judicial Service Commission of gross misconduct, incapacity, or professional incompetence.

The Supreme Court consists of the chief justice and three other judges. A court of appeal may be constituted by two or more judges of the Supreme Court. Magistrate's courts, which have jurisdiction over minor civil claims and criminal matters, are also established by legislation, as are island courts, which comprise three persons knowledgeable in local custom, at least one of whom must be a chief; they have only trivial jurisdiction. At present, island courts and magistrate's courts are not established on all islands.

The Public Service

The constitution provides that the public service owes allegiance to the constitution and the people of Vanuatu, and that only citizens of Vanuatu can be members of the public service. Members of the public service are appointed by, and dismissible by, an independent Public Service Commission.

The Ombudsman

The constitution establishes the post of an ombudsperson, who is empowered to conduct investigations into the conduct of any public servant, public authority, or ministerial department. Although the scope of investigation of the ombudsperson is wide, the power to take action upon those investigations is very limited; the ombudsperson may only make recommendations.

THE ELECTION PROCESS

The constitution requires that the Parliament must be elected on the basis of universal equal suffrage, available to all persons over the age of 18 years. Moreover, the electoral system must contain an element of proportional representation so as to ensure a fair representation of different political groups and opinions. The electoral system that has been adopted is that of multimember constituencies with a single nontransferable vote. There are at present 18 constituencies returning from one to seven members of Parliament, depending on their size. Political parties may be formed freely. All persons aged 25 and over are entitled to stand at elections.

POLITICAL PARTIES

There is no constitutional or legislative restriction on the formation of political parties. At the last general elections in 2004 there were some 31 political parties and 61 independent candidates standing for election.

CITIZENSHIP

Persons who automatically acquired citizenship at the time of independence were persons who had four grandparents indigenous to Vanuatu or were of Vanuatu ancestry and had no citizenship of another country. Persons of Vanuatu ancestry who had, at the date of independence, citizenship of another country were entitled, upon application within three months, to be registered as citizens. Citizens of another state may apply to become citizens by naturalization if they have lived continuously in the country for at least 10 years, provided they renounce the other citizenship. Vanuatu citizens who acquire citizenship of another country automatically lose Vanuatu citizenship, unless they renounce the other citizenship within three months.

FUNDAMENTAL RIGHTS AND DUTIES

The constitution recognizes the fundamental rights and freedoms of individuals, subject to respect for the rights

and freedoms of others and subject to the legitimate public interest in defense, safety, public order, welfare, and health. The fundamental rights and freedoms are, within the specified limits, enforceable by the Supreme Court. The constitution also recognizes certain fundamental duties that are not enforceable by the courts, except to the extent that they are incorporated into law.

ECONOMY

Most of agriculture is subsistence, but there is commercial production of coconut products, beef, coffee and timber. Manufacturing is on a very small scale. Tourism is a very significant earner of foreign exchange, as are the finance center and offshore banking system.

RELIGIOUS COMMUNITIES

The constitution guarantees freedom of conscience and worship and nondiscrimination on grounds of religious or traditional beliefs. The largest religious denomination is Presbyterian, followed in size by the Anglican and Roman Catholic Churches, but there are also many adherents of the Assemblies of God and other Pentecostal groupings, the Seventh-Day Adventists, the Church of Christ, and Baha'i.

MILITARY DEFENSE AND STATE OF EMERGENCY

There is a paramilitary wing of the police, the Vanuatu Mobile Force, numbering some 200 persons, but no separate army. A state of emergency can be invoked by the Council of Ministers if the country is at war or if there is a natural calamity or to prevent a threat to, or to restore, public order.

AMENDMENTS TO THE CONSTITUTION

Amendments to most provisions of the constitution can be made by a bill passed by two-thirds of all the members of Parliament. Amendments of the more crucial provisions, however, require not only approval by two-thirds of the legislature, but also support by a majority of voters at a national referendum. This applies to the status of the languages, the electoral system, and the parliamentary system.

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Don Paterson

VATICAN

At-a-Glance

OFFICIAL NAME
State of the Vatican City; Holy See

CAPITAL
Vatican City

POPULATION
792 (549 citizen, 243 resident)

SIZE
0.17 sq. mi. (0.44 sq. km)

LANGUAGES
Italian, Latin, German, French, English, and other languages

RELIGIONS
Catholic

NATIONAL OR ETHNIC COMPOSITION
Italian 42.4%, Swiss 23.2%, Polish 5%, Spanish 4.6%, American 3.4%, French 2.7%, German 2.5%, Indian 2.5%, other (35 nationalities) 13.7%

DATE OF INDEPENDENCE OR CREATION
February 11, 1929

TYPE OF GOVERNMENT
Monarchy (elective)

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral (pontifical commission)

DATE OF CONSTITUTION
June 7, 1929

DATE OF LAST AMENDMENT
November 26, 2000

The State of the Vatican City, the smallest state in the world, is an enclave territory within the city of Rome placed under the authority of the Roman pontiff (the Holy See), the head of the Catholic Church. The state was established by the Lateran Treaty in 1929, concluded between the Holy See and Italy, in order to ensure to the pope absolute and evident independence and sovereignty, in the accomplishment of his worldwide mission, including all actions related to international relations. For this reason the State of the Vatican City, having such a particular character, cannot be considered separately from the Holy See and the Catholic Church.

The Vatican covers a geographical area smaller than the National Mall in Washington, D.C. It extends from the right bank of the Tiber River to a slight elevation (77.5 meters above see level) known as the Vatican Hill, the ancient location of a circus created by the emperor Caligula (37–41) and the site of a necropolis where Saint Peter, martyred during the reign of Nero (54–68), was buried. On this area the emperor Constantine (306–37) erected at the beginning of the fourth century the first Vatican Basilica, replaced by the present Saint Peter's Basilica built from the 15th to the 17th century.

One-third of the state's territory is occupied by palaces (e.g., the Apostolic Palace, the Vatican Library, the Vatican Secret Archives, and the Vatican Museum). The state is surrounded by the ancient Leonine Wall along the north, south, and west sides; the east boundary coincides with Saint Peter's Square, where the Colonnade of Bernini and a "white line" demarcate the border. According to the provisions of the Lateran Treaty, the square usually remains open to the public and is entrusted to the control of the Italian police forces, whereas the Vatican authorities and security forces have complete supervision of the square on the occasion of papal celebrations.

The sovereignty implemented by the Holy See over the Vatican state cannot be compared with that exercised until 1870 over the Papal States, some characteristics of which were comparable to ordinary state sovereignty. Nowadays, the purpose of the Vatican state is not that of guaranteeing the orderly existence and welfare of a popu-

lation in a given territory. Rather, the state was created to ensure the absolute freedom and independence of the Holy See and to guarantee its authority over the Catholic Church in the world.

In this context it may be recalled what Pope Paul VI (1963–77), on October 4, 1965, said in his statement to the General Assembly of the United Nations: "You have before you a man like you: he is your brother, and among you, representatives of sovereign states, one of the smallest, invested he too, if thus it pleases you to consider us, with a minuscule, almost symbolic temporal sovereignty, all that he needs to be free to exercise his spiritual mission, and to assure whoever deals with him, that he is independent from every type of sovereignty of this world."

CONSTITUTIONAL HISTORY

The institution of the Vatican City state in 1929, with the conclusion of the Lateran Treaty between Italy and the Holy See, which legally settled the dispute known as the Questione Romana, did not represent a "beginning" of the temporal government exercised by the Holy See. The long-lasting fact of a territory in central Italy called the Patrimonium Sancti Petri and then the Papal States, or the States of the Church, saw the Holy See directly involved in activities proper to civil authorities as far as the government of a population in a given portion of territory was concerned. These states, formed over a period of 1,200 years, constituted a compact territory intended to guarantee the spiritual sovereignty of the pope and to prevent the association of the Catholic Church with any state and with a particular political commitment or position.

Various historical events had direct influence on the States of the Church, especially in more recent times, the French Revolution (starting in 1789); the Napoleonic campaign (1809–10), which led to the loss of territories; the Congress of Vienna (1815), which reestablished the pre-1789 borders; the occupation of the city of Rome by the Italian army on September 20, 1870; and its annexation to the Kingdom of Italy. The latter event caused the disappearance of the Papal States as Rome was proclaimed the capital of a united secular Italy.

The pope retreated into the Vatican Palace as a self-defined prisoner, refusing to cooperate with the Italian government, insisting on his old sovereignty and territorial rights. The conflict ended only with the Lateran Agreements that entered into force on June 7, 1929. These agreements comprised three international instruments: (1) the Lateran Treaty, which recognizes the absolute independence of the Holy See and inter alia created the Vatican City state under the full sovereignty of the pope; (2) a Concordat, regulating the situation of the Catholic Church and its institutions in Italy; (3) a Financial Convention, by which Italy gave to the Holy See a lump sum as a definitive settlement of the financial claims that followed the loss of the Papal States and of ecclesiastical properties.

With the Lateran Treaty the new state was officially established and became part of the international community. The Vatican state, indeed, was instituted as a "true" state from a formal point of view and therefore with all attributions proper to a state, including the existence of its own legal order formally distinct from (although based on) canon law, the legal system of the Catholic Church. Despite all this, the true function of the Vatican state is to be a guarantee for the independence of the Holy See, which exercises its own "sovereignty" over it.

FORM AND IMPACT OF THE CONSTITUTION

The State of the Vatican City lacks a formal constitution codified in a single document. However, one may refer to a collection of norms with constitutional value. In fact, the Lateran Treaty assumes the function of a source for norms about the nature and the purpose of the Vatican state, and it provides for many essential elements for the operation of the state.

Moreover, basic rules and fundamental principles are codified by six constituent laws, which entered into force on the same date as the Lateran Treaty: (1) the Fundamental Law of the Vatican City, as amended in 2001, which defines the character and the form of the state, the exercise of power, the public institutions, and their reciprocal relations; (2) the Law on the Source of the Legal Code, concerning the sources of the internal law of the state, establishing the links among the canon law, the laws and regulations issued by the Vatican authorities, and the laws issued by the Italian Kingdom or by the local government of Rome before June 8, 1929; (3) the Law on the Citizenship and Sojourn, which specifies the conditions to enjoy Vatican citizenship and the situation concerning the presence of any person in the state territory; (4) the Law on the Administrative Organization, with particular consideration of the power of officials and the regulation of contracts; (5) the Law on Economic, Commercial and Professional Organizations, which mainly defines the conditions of sale, purchase, and business enterprise; and (6) the Law on Public Security, which deals with subjects such as the Vatican state public order and the police. Finally, the 2002 Law on the Government of the Vatican state defines the structure, activities, and procedures of the Governatorato of the Vatican City, the central body that embraces the various administrative offices of the state.

BASIC ORGANIZATIONAL STRUCTURE

The State of the Vatican City is a unitary state with no internal administrative subdivisions, in part because of its small size.

LEADING CONSTITUTIONAL PRINCIPLES

The Vatican City, as a state, possesses certain peculiar characteristics, deriving from its special purpose.

A state is usually characterized—and consequently recognized—by sovereign authority, territory, population, and capacity to enter into relations with other states. The Vatican has indeed presented itself with a complete juridical and social organization, as a true state under the authority of the pope: "The Supreme Pontiff, Sovereign of the Vatican City State, has full legislative, judicial and executive powers" (Fundamental Law, Article 1). These same powers, during the "vacancy of the Apostolic See," when there is no pope, belong to the College of Cardinals, "which however will be able to only emanate legislative dispositions in emergency case, and this legislation may only be valid during the period of vacancy, unless confirmed at a later date by the Supreme Pontiff elected according to the rules of canon law" (Fundamental Law, Article 1.2).

It is important to emphasize that an independent territory is not absolutely indispensable to the institutional sovereignty of the Holy See, even in international law. The Vatican territory is but one of several political and juridical undertakings envisaged in the Lateran Treaty, as a means of support and symbol of the complete autonomy of the pope in the exercise of his spiritual mission. Given the limited extension of the territory, the treaty recognizes to the Holy See the full possession and property rights over some buildings and areas around the Vatican or in the city of Rome, according to the doctrine of extraterritoriality. These areas or buildings do not accommodate structures or offices of the Vatican state, but organs directly part of the Holy See as central government of the Catholic Church.

As stated in Article 4 of the Lateran Treaty, the recognition of the sovereignty and exclusive jurisdiction of the Holy See over the Vatican implies that there cannot be any interference whatsoever by foreign authorities and that within the Vatican City there will be no other authority than that of the Holy See. In fact, the power exercised by the Holy See over the Vatican state can be compared to that of a government over its territory and population. However, this similarity also entails deep contrast, given the singular nature and function of the Holy See in carrying out the universal mission of the Catholic Church.

This notion allows a further explanation of the subjective juridical qualification of "neutrality" of the Vatican state, as a consequence of an international obligation voluntarily assumed by the Holy See. Article 24 of the Lateran Treaty states: "The Holy See declares that it desires to take, and shall take, no part in any temporal rivalries between other States, nor in any international congresses called to settle such matters, save and except in the event of such parties making a mutual appeal to the pacific mission of the Holy See, the latter reserving in any event the right of exercising its moral and spiritual power."

The Vatican possesses independence and sovereignty not only with reference to its internal powers and domestic jurisdiction, but also in respect of international relations: conclusion of international treaties, relations with other states, participation in international meetings and conferences, and membership in intergovernmental organizations.

CONSTITUTIONAL BODIES

Different bodies, instituted by the constitutional norms or established by the laws in the Vatican City, have authority to perform functions relating to the exercise of power: the Pontifical Commission for Vatican City State, the president of the Pontifical Commission, the general counselor and the counselors of the state, the Governatorato, the Council of Directors, and the tribunals of the Vatican state.

These organs ordinarily achieve their tasks with delegated powers (the pope has full powers in the Vatican), also on the basis of specific internal regulations, with the exception of a few circumstances constitutionally recognized: above all the faculty of the supreme pontiff to retain some questions or cases for himself or for other instances such as legislative powers, or judicial powers. In matters of greater importance the organs exercising the legislative and executive powers must proceed in close cooperation with the Secretariat of State. The judicial power is exercised in the name of the supreme pontiff.

The Pontifical Commission for the State of the Vatican City

The Pontifical Commission Vatican City State consists of a cardinal president and other cardinals. At the moment they are seven, but no specific number is established. They are appointed by the pope for a five-year term. A secretary-general and a deputy secretary-general are also members of the commission; they participate in the meetings of the commission and collaborate, in a consultative status, in the decision process.

The main function of the Pontifical Commission is the exercise of legislative power. However, it also has executive powers, since it can examine issues of greater importance proposed to the commission by its president. In addition the commission has the exclusive power to issue general regulations, to approve the consolidated financial statement and the estimated budgets of yearly expenditures, and to submit them to the supreme pontiff.

The Lawmaking Process

The competence and the procedures that specifically involve the legislative function of the commission are explained through the special Regulation of the Pontifical Commission.

The supreme pontiff has the power to promulgate any legislation concerning the Vatican.

The President of the Pontifical Commission

The president of the Pontifical Commission, appointed by the pope, is the legal representative of the state in various matters, with the exclusion of questions related to international affairs. He exercises the executive power, according to the Fundamental Law and to other related norms and ordinances enforced in the Vatican legal system, particularly the 2001 Ordinance N°. CCCMXLVII on the competence of the president, secretary-general, and deputy secretary-general of the Pontifical Commission. The executive power of the president is implemented by issuing statutes, regulations, decrees, orders, and other lawful dispositions that must be confirmed by the commission within 90 days.

The whole activity of the state related to the exercise of the executive power is accomplished through different offices and structures, which are part of the Governatorato of the Vatican City. This entity is headed by the president of the commission, who, with the assistance of a secretary-general and a deputy secretary-general, has authority in the territory of the state as well as in the areas and buildings designated in the Lateran Treaty as "extraterritoriality zones" or "exempt buildings." In order to fulfill his functions the president is assisted by the Council of Directors, a special body composed of the heads of the different divisions and main offices of the Governatorato.

A special advisory function is assigned to the general counselor of the state and to the counselors of state in order to assist and to advise the Pontifical Commission and its president in the accomplishment of their legislative power, as well as "in other more relevant matters."

The Judiciary

The judicial power in the Vatican state is exercised according to the special 1987 Law on the Judiciary System. The court system is structured on three levels: (1) a single judge, who has primary jurisdiction on the matters conferred to him by law, relating to civil and criminal matters, and a court, composed of three judges dealing with cases not reserved for the single judge or prescribed by law; (2) a Court of Appeal, consisting of five members who sit in appeals that follow the verdicts adopted in the first instance; (3) a Court of Cassation (final appeal), composed of three cardinals authorized to receive and to examine petitions related to form or procedural defects in the proceedings of the lower courts.

Furthermore, with regard to juridical matters, given the particular situation of the Vatican, an enclave within the Italian territory, a special procedure of judicial cooperation has been established in the Lateran Treaty. Upon request of the Holy See in individual cases and also with a permanent delegation of power, Italian authorities take care of punishment of crimes committed in the Vatican City. In the case that the author of the crime has fled into Italian territory, the procedure against him or her is according to Italian law without any further requirements. The Holy See is obliged to hand over to the Italian state persons who have fled to the Vatican City charged with acts committed on Italian territory, considered criminal by the laws of both states. Analogous procedure applies to persons charged with crimes who flee into the extraterritorial zone under the jurisdiction of the Vatican, unless the authorities in charge of such property prefer to invite the Italian police to enter the premises and arrest the fugitives.

THE ELECTION PROCESS

The Vatican is an *elective monarchy:* The sovereign, the pope, is elected by the cardinals (with the exception of those who have reached their 80th birthday) gathered in the ancient institution of the Conclave with rules and procedures that have been established and defined by different formal decrees during history. At present, the conclave is functioning on the basis of the norms promulgated by Pope John Paul II on February 22, 1996, in the Apostolic Constitution Universi Dominici Gregis on the Vacancy of the Apostolic See and the Election of the Roman Pontiff. The contents of that instrument establish the government rules of the Catholic Church, and then of the Vatican state, in the transitional period, before the election of the new pope. They also establish the election procedures. For example, Article 62 states: "For the valid election of the Roman Pontiff two-thirds of the votes are required, calculated on the basis of the total number of electors present." The procedures of the election bring to light the importance that the norms of canon law have for the Vatican state: The Apostolic Constitution, in fact, is part of the legal system of the Catholic Church that affects the constitutional order of the Vatican.

POLITICAL PARTIES

As a result of the specific identity of the Vatican there are no political parties.

CITIZENSHIP

The population of the Vatican City does not constitute a national community—the Vatican constitutional law, in fact, makes no reference to nationality—but consists of persons subject to the power of the supreme pontiff. They are cardinals, dignitaries, senior officials, or all those persons who have at least a permanent residence in the Vatican according to special norms and procedures. Consequently the criteria generally accepted in order to confer citizenship (*ius sanguinis* or *ius soli*) are not taken into consideration by Vatican legislation.

Citizenship has a distinct feature that is acquired as a consequence of a particular relationship with the Holy

See (i.e., the diplomats and representative of the Holy See abroad) or with the Vatican state administration (i.e., function, regular employment, or permanent residence). This *ius officii* has no equivalent elsewhere.

FUNDAMENTAL RIGHTS

In the State of the Vatican City human rights are guaranteed and protected, respecting the provisions of canon law. It is evident from the very nature of the Catholic Church and from the spirit of its laws that the canon law rejects and condemns discrimination and violation of fundamental rights and that it has a positive attitude to promoting their implementation (Code of Canon Law, canons 741–43). According to the principle of fundamental equality, human persons all have the same rights and the same duties and possess the same legal capacity. In canon law, diversity does not result from differences in the legal status of persons in their being, but is determined by the diversity of vocations and the differences between roles.

Impact and Functions of Fundamental Rights

The conventions on human rights that have been ratified by the Holy See are implemented in the Vatican. In particular, the Convention on the Elimination of All Forms of Racial Discrimination (1966), of May 1, 1969; the Convention on the Rights of the Child (1989), of April 20, 1990; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1978), of June 26, 2002, have all been ratified.

A particular point arising from the examination of the laws mentioned concerns the supremacy of treaties over ordinary norms—that is, codes of canon law—and therefore prevailing of international law over domestic law. This explicitly establishes the primacy of international obligations contracted under treaties into which the Apostolic See has entered with states or other political entities.

Limitations to Fundamental Rights

The limitations to the exercise of the fundamental rights are those determined by law or by the particular situation of the State of the Vatican City. However, it is important to note that the conventions accepted by the Holy See are placed on a level higher than ordinary laws, subject to full respect of those areas of its own legislation "which are essentially within [its] domestic jurisdiction" (Article 2, paragraph 7, of the Charter of the United Nations). Such conventions assume the quality of standards in the law of the Holy See: "The canons of the Code do not abrogate, nor do they derogate from, agreements entered into by the Apostolic See with . . . civil entities; such agreements therefore remain in force notwithstanding any contrary provisions of this Code" (can. 3).

ECONOMY

The Lateran Treaty confers on the Holy See the rights of exclusive property, considering the territory as a private domain. The Vatican is the unusual example of a "patrimonial sovereignty," as can be found in the concept of the Middle Ages of statehood. As a consequence of this constitutional principle, and according to the specific regulation of the Law on Citizenship and Sojourn and of the Law on Economic, Commercial and Professional Organizations, all people who have fixed residence in the Vatican City—ecclesiastics or laypersons—being subject to the sovereignty of the Holy See as a statehood authority, have no rights to the property of lands or buildings.

The finances of the state are constituted by contribution from different Catholic dioceses throughout the world, as well as the special annual collections known as Saint Peter's Pence. The income includes the sale of postage stamps, coins, medals, and tourist mementos; fees for admission to museums; and the sale of publications. The main categories of expenditure are salaries, pensions, fund reserves, preservation, and repairs of different buildings.

Vatican law is without any provisions regarding fiscal matters and therefore income taxes or tributes of any kind are not due by Vatican citizens or employers. When appropriate, only custom tariffs are established by special decree in order to regulate the imports of goods into territory under the jurisdiction of the Vatican authorities. Moreover, Italy exempts all persons who have fixed or partial employment in the Vatican state from taxes and fiscal duties.

RELIGIOUS COMMUNITIES

The Vatican state is based on Catholicism, as are its rules on citizenship. The issue of the status of different religious communities does not arise.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Vatican state is constitutionally obliged to maintain its condition of neutrality and to implement the provisions of international treaties concluded by the Holy See on the behalf of the Vatican City, regarding production, detention, or use of conventional armaments as well as atomic, bacteriological, or chemical weapons.

The Swiss Guard Corps, founded in 1505 by Pope Julius II, is the only armed force existing in the Vatican City. In 1970, other military corps, the Noble Guard and the Palatine Guard, were dissolved. Unmarried Swiss males of

Catholic faith, between 19 and 30 years old, who have fulfilled their basic military training in the Swiss army form the Swiss Guard. They serve in this special body for a minimum of two years, with the possibility of extending service to a maximum of 25 years. The guard responsibilities include the protection and guarding of the pontiff, surveillance at the boundaries and entrances of the Vatican City, ceremonial honor guard, and security service.

A special police corps, the Gendarmeria, looks after security, public order, and the flow of vehicular traffic within state territory. If necessary, according to the Fundamental Law (Article 14), the president of the Pontifical Commission of the Vatican City may ask for assistance from the Swiss Guard.

AMENDMENTS TO THE CONSTITUTION

According to the Vatican legal system only the supreme pontiff can amend the Fundamental Law, and there is no specific rule for that process. Some of the constitutional laws are contained in the Lateran Treaty, whose amendment requires the agreement of the partner of the treaty, the Italian government.

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Vincenzo Buonomo

VENEZUELA

At-a-Glance

OFFICIAL NAME
Bolivarian Republic of Venezuela

CAPITAL
Caracas

POPULATION
24,390,000 (2005 est.)

SIZE
353,841 sq. mi. (916,445 sq. km)

LANGUAGES
Spanish and minority indigenous languages

RELIGIONS
Catholic 92%, other 8%

NATIONAL OR ETHNIC COMPOSITION
Half-caste 67%, white 21%, Afro-American (descendants) 10%, indigenous peoples 2%

DATE OF INDEPENDENCE OR CREATION
July 5, 1811

TYPE OF GOVERNMENT
Presidential democracy

TYPE OF STATE
Federal state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 30, 1999

DATE OF LAST AMENDMENT
No amendment

Venezuela is constitutionally defined as a democratic and social state of law and justice. Additionally, it is categorized as a decentralized federal state. However, the national government is highly privileged in assigning powers throughout the territorial levels of government; perhaps the truest categorization is a federal-central state.

The constitution is divided into the two fundamental texts: a dogmatic part, which includes an ample catalogue of rights and incorporates principles and obligations deriving from international law and human rights law; and an organic part, which covers the distribution of powers among the different political-territorial levels of government (national, state, and municipal), as well as the organization of public power and the fundamental aspects of the organization of states and municipalities. As regards the branches of national government, the classic tripartite division of legislative, executive, and judiciary powers has been expanded to include a citizenship branch and an electoral branch. The president is the chief of state and the executive government, elected through universal, direct, and secret vote. The constitutional design has been characterized by a marked presidentialist tendency.

CONSTITUTIONAL HISTORY

Venezuela's constitutional history begins with the approval of the first constitution in 1811, which was also the first Latin American national constitution. It was the turning point of a process leading toward the declaration of independence from the Kingdom of Spain. From that moment on an era was opened that has seen the promulgation of 26 constitutional texts to the present, with frequent interruptions of legal continuity by coups d'état or revolutions.

A global analysis of Venezuelan constitutional history leads to the recognition of two great polarities. One of these has been between the constitutional rule of law and an authoritarian state, the other between federalism and centralism.

Long periods of Venezuelan history have been under the yoke of the authoritarian model, characterized by total

domination of the political scene by one leader or tyrant, who incarnated the fundamental values of the particular regime. In contrast, the constitutional state model was only in effect between 1830 and 1847; between 1864 and the beginnings of the 1870s; between 1936 and 1948; and then from 1958 until today.

The first constitution (1811) adopted the federal model, much influenced by the North American model and by the social reality of a country whose people were integrated at the province level. In 1830, the topic of statehood was defined as a fundamental political decision, and a formula of compromise was adopted: a central-federal state. This system was in force until the end of the Federal War, which rampaged throughout the country for five years from 1859 until 1863, when a new constitution was promulgated, the 1864 constitution, which adopted a federal system that prevailed for the rest of the 19th century.

Thanks to Antonio Guzmán Blanco's autocracy, which began in the early 1870s, federalism did not entirely reflect institutional practice. During the first third of the 20th century, under the hegemony of Juan Vicente Gómez, ruler of one of Venezuela's longest dictatorships, the Venezuelan state was decidedly centralist, despite the fact that the 1925 constitution defined the country as a federation.

A historical constant in Venezuela's institutional evolution is the government's republican character, which has been maintained since 1811. Likewise, the predominant role of public rights and freedoms is manifest in all the constitutions. The institution of constitutional claims (*amparos*), which seeks to guarantee the validity and effectiveness of constitutional rights, points in the same direction.

The first Venezuelan constitutions of 1811, 1819, and 1821 were part of the independence process. Generals José Antonio Páez and José Tadeo Monagas and the liberal and conservative parties produced new constitutions in 1830, 1857, and 1858. Constitutions of the federative type and from Antonio Guzmán Blanco followed in 1864, 1874, 1888, 1891, and 1893. Again, a series of new constitutions was introduced by Cipriano Castro and Juan Vicente Gómez in 1901, 1904, 1909, 1914, 1922, 1925, 1928, 1929, and 1931. Those were followed by constitutions of transition toward democracy in 1936, 1945, and 1947, disrupted by the constitution of the Marcos Pérez Jiménez dictatorship in 1953. Finally, democratic constitutions were created in 1961 and 1999.

Most of the changes introduced between one constitution and the next were simple reforms or modifications. Using a more substantive criterion, the number of Venezuelan constitutions would be significantly reduced. The key documents were those of 1811, 1819, 1830, 1864, 1936, 1947, 1961, and 1999.

The 1961 constitution is of particular importance among the constitutions of democracy, both because of the long period in which it was in force (38 years) and because of its contents. This constitution was adopted after the fall of the military dictatorship of Marcos Pérez Jiménez. It was based on the Punto Fijo Covenant, signed on October 31, 1958, by the leaders of the three largest political parties. Thus the 1961 constitution was a product of a spirit of consensus, which was then made evident in the frequent use of compromise formulas in matters such as the country's economic system, in which socialist and liberal views joined on paper to form the state's economy.

A political system, under the lead of the Acción Democrática (AD) and the Social Christian Party (COPEI), emerged under the 1961 constitution and was labeled a partisan democracy. With the passage of time, the majority parties began to lose dynamism and social pull, and the important political decisions began to be adopted more and more by secret agreements between the leaders. Moreover, these political parties took hold of the country's institutions, including the administration of justice and even universities, professional associations, and labor unions. Furthermore, suspicion of corruption in the executive branch began to rise, while the economy fell from its artificial oil-derived prosperity.

In February 1989 the disorders known as El Caracazo broke out in the capital's suburbs and its poorest areas, as people ransacked supermarkets and other stores in protest against a rise in public transport prices. The violence was repressed with the use of excessive police and military force. As reform proposals made by a joint commission of congress in 1992 were not implemented, the political crisis deepened. Two attempted coups d'état, on February 4 and November 27, 1992, had popular support.

Promising to transform the political structure toward political and social democracy via a National Constituent Assembly, Hugo Chávez Frías, one of the military men who led the 1992 coup, was elected president in the 1998 elections.

The 1961 constitution did not provide for a Constituent Assembly, but several decisions of the Supreme Court of Justice cleared the way. By manipulating the election, the president's supporters managed to dominate the Constituent Assembly, immediately began to take over the legislative and judiciary branches in a revolutionary atmosphere, and quickly drafted a new constitution, which went into force on December 30, 1999.

Even after the approval of the constitution, the National Constituent Assembly continued to function, issuing a series of transitional decrees to govern until the new state organs could be constituted. It also designated the members of the National Legislative Commission (a transitional organ), as well as the justices of the new Supreme Tribunal of Justice, the prosecutor general, the ombudsperson, and the state comptroller. The unilateral designation of these senior authorities occurred outside the margin of the provisions of the new constitution.

FORM AND IMPACT OF THE CONSTITUTION

Venezuela has a written constitution, contained in a single document, the Constitution of the Bolivarian Republic of Venezuela. It has 350 articles, structured into nine titles.

There are discrepancies between the original version submitted to popular consultation through referendum; the text published in the *Official Gazette* of December 30, 1999; and a new version published March 24, 2000, which was the date when the constitutional text was reprinted. The version of March 24, 2000, contains the constitution's Exposition of Motives, which was never submitted to popular consultation and apparently was also never discussed or duly approved by the Constituent Assembly.

As provided in its Article 7, the constitution is the topmost norm and the basis of the juridical system; by implication therefore it has supremacy over all other legal norms. Moreover, this precept declares the constitution binding on all public powers and subjects of the law. In accordance with these provisions, ample powers are given to the Constitutional Chamber of the Supreme Tribunal of Justice and to other judicial organs in charge of protecting the constitution.

The constitution does not define any general guidelines as to the relationship between national and international law. However, the constitution is clear about human rights, and the economic integration of Latin America and the Caribbean. Distinctive features are the granting of constitutional hierarchy to the treaties and covenants on human rights ratified by Venezuela and the provision for their preferential application over the internal legal order as long as the international norms contain more favorable rights than those established in the constitution and national laws. The constitution also recognizes preferential application over national laws of norms dictated under the scope of Latin American and Caribbean integration agreements.

The constitution of the Bolivarian Republic of Venezuela is one of the nation's most publicized and best known to the common people. It was declared the symbol of the so-called Bolivarian Revolution, but it has also been invoked by the political opposition, to defend citizen participation and the rights it guarantees. Nevertheless, the constitution's significance has been reduced by the way that it has been interpreted frequently by the Constitutional Chamber of the Supreme Tribunal.

BASIC ORGANIZATIONAL STRUCTURE

Venezuela is a decentralized federal state. However, the constitution concentrates the highest authority in the "national public power," to a degree not compatible with the model of a federal state. Additionally, the constitution does not guarantee the boundaries of the current states, a role that is instead relegated to organic law. Moreover, parliament was made into a single chamber by eliminating the Senate, which had been based on territorial representation. Finally, the constitution does not provide for the participation of states in constitutional reform, as did the 1961 constitution. For these reasons, it has been said that the 1999 constitution did not advance the decentralization process that had been developing under the derogated constitution.

There are presently 23 states, each of which is entitled to adopt its own constitution. These state constitutions can provide for the organization of municipalities and other local entities and their political-territorial division, subject to constitutional and national law; establish guidelines for the administration and investment of state resources; provide for state taxes, which are minimal; establish procedures for exploiting nonmetallic mineral resources not reserved to the federal state, such as salt and oyster beds; provide for the administration of uncultivated lands; and organize state police, subject to the provisions of national law. Moreover, state public services are covered in the state constitutions, as are state roads and national highways, commercial ports, and airports. There are also concurrent powers shared between states and the national government. These are governed by interlocking national and state laws.

States are divided into municipalities, which are the primary political unit in the national organization. Municipalities have separate legal personality and autonomy. Today, there are 335 municipalities throughout the country, and each elects its own government (mayors, councilpersons, and members of the community boards) autonomously. These authorities oversee matters under municipal jurisdiction, such as the provision and execution of domiciliary public services, territorial and urban delimitation, or historic patrimony. Municipal autonomy also includes the creation, collection, and investment of municipal income, which derives from tariffs for the use of municipal goods and services or taxes on local businesses. The constitution seeks to promote decentralization of state powers to the municipal level.

Finally, the 1999 constitution created a Federal Government Council to oversee decentralization and the transfer of powers. This council helps finance public investments that promote balanced regional development. However, this council has not yet been put into effect.

The city of Caracas is Venezuela's capital. Its metropolitan district has a complex structure. There is one metropolitan mayor, and one metropolitan town council, but there are many individual municipalities as well, with their own mayors and councils. All of these officials are elected by popular vote.

LEADING CONSTITUTIONAL PRINCIPLES

Venezuela is a free and independent republic, and a democratic and social state, based on the rule of law and justice. It is a federal decentralized state of a special kind. The constitution recognizes popular sovereignty as a fundamental principle. This sovereignty is expressed indirectly, through the election of the representatives who hold the

seats of government, but it also manifests itself through direct means.

In that regard, the 1999 constitution is quite prolific in providing mechanisms for citizen participation, among which are consultative referenda, votes to recall officials, and referenda to abrogate or approve laws. There are also popular treaties or decrees with legal force; legislative, constitutional, and constituent initiative; and open councils and citizen assemblies. Organized civil society also has the right to participate in committees for the selection of nominees for the Supreme Tribunal of Justice (Judicial Nominations Committee) or members of the National Electoral Council (Electoral Nominations Committee), as well as for the selection of the ombudsperson, the prosecutor general, and the national comptroller (Citizen Power Nomination Evaluating Committee).

At the state and local levels, there are Councils for Public Planning and Policy, which are formed by local municipal and regional legislators and representatives of organized communities. Advocates of the 1999 constitution signal these features as its greatest achievement, since they represent the conversion of party-based representative democracy to a participatory democracy, in which the people are the protagonists of public decision making. In practice, these provisions have had little effect.

Another fundamental principle of the Venezuelan constitutional regime is the prevalence of human rights, which occupy an extensive part of the constitutional text.

Of the principles of public power, the most relevant is that of separation or division of powers. However, this separation is not absolute, as the various powers must collaborate.

CONSTITUTIONAL BODIES

The constitution provides for the following organs: the National Assembly; the national executive power, including the president of the republic, the executive vice president, and the secretaries; the judicial power, with the Supreme Tribunal of Justice at its head; the citizen branch, composed of the Ombudsperson's Office, the Prosecutor General's Office, and the National Comptroller's Office; and the electoral power topped by the Electoral National Council.

The President

The president is the chief of state and the chief of the executive. As chief of state, he or she oversees foreign relations and signs international treaties, covenants, and agreements. As chief of the executive government, the president designates and removes the executive vice president and the secretaries of the executive, allocates their responsibilities, presides over the Council of Secretaries, and administers the national budget.

The president can declare states of emergency and limit individual rights in cases provided by the constitution. The president can also adopt decrees with the force of law, whenever authorized to do so by an enabling law from the legislature, and draft regulations that develop laws. The president can also dissolve the National Assembly whenever the latter has removed three executive vice presidents as a result of censure votes within one session. The president is the commander in chief of the national armed forces, promotes officials from the rank of colonel or ship captain and upward, and can assign soldiers to official positions that would otherwise not be available to them. Finally, the president presides over the National Defense Council.

The presidential term is six years, with one consecutive reelection allowed. The president must be a Venezuelan-born person, have no other nationality, be over 30 years of age, have secular status, and have never been condemned by a final judicial decision. The president's mandate can be revoked by popular demand if, after the first half of the six-year period, no less than 20 percent of the registered voters request a recall vote. The president loses office if more voters support recall than voted for him or her in the election and if the number of voters in the recall election is at least 25 percent of registered voters.

The Parliament (National Assembly)

The National Assembly is a single-chamber parliament, elected in each federal entity through universal, direct, and secret voting. Additionally, each state elects three representatives, as do the indigenous peoples. At present, there are 165 representatives in the National Assembly.

The main functions of the National Assembly are to legislate on subject matters of national competence and on the operations of the various branches of public power and to exercise control over the executive. Additionally, parliament can propose amendments and reforms to the constitution, decree amnesty, discuss and approve the national budget, pass a censure vote on the vice president and secretaries of the executive, and authorize the executive branch to enter into contracts of national interest.

The assembly regularly works in two ordinary sessions, extending across most of the year, and can meet in special sessions as well, at its own or the president's summons. Drafts and reports are prepared by 15 permanent or temporary special committees. During recess, the National Assembly is run by the delegate committee, which is formed by the assembly's president, its vice presidents, and the presidents of each permanent committee.

Representatives must be Venezuelan, whether born or nationalized; must have lived in Venezuela for at least 15 years; be over 21 years of age; and have resided at least four consecutive years in the entity that they seek to represent before the date of the election. No major national, state, or municipal officer may run for representative.

Representatives of the National Assembly can be reelected for two consecutive terms, and they enjoy the privileges of immunity and inviolability of their privacy in the exercise of their functions. In order for them to be brought to trial, the Supreme Tribunal of Justice must authorize the trial by deciding favorably on a special merits trial petition.

The Lawmaking Process

There is one lawmaking procedure common to the various types of laws, though some categories have special quorum and majority requirements. The initiative for a bill can originate with the executive branch, any of the permanent commissions, the delegate committee; any three representatives, the Supreme Tribunal of Justice (laws referring to judicial organization and procedure), the electoral branch (on electoral matters), the citizen branch (laws pertaining to its organs), 0.1 percent of the total number of registered voters, and the state legislative councils (on matters related to state laws). Two discussions must be held at different sessions. The first is dedicated to the draft's motives, scope, and structure; the second is an article-by-article analysis. Once the legal draft is approved without amendments in the second discussion, it is considered a sanctioned law. If the president agrees with the content of the law, the president proceeds to its promulgation by signing it and orders its publication in the *Official Gazette*.

Organic laws are a different legislative category; laws are organic when the constitution designates them as such, or when they organize public powers, develop constitutional rights, or serve as a legal framework for other laws. Except those that are constitutionally designated as such, organic law drafts need the support of a two-thirds majority of the National Assembly before the first discussion. After this, the regular lawmaking process applies, except that draft organic laws must be sent to the Supreme Tribunal of Justice for a ruling on constitutionality.

Enabling laws authorize the president to legislate through decrees with the rank and force of law. These enabling laws must be approved by a qualified majority equivalent to three-fifths of all members. Their contents must include the purpose, guidelines, and framework of the subject matters delegated to the president for legislation, as well as the duration of the enablement.

Finally, there are base laws, which regulate the concurrent power of the national government and the states.

Bills that originate through popular initiative must be considered in the session immediately after their presentation to the assembly. Otherwise, the bill must be submitted to a popular referendum.

The Judiciary

The judiciary is formed by the Supreme Tribunal of Justice and the other tribunals and courts of the republic. The constitution blends the judiciary into the judicial system, which also includes the general prosecutor, the ombudsperson, and organs of criminal investigation; auxiliary and other judicial officers; penitentiaries, justices of the peace, arbitrators, citizens who participate in the administration of justice, and all lawyers authorized to practice law.

The Supreme Tribunal of Justice is not only the highest judicial court, but also the director, overseer, and administrator of the judiciary and the public defense system. The Supreme Tribunal includes six chambers: the Civil Cassation (appeals) Chamber, the Criminal Cassation Chamber, the Social Cassation Chamber, the Electoral Chamber, the Political-Administrative Chamber, and the Constitutional Chamber. Every chamber seats five justices, except the Constitutional Chamber, which seats seven. The Plenary Chamber is formed by all the justices of all the chambers to deal with special matters.

The Constitutional Chamber of the Supreme Tribunal of Justice can declare absolute or partial nullity of national laws and other public acts of national, state, municipal, or any other public authority that are contrary to the constitutional text. The chamber is the ultimate and supreme interpreter of the constitution, and its interpretative criteria are binding on every other chamber of the tribunal and the rest of the nation's courts.

The constitution expressly declares the independence of the judiciary, as well as the functional, financial, and administrative autonomy of the Supreme Tribunal of Justice, which commands at least 2 percent of the national budget allocated to the justice system. The tribunal drafts its own budget and that of the judiciary.

The constitution created a Judicial Nominations Committee staffed by the various civil society sectors, which compiles lists of potential candidates for supreme tribunal justices. This constitution also increased their term to 12 years, while prohibiting reelection.

Justices, judges, state attorneys, and public defenders are barred from political, partisan, collegiate, union, or any other such form of activism, as well as from conducting, whether personally or through third parties, any lucrative activity incompatible with their public functions.

Another innovation of the 1999 constitution is the recognition of indigenous justice, as long as its norms and procedures do not collide with the constitution, national laws, and public order. Furthermore, it foresees the creation of a justice of the peace system and the promotion of alternative means of conflict resolution.

In the area of organization of the judiciary, the constitution calls for a law to organize tribunals into judicial circuits and to create regional courts. However, this law has not yet been adopted. As regards grade or rank, the present judicial structure mandates that the Supreme Tribunal of Justice is followed in rank by superior courts or tribunals with jurisdiction over civil, commercial, and criminal matters, which receive appeals petitions in those areas. Immediately lower are first instance courts, some with civil and commercial jurisdiction, others with responsibility for criminal matters. Finally, there are municipal courts.

In addition, there are special courts and tribunals, such as courts for the protection of children and adolescents, tax courts, and administrative procedural tribunals.

In reality and practice, the judicial system differs substantially from what was foreseen in the 1999 constitution. The judiciary is today one of the weakest institutions within the Venezuelan rule of law. Despite compliance with certain formal aspects, the selection and designation of the supreme tribunal's justices have taken place in flagrant contradiction to the constitution, since there was never true citizen participation in the Judicial Nominations Committee, and political interest prevailed over institutional ends. Also, the vast majority of judges (almost 80 percent) were designated directly by the highest-ranking members of the judiciary, without the required public competition. They are called provisional or temporary judges, and this provisionary status exposes them to undue pressure from those who appointed them and have the power to remove them. Many lack the best qualifications, or even the right vocational background. Furthermore, disciplinary matters within the judiciary are still being decided on the basis of the 1999 transitory decree, since the legislature has not yet approved the Judges' Code of Ethics, and no disciplinary tribunals have been created to date.

Finally, despite the constitution's recognition of the right to access to justice, a large percentage of the country's population (the poor) still face important obstacles in the courts and tribunals. Notwithstanding, the recent reform of legal procedure in labor matters and the stimulation of alternative means for conflict resolution in this area of the law are positive signs.

The Citizen Branch

The Ombudsperson's Office, the Prosecutor General's Office, and the National Comptroller's Office form the so-called citizen branch, which is responsible for investigating and punishing any acts violating public ethics and administrative morals; overseeing the conduct of a good administration and the legality of the use of public resources; and promoting citizenship education. The branch has the power to issue warnings to public officials about faults in the exercise of their functions.

The Ombudsperson's Office is a novel institution for Venezuela. It is in charge of the defense and oversight of human rights and the protection of collective and diffuse interests of the citizenship. The Prosecutor General's Office is in charge of prosecuting all criminal actions in public action crimes, supervising criminal investigations, and ensuring respect for human rights in the judicial process. The comptroller general audits and supervises the national accounts, as well as public assets and resources.

Electoral Branch

The constitution considers election oversight as a branch of government. The electoral branch is overseen by the National Electoral Council, which organizes, administers, and oversees all acts related to the election of public officials by popular vote and all referenda.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

In order to be eligible for the highest positions in national government, a candidate must be a Venezuelan-born citizen. These positions are the presidency and the vice presidency; the presidency and vice presidency of the National Assembly; seats on the Supreme Tribunal of Justice; the presidency of the National Electoral Council; the attorney general, comptroller general, prosecutor general, and ombudsperson; the secretaries of defense, interior, justice, finance, energy and mining, and education; as well as state governor or mayor of frontier municipalities.

Also, the following government positions are subject to popular election: president, governor, mayor, National Assembly representative, State Legislative Council representative, municipal councilperson, and community council member. In the case of candidates to collegiate bodies (assembly, legislative councils, and municipal councils), the law provides a mixed voting system: Some are elected by single-member constituencies and others through proportional representation.

POLITICAL PARTIES

The constitution does not mention political parties directly, partly because of the discredit they suffered in the 1980s. Rather, the text uses a more ample concept, that of "organizations with political objectives." In practice, the weight of political participation still falls on the parties. The constitution does its best to ensure their democratic operations, in choosing their own officials and in nominating candidates for election.

There are many political parties and election groups. Nationally, there is the government party, Movimiento Quinta República (MVR), which occupies the majority of all popular representation positions; Acción Democrática (AD), which is one of the first political opposition parties; along with the Partido Socialcristiano (COPEI); the Socialist Movement (MAS); Primero Justicia; and Proyecto Venezuela.

CITIZENSHIP

Venezuelan nationality can be acquired by birth (originary) or upon compliance with certain prerequisites. Originary nationality is reserved to those who are born within the country to at least one Venezuelan parent, and to those who have at least one Venezuelan-born parent, outside Venezuelan territory, if they have established their residence in Venezuela or declare their will

to acquire Venezuelan nationality. The same applies to those who have naturalized Venezuelan parents and are born outside Venezuelan territory but have established their residence within the country before becoming 18 years of age and have declared their desire to acquire Venezuelan nationality before turning 25.

Foreigners who have resided in the country for at least 10 years and comply with all the requirements of the naturalization process can acquire Venezuelan nationality. Foreigners from Spain, Portugal, Italy, Latin America, and Caribbean countries have a shorter, five-year residency requirement. Anyone who marries a Venezuelan can also acquire Venezuelan nationality five years after the wedding.

Any Venezuelan over 18 who registers in the permanent electoral registry and who is not subject to political inability or civil interdiction can exercise his or her political rights and duties and is considered a citizen. Naturalized Venezuelans have the same political rights, as long as they have entered the country before turning seven years old and have permanently resided within national territory until the age of 18.

FUNDAMENTAL RIGHTS

Title 3 of the constitution is dedicated to fundamental rights, which are subsumed under the international term *human rights*. Among the principles adopted from international law are progressiveness, which opposes any measures that might imply a retreat in the protection of rights, and the nondivisibility and interdependence of human rights, which prevent the sacrifice of one right to protect another.

There is also a general duty to investigate, punish, and repair human rights violations. In this context, amnesty laws that prevent the prosecution of human rights violations or crimes against humanity are prohibited. Moreover, these violations and crimes can only be investigated and prosecuted by judicial courts, and there is no statutory limitation on their prosecution.

Impact and Function of Fundamental Rights

The bill of rights in the constitution has an ample and open character. Its ampleness is reflected in the extensive and generous list of rights, including different types of rights. Following the terminology of international treaties, Venezuelans have civil and political rights, as well as economic, social, and cultural rights. The open character of the bill of rights is evidenced by the fact that the listing of constitutional rights is merely an enunciation and does not exclude other rights inherent to human nature, which do not need to be legislated upon in order to be effective. The rights guaranteed are binding primarily on the state, but they also bind private persons, who also have a general duty to respect the rights of others.

Human rights occupy a high place within the constitutional system since they have been declared superior values of the legal framework and the basis for the legitimacy of the government and the political regime. Unfortunately, the day-to-day impact of human rights in political and social life is still only partial. In matters related to politics or partisanship, rights have frequently been limited, sometimes with the support of the highest judicial levels, particularly rights such as freedom of expression, freedom of association, freedom to form workers' unions, freedom of conscience, and freedom of political participation.

In contrast, there has been progress in access to justice and the effectiveness of judicial remedies. Also, social rights have often been respected by official policies and judicial decisions.

Limitations to Fundamental Rights

As a general rule, constitutional rights are subject to limitations, which must be backed by a law and be necessary for the protection of other rights or of the public interest.

ECONOMY

The social-economic system can be qualified as a mixed system, oriented toward the development of a social market economy and inspired by the principles of social justice, economic freedom, private initiative, and free trade. The state owns all oil-related activities and those of other industries that are considered strategic to the development of the nation.

The constitution guarantees the right to private property, subject to restrictions established by law for the benefit of the public interest. Economic freedoms are also recognized, such as the freedom to work and the freedom to incorporate enterprises, commerce, and industries. The state is entitled to dictate measures to plan rationally and regulate the economy.

The state is multifaceted and active in the regulation, distribution, and development of various key sectors of the economy. It participates in the exploitation of certain resources, such as iron, aluminum, and hydrocarbons. In practice, however, the economy depends almost entirely on oil revenues, and thus on oil price fluctuations in the global market.

RELIGIOUS COMMUNITIES

In Venezuela, the state is nonconfessional, and freedom of religion and worship is guaranteed by the constitution. Every person can publicly and privately perform the rites of any religion he or she chooses, as long as it is not contrary to good manners, morals, or public order. No one can circumvent compliance with the law or prevent an-

other person from exercising his or her rights on the basis of religious beliefs.

Roman Catholicism is by far the most professed religion. However, Muslim, Jewish, Evangelical, and Adventist communities also exist. The constitution protects the independence and autonomy of all religions. Civil legislation recognizes their legal personality, making them recipients of rights and duties. There is an Ecclesiastic Patronage Law, which protects the establishment and promotion of Catholicism throughout the country.

MILITARY DEFENSE AND STATE OF EMERGENCY

The National Armed Force is composed of the army, the navy, the air force, and the national guard. They are defined in the constitution as an essentially professional body, lacking a political role. However, the deletion of the words *apolitical and nondeliberative,* which existed in the previous constitution, has been interpreted as an attempt to politicize the armed forces and to place them at the service of a particular political project.

In any case, active members of the military are prohibited from running for office and from participating in acts of political propaganda or proselytism. The constitution is implicitly based on the premise that the military are subject to civil authority. In practice, there is a growing tendency to place active or retired military members in key positions of the central and decentralized administrations.

The National Armed Force is responsible for guaranteeing the nation's sovereignty, independence, and territorial integrity. They cooperate in maintaining internal order and participate in national development. This last role has raised fears that the role of the military may be abused, as it moves into the civil authority and, ultimately, politics.

The 1999 constitution eliminated mandatory military service as a general duty, by providing for the possibility of freely opting for civil service, which makes conscientious objection superfluous.

States of exception or emergency are regulated by the constitution and an organic law. The president is empowered to declare these states, but they must be ratified by the National Assembly and declared legal by the Supreme Tribunal of Justice. States of exception increase the powers of the executive branch and the military authorities, but they may not interrupt the operations of the organs of public power, or affect the subordination of military power to civil authority.

AMENDMENTS TO THE CONSTITUTION

The constitution provides for three means of change: amendments, reform, and national constituent assembly. Amendments are minor changes and as a general rule are overseen by the National Assembly and ratified by a referendum. A reform has a broader scope, but it does not alter the fundamental principles of the constitution. Reforms must be approved by the qualified majority of the representatives of the National Assembly. Finally, a National Constituent Assembly allows for the drafting of a new constitution. The constitution does not explicitly require a referendum to approve a new constitution, but such a requirement can be deduced from the fundamental principles and from the grant of constituent power to the people.

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VIETNAM

At-a-Glance

OFFICIAL NAME
Socialist Republic of Vietnam

CAPITAL
Hanoi

POPULATION
81,620,000 (2005 est.)

SIZE
127,259 sq. mi. (329,600 sq. km)

LANGUAGES
Vietnamese

RELIGIONS
Buddhist 50%, Catholic 25%, Caodaist 10%, Hoa Hao Buddhist 5%, other (largely of Muslim, Protestant) 10%

NATIONAL OR ETHNIC COMPOSITION
Vietnamese 84%, Chinese 2%, also Khmer, Cham (remnant of once, great Indianized Champa Kingdom), and over 54 ethnolinguistic groups

DATE OF INDEPENDENCE OR CREATION
September 2, 1945

TYPE OF GOVERNMENT
State socialism

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
April 15, 1992

DATE OF LAST AMENDMENT
December 25, 2001

According to its constitution, Vietnam is a socialist republic based on principles of socialist legality and unity of power, with the National Assembly as the highest state organ. It is made up of 64 provinces and municipalities under a central authority. The constitution provides for far-reaching guarantees of human rights.

The president is the head of state, but his or her role is mostly ceremonial. The central political figure is the prime minister, the head of the executive government. The president and the prime minister are elected by the National Assembly. The constitution guarantees the free, equal, general, and direct election of members of the National Assembly.

The constitution upholds religious freedom, and religious communities and the state are separate. Vietnam promotes a multisectoral economy, which functions in accordance with market mechanisms under the management of the state. The military is subject, in fact and in law, to the civil government. The constitution declares that it is state policy to promote peace and friendship and expand its relations and cooperation with all countries in the world, regardless of political and social regime, on the basis of respect for each other's independence, sovereignty, and territorial integrity; noninterference in each other's internal affairs; equality; and mutual interest.

CONSTITUTIONAL HISTORY

Vietnam as an independent entity dates back to the early history of Southeast Asia. Around the fifth century B.C.E., the Dong Song culture, a unique and distinct civilization exhibiting a high level of technical and artistic skill and famed for rich bronze objects, emerged in northern Vietnam. Recent ethnological and archaeological studies have asserted the existence of a Hung dynastic period during the Van Lang (later Au Lac) Kingdom around 1000 B.C.E., In 200 B.C.E., the Au Lac Kingdom was invaded and annexed by the powerful Chinese Han Empire to the north, leading to a 10-century domination by China.

In the 10th century C.E., the Vietnamese built an independent state named Dai Viet. Centuries of war against the Chinese and Mongol Empires followed. In the middle of 19th century France began to encroach on the country, and before long Vietnam was transformed from a centralized state into a colonial one under French domination.

At the peak of the movement for national liberation, under the leadership of the Communist Party of Vietnam (then the Indochina Communist Party), headed by Ho Chi Minh, the National Congress of Representatives was convened in Tan Trao, Tuyen Quang province, on August 16, 1945. The congress agreed on launching the national general uprising proposed by the Indochina Communist Party. It issued a declaration calling on the people throughout the country to seize power and appointed a Committee for National Liberation, the Provisional Government. On September 2, 1945, Ho Chi Minh, on behalf of the Provisional Government, presented the Declaration of National Independence, proclaiming the birth of the Democratic Republic of Vietnam. In 1946, the first general elections were held throughout the country. For the first time in Vietnam's history, all Vietnamese citizens 18 years and older, regardless of gender, wealth, ethnic group, religion, or political opinion, could cast their votes to elect their own representatives to the National Assembly. Ho Chi Minh was elected president of the Democratic Republic of Vietnam, and on November 9, 1946, the National Assembly approved its first constitution.

After the formation of the Democratic Republic of Vietnam, France attempted to reassert control; the result was a renewed war of resistance that ended with the defeat of French forces at Dien Bien Phu on May 7, 1954, and eventually led to the Geneva Agreement on Vietnam signed in July 1954. According to this agreement the country was temporarily split along the 17th parallel into North Vietnam and South Vietnam and was to be reunified within two years (1956), following general elections held all over Vietnam. The elections, however, did not take place, as the southern part of Vietnam was placed under the control of, first, a pro-French and, later, a pro-American administration. This political situation led to the resurgence of the national movement with the goal of reunifying the country.

To help implement a socialist regime in the north of Vietnam and strengthen the base for the war against U.S. troops in the South, a new constitution was adopted in 1959. In 1973, the United States signed the Paris Peace Agreement and withdrew its troops from Vietnam.

After reunification with the South in 1975, Vietnam was renamed the Socialist Republic of Vietnam on July 2, 1976. A new constitution, establishing the political and economic system of the unified state, was adopted in 1980. The 1980 constitution followed the traditions of the 1946 and 1959 constitutions in recognizing the people's sovereignty, human rights, and unity of powers. New solutions, some based on the model of the Soviet Union, were introduced to aid the transition to socialism. For the first time the constitution declared Communist Party leadership of state and society. The economy was to be organized according to the socialist principles of a centrally planned economy and collectivization of land. A State Council (Hoi dong nha nuoc), which combined in a single institution two previous institutions, the presidency and the Standing Committee of the National Assembly, was created.

To restore an economy destroyed by years of war the government introduced free-market economic reforms in 1986, in the process of Doi Moi, or "all-around renovation." In June 1991, the Seventh Congress of the Communist Party of Vietnam reaffirmed its determination to pursue the renovation process and to maintain a foreign policy guided by the precept "Vietnam wants to be friends with all other countries in the international community for peace, independence and development." The 1992 constitution was promulgated to institutionalize the new policies of the Socialist Republic of Vietnam.

FORM AND IMPACT OF THE CONSTITUTION

Vietnam has a written constitution, codified in a single document, called the fundamental law of the state (Dao luat co ban), which has precedence over all other national law.

The constitution of Vietnam details the legal system of the country and establishes its values, and all other legal documents must conform to its provisions. The significance of the constitution, however, supersedes its legal implications in helping to shape the direction of the country's development and reaffirming Vietnam's policy of international peace, friendship, and cooperation.

BASIC ORGANIZATIONAL STRUCTURE

Vietnam is a unitary state divided into 64 provinces and cities under central authority. The central government, comprising a prime minister and the cabinet, is the highest administrative body of the land. It has the powers to implement the policies of the state and the duty to "ensure the effectiveness of the state apparatus from the center to the grassroots [and] respect for and implementation of the constitution and the law."

At provincial and local levels, elected people's councils choose people's committees to perform executive functions. Legislative and constitutional authority is vested in the popularly elected National Assembly, which selects from among its own members a president to serve as head of state. The highest judicial body is the Supreme People's Court, which supervises the work of people's courts and the Supreme People's Procuracy with people's procurators at provincial and district levels.

LEADING CONSTITUTIONAL PRINCIPLES

Vietnam's system of government is a socialist republic. On the one hand, the constitution clearly stipulates the legislative, executive, and judicial powers. However, Article 2 states that "state powers are unified and decentralized to state bodies, which shall coordinate with one another in the exercise of the legislative, executive, and judiciary powers." Thus, there is unity rather than separation of state powers. The National Assembly is the highest organ of state power. "However, in practice its function is limited, as it meets in only two brief sessions per year."

The Vietnam constitutional system is defined by a number of leading principles: Vietnam is governed by democratic centralism; it is an independent and sovereign country and "a law-governed socialist state of the people, by the people, and for the people."

According to Article 3 of the constitution, the state "guarantees and unceasingly promotes the people's mastery in all fields, and severely punishes all acts violating the interests of the motherland and the people; it strives to build a rich and strong country in which socialist justice prevails, and men have enough to eat and to wear, enjoy freedom, happiness, and all necessary conditions for complete development."

According to Article 4, the Communist Party of Vietnam—the only political party in the country—is the vanguard of the working class and the force leading the state and society. Its actions are based on Marxist-Leninist doctrine and Ho Chi Minh's teaching.

The constitution has provided a number of principles of the organization of the state. First is the principle of the unity of all nationalities living in the territory of Vietnam. According to this principle, the state must administer a policy of equality, solidarity, and mutual assistance among all nationalities and forbid all acts of national discrimination and division. Second, the principle of state accountability provides that all state organs, cadres, and employees must show respect for the people, devotedly serve them, and maintain close links with them; that all manifestations of bureaucratism, arrogance, arbitrariness, and corruption shall be vigorously opposed. Third, the principle of legality entails that the state shall exercise the administration of society by means of the law and thereby unceasingly strengthen socialist legality.

CONSTITUTIONAL BODIES

The main bodies defined in the constitution are the National Assembly, the president of the state, the prime minister, the People's Councils, the Supreme People's Court, and the Supreme People's Procuracy. Other bodies include the Standing Committee of the National Assembly, which functions as its permanent committee, and the National Defense and Security Council, which comprises the president of the state, the vice president, and others, who need not be members of the National Assembly.

The National Assembly (Parliament)

The constitution defines the National Assembly as "the highest representative organ of the people and the highest organ of state power" in Vietnam. The unicameral assembly has three main functions: creating legislation, formulating major domestic and foreign policies, and exercising supreme supervision over all activities of the state.

The National Assembly is not a full-time working body; it meets in two sessions of about two weeks duration per year. Therefore, the Standing Committee of the National Assembly has the predominant role in the functioning of the National Assembly and has considerable powers in preparing for and presiding over its sessions. The Standing Committee creates ordinances, which are decree laws on matters entrusted to it by the National Assembly, and exercises supervision and control over the activities of the executive government, the Supreme People's Court, and the Supreme Peoples' Procuracy in the period between National Assembly sessions. The Standing Committee of the National Assembly consists of the chair of the National Assembly, the vice chairs of the National Assembly, and members elected from among Assembly delegates, who cannot be members of the executive government at the same time.

The National Assembly is the only organ that has legislative powers. As such, it can make and amend the constitution, make and amend laws, and develop a program for creating laws and ordinances. Almost all of the laws passed by the National Assembly are initiated by the executive government. The National Assembly is a unicameral parliament. It elects, releases from duty, and removes from office the country's president and vice president, the chairman or chairwoman of the National Assembly, the vice chairpersons and members of the Standing Committee of the National Assembly, the prime minister, the chief justice of the Supreme People's Court, and the president of the Supreme People's Procuracy. The National Assembly exercises supreme control over conformity with the constitution, the law, and resolutions of the National Assembly and reviews the reports of the country's president, the Standing Committee of the National Assembly, the executive government, the Supreme People's Court, and the Supreme People's Procuracy.

The members of the National Assembly have the right to propose bills, make motions on laws before the National Assembly, and draft ordinances before the National Assembly Standing Committee. They also have the right to question the president of state, the National Assembly chairperson, the prime minister and other members of the executive government, the chief justice of the Supreme People's Court, and the president of the Supreme People's Procuracy.

An important right of the members of the National Assembly that helps to ensure their independence is par-

liamentary privilege. Deputies must not be detained or persecuted and their places of residence and work must not be searched without the consent of the National Assembly or of the National Assembly Standing Committee when the National Assembly is in recess. The only exception to this privilege occurs when a deputy is placed in custody when committing a crime, but the arrest must be immediately reported to the National Assembly or the National Assembly Standing Committee for consideration and decision.

At present, the National Assembly 11th Legislature consists of 498 deputies. Its period of office, the legislative term, is five years. The deputies are elected in a general, direct, free, equal, and secret balloting process.

The Executive Government

The government is the executive organ of the National Assembly, the highest organ of state administration of the Socialist Republic of Vietnam. The executive government is composed of the prime minister, the deputy prime ministers, the ministers, and other members. With the exception of the prime minister, its members are not necessarily members of the National Assembly. The prime minister is accountable to the National Assembly and reports to the assembly, its Standing Committee, and the country's president.

The constitutional powers of the prime minister are largely responsible for the prime minister's dominance in Vietnamese politics. The prime minister has considerable powers to direct the work of the executive government, shaping the policy of the government and its personnel.

The tenure of the executive government is the same as that of the National Assembly, i.e., five years. When the latter's tenure ends, the administration remains in office until the new legislature establishes a new administration.

The constitution stipulates that the ministers and the other executive government members shall be responsible to the prime minister and the National Assembly.

The constitution does not clearly stipulate the dismissal of the members of the executive government, although there is a clause in the law on organization of the National Assembly that the assembly can cast a vote of confidence for individuals who hold positions elected or ratified by the National Assembly. As such the members of the executive government can be subject to a vote of confidence at the proposal of the Standing Committee of the National Assembly.

The President of the State

The president is the head of state and represents the Socialist Republic of Vietnam internally and externally. The president promulgates the constitution, laws, and ordinances. The president is the commander in chief of the armed forces and the head of the National Defense and Security Council.

The president can propose to the National Assembly a motion to elect, release from duty, and remove from office the vice president, the prime minister, the chief justice of the Supreme People's Court, and the president of the Supreme People's Procuracy. The president formally appoints, releases from duty, and dismisses the deputy chief justices and judges of the Supreme People's Court, and the deputy president and procurators of the Supreme People's Procuracy. The president has the authority to proclaim a state of war, to proclaim an amnesty, to order a general or partial mobilization, and to proclaim a state of emergency throughout the country or in a specific region.

The country's president is elected by the National Assembly from among its members for a five-year term; he or she is responsible to the National Assembly and reports to it. The chairperson of the National Assembly of the new term proposes the candidate for election as president. There is no specific requirement of age to be elected as president.

The Lawmaking Process

One of the main duties of the National Assembly is to make the laws, in cooperation with various other constitutional organs. The constitution stipulates that the country's president, the Standing Committee of the National Assembly, the Nationalities Council and Committees of the National Assembly, the executive government, the Supreme People's Court, the Supreme People's Procuracy, the Vietnam Fatherland Front, and its member organizations may present draft laws to the National Assembly. Members of the National Assembly may present motions concerning laws and draft laws to the National Assembly. However, almost all of the laws passed by the National Assembly are initiated by the executive government.

Before they are submitted to the National Assembly for debate, all draft laws must be scrutinized by the Nationalities Council or Committees of the National Assembly. Laws must be approved by more than half the total membership of the National Assembly. Once a bill has been passed by the assembly, it must be signed by the National Assembly chairperson and must be promulgated by the country's president no later than 15 days after its adoption.

The Judiciary

The judiciary in Vietnam consists of the Supreme People's Court and the Supreme People's Procuracy. In Vietnam, there are four types of courts: the Supreme People's Court; the people's courts of the provinces and of cities directly under the central authority; the people's courts of the districts, towns, or cities under the provincial powers; and the military courts. In special circumstances, the National Assembly may establish special tribunals.

In Vietnam there is no constitutional court. The power to interpret the constitution, laws, and ordinances is vested in the Standing Committee of the National Assembly. On the other hand, an act of the

National Assembly cannot be declared void by the Supreme People's Court.

THE ELECTION PROCESS

All citizens of the Socialist Republic of Vietnam aged 18 or older, regardless of race, sex, social position, religion, education, occupation, or residency, have the right to vote, except mentally impaired people and those who are deprived of that right by law.

Parliamentary Elections

Every Vietnamese who is 21 or older has the right to stand for election to the National Assembly. To be elected to the assembly, the candidate must meet a number of requirements; for example, he or she must be loyal to the Socialist Republic of Vietnam, strive for national renovation, demonstrate moral and ethical qualification, abide by the laws, maintain close contact with the people, and deserve the people's trust.

POLITICAL PARTY

In the past Vietnam had a pluralist system of political parties, which included the Communist Party of Vietnam, the Democratic Party, and the Social Party. The Democratic Party, established on June 30, 1944, was a political organization of the nationalist bureaucracy and Vietnamese intelligentsia with the objective of fighting for national liberation and the people's happiness. The Social Party, formed on July 22, 1946, was a political organization of the progressive Vietnamese intelligentsia of the generation of the revolution. After the reunification of Vietnam in 1976, the two parties declared that they had fulfilled their objectives; they ceased to function in 1988.

At present, the Communist Party of Vietnam, founded on February 3, 1930, at the beginning of the national liberation movement, is the sole political party. Party policies are based on Marxist-Leninist doctrine and Ho Chi Minh's thought. The constitution acknowledges the role of the Communist Party of Vietnam as the force leading the state and society in Article 4. At the same time, the constitution states that all party organizations must operate within the framework of the constitution and the law.

CITIZENSHIP

Vietnamese citizenship is primarily acquired by birth. The principle of *ius sanguinis* is also applied; that is, a child acquires Vietnamese citizenship if one of his or her parents is a Vietnamese citizen, regardless of where a child is born.

FUNDAMENTAL RIGHTS

The constitution stipulates that in Vietnam human rights in the political, civic, economic, cultural, and social fields are respected. All citizens are equal before the law, and the citizen's rights are inseparable from his or her duties.

Political rights include the right to participate in the administration of the state and management of society, the right to petition the government, and the right to stand for elections. Economic rights include the right to work, freedom to conduct business, the right of lawful ownership, and the right of inheritance. Cultural and social rights include the right to education, the freedom to carry out scientific and technical research, and the right to housing. The constitution also emphasizes the citizen's right to freedom of opinion and speech, freedom of the press, the right to be informed, and the rights to assemble and to form associations.

Impact and Functions of Fundamental Rights

According to the constitution, human rights are of fundamental importance in Vietnam. First, they are defensive rights because the state may not interfere with the legal position of the individual unless there is special reason to do so. Further, the constitution declares that the state shall guarantee the rights of the citizen, and the citizen must fulfill his or her duties to the state and the society. The constitution explicitly mentions the responsibility of the state to protect children, ill and injured soldiers, and the family of fallen soldiers, and revolutionary martyrs.

A general equal-treatment clause in the constitution guarantees that male and female citizens have equal rights in political, economic, cultural, and social fields and in the family.

In addition, the constitution provides that no one shall be arrested in the absence of a ruling by the People's Court or a ruling or sanction of the People's Office of Procuracy except in cases of flagrant offences. Taking a person into or holding him or her in custody must be in accordance with the law. It is strictly forbidden to use any form of harassment, coercion, torture, or violation of honor and dignity against a citizen. The constitution states that no one shall be considered guilty and be subjected to punishment before the sentence of a court has taken full legal effect.

Limitations to Fundamental Rights

The fundamental rights specified in the constitution are not without limits. The constitution specifies such possible limitations in terms of the needs of the public and the rights of others.

ECONOMY

The constitution specifies that the Vietnamese economic system is a multicomponent commodity economy func-

tioning in accordance with market mechanisms under the management of the state and with a socialist orientation. The constitution recognizes a system of ownership by the entire people, by collectives, and by private individuals.

The constitution prescribes that the state shall encourage foreign investment and guarantee the right to lawful ownership of interests by foreign organizations and individuals.

The constitution protects the citizens' right of lawful ownership and right of inheritance. Citizens enjoy freedom of enterprise and can set up enterprises of unrestricted scope in fields of activity that are beneficial to the country and to the people. The lawful property of individuals and organizations cannot be nationalized.

The aim of the state's economic policy is to make the people rich and the country strong by releasing all productive potential, developing all the talents of all components of the economy—the state sector, the collective sector, the private individual sector, the private capitalist sector, and the state capitalist sector in various forms—and by continuing to develop material and technical resources; broadening economic, scientific, and technical cooperation; and expanding relations with world markets.

RELIGIOUS COMMUNITIES

Vietnam is a multireligious state, which has more than 20 million believers, and more than 30,000 places of worship. Buddhism is the largest of the major world religions, with about 10 million followers. The second-largest religion is Catholicism, with about 6 million adherents. Protestantism is widespread throughout Vietnam, but the number of Protestants is not very large. In addition to these religions originating in other parts of the world, Vietnam has indigenous religions, such as the Cao Dai and Hoa Hao groups, whose holy places are in the city of Tay Ninh and the provinces of Chau Doc and An Giang in the Mekong Delta. The Vietnamese religions are united in the Vietnam Fatherland Front in order to cooperate to promote national sovereignty and reconstruction.

Vietnamese folk beliefs since ancient times consist of belief in fertility, worship of nature, and worship of humankind. Among the human-revering beliefs, the custom of worshiping ancestors is the most popular; it is a nearly universal belief of the Vietnamese (also called Dao Ong Ba in Cochin China). The Vietnamese choose the death day rather than the birthday to hold a commemorative anniversary for the deceased. Every family worships Tho cong, or the god of home, who takes care of the home and blesses the family. Every village worships its Thanh hoang, the god of the village, who protects and guides the whole village. The whole nation worships the first kings, sharing the common ancestors' death anniversary (the Ritual of Hung Temple).

Freedom of belief and of religion is guaranteed by the constitution as a human right. The constitution stipulates that anyone can follow any religion or follow none. All religions are equal before the law. Citizens, whatever their beliefs or religious attitudes, enjoy all civic rights and perform civic obligations.

Despite the separation of religion and the state, there remain many areas in which they cooperate, including recognition of religious organizations. According to the 2004 ordinance on beliefs and religions, the prime minister recognizes religious organizations that are active in more than one province and/or city under central authority; the chairperson of the people's committee of the province or city under central authority recognizes religious organizations that are active mainly in that province or city.

MILITARY DEFENSE AND STATE OF EMERGENCY

Creation and maintenance of armed forces are responsibilities of the national government. The constitution states that citizens must fulfill their military obligations to the national defense.

In Vietnam, general conscription requires all men above the age of 18 to perform basic military service of 18 months. In addition, there are professional soldiers who serve for fixed periods or for life. Women can volunteer.

The military always remains subject to civil government. The constitution states that the country's president is commander in chief of the armed forces.

AMENDMENTS TO THE CONSTITUTION

The fundamental law has been designed to be particularly difficult to change. It can only be changed by the National Assembly provided that at least two-thirds of the total members of the assembly shall approve an amendment to the constitution.

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Ngo Duc Manh

YEMEN

At-a-Glance

OFFICIAL NAME
Republic of Yemen

CAPITAL
Sanaa

POPULATION
19,721,643 (December 16, 2004 census)

SIZE
555,000 sq. km (official figure); since border settlements with neighboring countries, 460,000 sq. km in some studies and official documents

LANGUAGES
Arabic (official)

RELIGIONS
Islam (official religion; both Sunni and Zaidi), small minority of Jews

NATIONAL OR ETHNIC COMPOSITION
Predominantly Arab; also Afro-Arab, South Asian, European

DATE OF INDEPENDENCE OR CREATION
May 22, 1990 (Unification Day; 1918, North Yemen independence; 1967, South Yemen independence)

TYPE OF GOVERNMENT
Combination of parliamentary and presidential systems

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
May 16, 1990

DATE OF LAST AMENDMENT
April 27, 2001

Yemen is a unitary state with a president as the dominant figure in the political and institutional system. The legislative, executive, and judicial functions are not fully separated. Fundamental rights are guaranteed, though not completely respected in reality. Islam is the religion of the state. The constitution guarantees a free-market economy.

CONSTITUTIONAL HISTORY

The territory of Yemen has a long civilized history dating back to the ancient kingdoms of Mina (1200–650 B.C.E.) and Saba (750–115 B.C.E.). In the first century C.E., the Romans invaded the country, followed later by other regional powers such as Ethiopia and Persia. Yemen was known as Arabia Felix, or “Flourishing Arabia.” Judaism and Christianity were the religions during this era.

In 628 C.E., Yemen adopted Islam and was subsumed under the rule of the Islamic caliphs. The Ottoman Turks occupied most of Yemen from 1538 to 1918. The British colonized the southern part of the country in 1839. From 1918 to 1990, Yemen was made up of two political entities. The North was ruled by an authoritarian imam until 1962, when a revolution established the Yemen Arab Republic. South Yemen, or Aden, remained a British colony until 1967, when it gained independence; three years later a radical regime took power and renamed the state the People’s Democratic Republic of Yemen.

In North Yemen, from October 1962 onward, five different constitutions were promulgated. Four of them were officially provisional and frequently amended. The first permanent constitution was adopted on December 28, 1970. It established the first parliament, called the Consultative Council. It had 159 members, some appointed by the president and the others elected by general fran-

chise. Elections were held in March 1971. However, political parties remained banned.

In the southern part of Yemen, a one-party system was established. After a period of instability (1967–70), the first constitution was introduced on November 30, 1970, and amended on October 31, 1987. The first parliament, called the People's Supreme Assembly, with 301 representatives, was formed in 1971.

In December 1981, the leaders of both countries signed a draft constitution for a United Yemen—with one state, one flag, and one people. This led to several further meetings and eventually resulted in the establishment of a joint Yemeni Council with representatives from both states to monitor progress toward unification. On December 1, 1989, a draft constitution for the unified state was published, to be ratified by both parliaments within six months and approved by a referendum.

On May 22, 1990, the Republic of Yemen was founded as the two political systems merged into one state. The unification of Yemen was achieved in a democratic way, and within a set of values and principles that have become permanent under the new constitution.

FORM AND IMPACT OF THE CONSTITUTION

The Republic of Yemen has a written constitution based on the principles of Islam and on the aims of the Yemeni revolutions of September 26 and October 14, 1962, which called for a democratic system based on political and intellectual pluralism.

BASIC ORGANIZATION STRUCTURE

Yemen is administratively divided into 21 governorates in addition to the capital city of Sanaa. The governorates in turn are divided into 352 districts comprising 2,082 subdistricts. According to the constitution, this division is based on the "principle of decentralization."

The governorates differ considerably in geographical area and population size. Each has its own representative council, all of whose members are elected except the chair, who is appointed by presidential decree and also acts as the governor. This structure applies also to the districts, each of which has an elected council and an appointed chair, who also serves as district director. This structure was organized under a local authority law, enacted to fulfill a constitutional mandate. The constitution considers the local authority as a third branch of the executive body of the government.

LEADING CONSTITUTIONAL PRINCIPLES

The leading principles are specified in the first two chapters of the constitution (Articles 1–60). The constitution defines Yemen as a republican and parliamentary democracy based on the rule of law. It does not make a clear division among executive, legislative, and judicial powers. However, it outlines certain tasks for the different authorities within the government. The Yemeni democratic system calls for a political and intellectual pluralism that guarantees freedom and personal liberties, human rights, and equal opportunities, under the law and the constitution.

Yemen's constitution provides for guarantees of human rights. In reality, however, they are not widely respected by the public authorities. If a violation of the constitution does occur in individual cases, there sometimes are no effective remedies enforceable by the judicial power.

The constitution has mandated the state to strengthen the economy on the basis of bilateral, regional, and international cooperation to advance mutual interests and strengthen peace. It also calls for stronger economic, administrative, and political structures that can apply enlightened and dynamic market mechanisms to support a larger role for the private sector.

CONSTITUTIONAL BODIES

The constitutional bodies, organized in the constitution according to their importance in constitutional theory, are the executive (which includes the president, cabinet ministers, and local authorities), the legislature (House of Representative), and the judiciary.

The Executive

The executive according to the Yemeni constitution consists of three branches organized as follows.

The president is the head of state. The president appoints the prime minister and forms the Shura Council (an advisory body). The president is also the head of the judiciary. The president has the ultimate responsibility to approve of government policies and strategies and oversee their proper implementation. The constitutional powers of the president reflect the fact that the president is the preeminent figure in Yemeni politics.

The president is elected for a seven-year term; he or she can be elected for two terms only.

According to the constitution, the Council of Ministers (cabinet) is the second branch of the executive. The prime minister is appointed by the president and forms the administration after consultation with the president. The Council of Ministers has the authority to set government policies and is empowered by the Parliament to issue by-laws and regulations. The constitution considers the Council of Ministers the highest executive and administrative body.

The local authority is considered to be the third branch of the executive. The main functions of the local authority are to raise funds and to plan and deliver services to the people according to the strategic targets set

for their respective governorates and districts. This function includes caring for the poor.

The Shura Council

The Shura Council (*Al Showra*) consists of 110 members. It is a body of senior advisers, which reports directly to the president. This council conducts studies to aid the state in implementing its development strategies. It contributes to strengthening the democratic process and promoting public participation.

The members of the Shura Council are appointed by the president.

The House of Representatives

The House of Representatives (parliament) is the legislative body of the republic. It also approves, jointly with the Shura Council, the presidential candidates' nominations. The House of Representatives consists of 301 members, elected in general, direct, free, equal, and secret balloting.

The Lawmaking Process

One of the main duties of the Parliament is the passing of legislation. Both members of the Parliament and members of the Council of Ministers can propose bills for new or amended laws. Financial bills can be submitted only by the Council of Ministers or at least 20 percent of the members of the House of Representatives.

All proposed bills are referred to the relevant specialized committees of Parliament. Certain bills can only become law if they are passed by the majority of all members of Parliament. Before promulgating a law, the president may raise objections and return the law to the Parliament for reconsideration. However, if the bill is again adopted by Parliament, it can become law without the consent of the president.

The Judiciary

The judiciary is the third constituent body of the state enshrined in the constitution. The constitution guarantees the independence of the judiciary and further gives citizens the right to challenge any perceived absence of impartiality within the judiciary.

The judiciary has a high degree of authority and autonomy. The judiciary is considered by the constitution as an integrated system, and its structure of courts, responsibilities, and jurisdictions are determined by law. The constitution considers interference with the judiciary a crime.

THE ELECTION PROCESS

General, free, equal, and direct elections of the members of the House of Representatives, local authority councils, and the president are guaranteed by the constitution. Article 43 guarantees the right to vote, to stand as an electoral candidate, and to express an opinion by referendum. All Yemenis over the age of 18, men and women, have both the right to stand for elections and the right to vote in them.

The Electoral Act makes no distinction between the genders, as both genders have legal competence.

POLITICAL PARTIES

A pluralistic system of political parties is guaranteed by the constitution. Multiparty parliamentary elections were held in 1993 and again in 1997 and 2003. The number of political parties increased rapidly to reach 22 in the 2003 elections.

The political parties law stipulates rules and procedures required for the formation of political organizations and parties, and the conduct of political activity. The constitution prohibits the misuse of governmental offices and public funds for the special interest of any specific party or political organization. According to the law, political parties can be banned only by a decision of the court.

CITIZENSHIP

Yemeni citizenship is primarily acquired at birth by children of a Yemeni father. An amendment to this law took place recently to allow the child of a Yemeni mother married to a foreigner to be treated as Yemeni until the child reaches maturity; at that time, the child may choose to be a Yemeni or to acquire the father's nationality.

The constitution guarantees that no Yemeni can be deprived of his or her citizenship. Once Yemeni nationality is acquired, it may not be withdrawn except in accordance with the law. The constitution does not allow the extradition of a Yemeni citizen to a foreign authority.

FUNDAMENTAL RIGHTS

The constitution of the Republic of Yemen recognizes the principle that all citizens are equal in accordance with Article 41, which stipulates that "all citizens have equal public rights and duties." Article 42 stipulates that citizens have the right to participate in political, economic, social, and cultural life. It also emphasizes that women are the sisters of men and have rights and duties guaranteed by the sharia and stipulated in law, as stated in Article 31.

The constitution guarantees the fundamental rights and duties of all citizens (Articles 41–61). It provides citizens with basic human rights, equal opportunities, education, freedom of movement within the state, social security, and health. Direct elections of the members of Parliament are guaranteed by the constitution.

Impact and Functions of Fundamental Rights

The constitution of the Republic of Yemen recognizes the principle that all citizens are equal, and it stipulates that citizens have the right to participate in the political, economic, social, and cultural life of the country. However, human rights are not respected in reality because of many factors, such as the impact of the tribal system on Yemeni society and culture and the neglected role of law enforcement. Some developments have been achieved in recent years in the field of human rights, but only limited progress has been made in freedom of expression and of the press.

ECONOMY

The constitution guarantees a free-market economy. It also permits lawful competition among the public, private, and cooperative sectors. The constitution mandates the government to strengthen the economic system, especially market mechanisms, through a larger role for the private sector.

RELIGIOUS COMMUNITIES

Islam is the religion of the state. The constitution guarantees religious freedom. It recognizes that residences, places of worship, and educational institutions have a sanctity that may not be violated by surveillance or search except in cases stipulated by the law.

Apart from the sanctity of houses of worship, the constitution makes no mention of the status of religious communities.

MILITARY DEFENSE AND STATE OF EMERGENCY

The constitution states that “establishing the armed forces is a responsibility of the state.” The constitution also assures that such forces belong to all the people and their function is to protect the republic and to safeguard its territories and security. Establishing of armed forces or paramilitary groups by anyone else than the government for whatever purpose or under whatever name is prohibited by the constitution. The Yemeni constitution requires the military to be politically neutral.

The president is the head of the National Defense Council. The president of the republic, after the approval of the Parliament, has power to proclaim a state of emergency and summon public mobilization.

AMENDMENTS TO THE CONSTITUTION

Either the president or one-third of the members of Parliament can request a change or amendment to one or more articles of the constitution. The request must identify the article(s) that require(s) amendment as well as the reasons for such an amendment. In its first reading, an absolute majority is needed to agree that the amendment is justifiable in principle. The final reading requires a special majority of three-quarters of all the members.

If the motion is defeated, no request to amend the same article(s) may be submitted for a full year after that motion’s defeat. Fundamental provisions of the constitution, listed in Article 158, require approval in a popular referendum, in addition to the three-quarters parliamentary support.

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Mohamed Moghram

ZAMBIA

At-a-Glance

OFFICIAL NAME
Republic of Zambia

CAPITAL
Lusaka

POPULATION
10,462,436 (2005 est.)

SIZE
290,585 sq. mi. (752,614 sq. km)

LANGUAGES
English (official), major vernaculars Bemba, Kaonda, Lozi, Lunda, Luvale, Nyanja, Tonga, and about 70 other indigenous languages

RELIGIONS
Christian 50–75%, Muslim and Hindu 24–49%, indigenous beliefs 1%

NATIONAL OR ETHNIC COMPOSITION
African 98.7%, European 1.1%, other 0.2%

DATE OF INDEPENDENCE OR CREATION
October 24, 1964

TYPE OF GOVERNMENT
Mixed presidential and parliamentarian

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
August 24, 1991

DATE OF LAST AMENDMENT
May 28, 1996

Zambia has a constitutional system of government. It combines elements of presidential and parliamentary systems; it is based on the rule of law and on the constitution as supreme law of the land. The system embraces the separation of powers among the executive, the legislature, and the judiciary. Zambia is divided into nine provinces, whose administrations are accountable to the central government; it is not a federal state. The constitution provides for the protection of fundamental human rights, guaranteed under the Bill of Rights. Effective remedies exist for violations of human rights guaranteed under the constitution and are enforceable by an independent judiciary. Human rights are enforced in the High Court, in the Supreme Court, and by an independent Human Rights Commission.

The president is both head of state and head of the administration. The president is directly elected through a free, equal, and secret ballot process. Religious freedom is guaranteed, and state and religious communities are separated. The economic system may be described as an open market economy. The military is subject to the civil government in terms of law and practice. Zambia, as are most countries of the world, is obliged by its constitution to contribute to world peace.

CONSTITUTIONAL HISTORY

The area today known as Zambia was governed by a variety of local kings and rulers when, in 1890, agents of Cecil Rhodes's British South Africa Company made their appearance. They concluded treaties with several of the African leaders, including Lewanika, the Lozi king, and set up an administration for the region. The area was divided into the protectorates of Northwestern and Northeastern Rhodesia until 1911, when the two were joined to form Northern Rhodesia. In 1924, the British government took over the administration of the protectorate.

In 1953, the Federation of Rhodesia and Nyasaland was formed under a British initiative, combining Northern Rhodesia (now Zambia), Southern Rhodesia (now Zimbabwe), and Nyasaland (now Malawi). The capital was Salisbury (now Harare), Southern Rhodesia. The federation was also called the Central African Federation. Under

an appointed governor-general, the federal government handled external affairs, defense, currency, intercolonial relations, and federal taxes for its constituent members, which, however, retained most of their former legislative structure.

The federation was dissolved on December 31, 1963, as decolonization gathered force in Africa. Kenneth Kaunda, a militant former schoolteacher, had formed a new party in 1959, the United National Independence Party (UNIP). He led a massive civil disobedience campaign in 1962, which earned Africans a larger voice in the affairs of the protectorate. On October 24, 1964, Northern Rhodesia became independent as the Republic of Zambia, with Kaunda as its first president. Kaunda ruled Zambia for a period of 27 years until 1991, when Frederick Chiluba, a trade unionist, was elected president under his party, the Movement for Multiparty Democracy (MMD), which won the majority of seats in the parliament.

Chiluba was reelected in 1996, after parliament passed a constitutional amendment preventing Kaunda from running for the presidency again. In the December 2001 elections, the MMD candidate, Levy Mwanawasa, was elected with less than 30 percent of the vote.

FORM AND IMPACT OF THE CONSTITUTION

Zambia has a written constitution, codified in a single document. The constitution takes precedence over all other laws. It is the supreme law of the land. Other laws, including international law, are applicable to the extent that they are not in conflict with the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Zambia is a unitary state divided into nine provinces established under the constitution. The provincial administrations are subject to the control of the central government and have no legislative or judicial powers. The provinces differ in area, population, and economic strength. However, the same law governs their administration.

LEADING CONSTITUTIONAL PRINCIPLES

Zambia has a centralized system of government. The president is not only head of state but also head of the administration. Two chambers are provided for under the constitution, although the House of Chiefs (tribal leaders) was only established in November 2003. The role of the tribal leaders is not legislative, but merely advisory.

The constitutional principles that define the system include the idea of Zambia as a democracy and a republic based on the rule of law. At both national and local levels, participation is by way of indirect, representative democracy. All state actions that undermine the rights of the people must have their basis in the constitution.

CONSTITUTIONAL BODIES

The chief organs of government provided for in the constitution include the state president and the cabinet, parliament, and the judiciary. Others include the Permanent Human Rights Commission, the Anti-Corruption Commission, and the Drug Enforcement Commission.

The President

The president is elected directly by adult universal suffrage through secret ballot for a five-year term. The president is both head of state and head of the administration. Reelection is possible only once. The constitution provides for extensive powers for the president. The president is the dominant figure in Zambian politics.

The Administration

The president and the cabinet ministers together with their deputies form the administration. The president and the cabinet have the authority to determine the policy of the administration. The president appoints the cabinet ministers and their deputies.

The National Assembly (Parliament)

The Zambian National Assembly is the representative organ of the people and legislative body of the republic. By way of delegation local authorities may pass only by-laws with the approval of responsible ministers. The life of an elected parliament is five years. Members of Parliament are elected in a general direct, free, equal, and secret balloting process.

The Lawmaking Process

One of the functions of the National Assembly is to make laws. Most legislation is introduced by the cabinet, some by other members of Parliament. Legislation becomes law after the bills have been debated and approved by the National Assembly and assented to by the president.

The Judiciary

The judiciary is independent of the parliamentary and executive arms of the government. The highest court is the Supreme Court of Zambia, consisting of a bench of nine judges. The Supreme Court has unlimited jurisdiction and can hear appeals on all matters, including civil, criminal, administrative, labor, revenue, and social law, and, above all, constitutional matters.

THE ELECTION PROCESS AND POLITICAL PARTICIPATION

All Zambians who have attained the age of 18 have the right to vote in the elections. Those who are at least 21 have the right to stand for election as members of Parliament, and those who are at least 35 have the right to stand for election as president of the Republic of Zambia.

POLITICAL PARTIES

Zambia has a pluralist system of political parties. The multiparty system is provided for in the constitution and thus is a fundamental element of public life. Registered political parties may only be banned by an order of the High Court. They may be deregistered when they fail to comply with the law governing societies.

CITIZENSHIP

Zambian citizenship is primarily acquired by birth. This applies if either of the parents is a Zambian citizen irrespective of where the child is born. Citizenship may also be acquired through the process of naturalization or by registration.

FUNDAMENTAL RIGHTS

The constitution defines fundamental rights in its third chapter. The constitution guarantees traditional African rights, as long as they are not repugnant to natural justice or inconsistent with written law, the constitution itself, and civil liberties. The fundamental rights set out in Chapter 3 of the Zambian constitution have binding force on the legislature, the executive, and the judiciary as directly applicable law. All public authorities are bound by the constitution. The constitution guarantees rights to equality before the law.

Impact and Functions of Fundamental Rights

The constitution is the supreme law of the land, and all laws enacted and actions by those in authority must conform to the constitutional principles. The rights guaranteed under Chapter 3 of the constitution permeate all areas of the law. Fundamental importance is given to the rights guaranteed in the constitution in the interpretation and application of all laws and value judgments.

Limitation to Fundamental Rights

Fundamental rights are not absolute. They may be limited, but the limitation must be reasonable, justifiable, and proportional.

ECONOMY

The Zambian constitution does not specify an economic system. However, it does guarantee the ownership of property, freedom of occupation or profession, and freedom of assembly and association, including the right to form and belong to associations. The economic system is oriented toward an open market.

Despite progress in privatization and budgetary reform, Zambia's economic growth has remained below the rate necessary to reduce poverty significantly. Low mineral prices have slowed the benefits of privatizing the mining industry and have reduced incentives for further private investment in the sector. Zambia has, however, continued to cooperate with international bodies on programs to reduce poverty. The mining and refining of copper constitute by far the largest industry in the country, concentrated in the cities of the Copperbelt. Copper accounts for over 80 percent of foreign exchange. Cobalt, zinc, lead, gold, silver, gemstones, and coal are also mined. Manufacturing includes food products, beverages, textiles, construction materials, chemicals, and fertilizer. Hydroelectric plants, especially the one at Kariba Dam, supply most of Zambia's energy.

RELIGIOUS COMMUNITIES

Freedom of conscience and religion is guaranteed as a human right. This guarantee also includes rights for religious communities. There is no established state religion. All public authorities must by law remain neutral in their relations with religious communities, and all religions are equal. Religious communities conduct and regulate their affairs independently but within the law that applies to all.

MILITARY DEFENSE AND STATE OF EMERGENCY

The Zambian military is established under Part 7 of the constitution. It comprises the air force, army, and national service. The military is trained and commanded according to fixed organizational requirements and terms of service; it is governed by disciplinary rules and a clear chain of command. The three components together are called the Zambian Defense Force. Its functions are to preserve and defend the sovereignty and territorial integrity of Zambia, to cooperate with civilian authority in emergency situations such as natural disasters, to foster harmony and understanding between the Zambian Defense Force and civilians, and to engage in productive activities for the development of Zambia.

The military is nonpartisan and subordinate to the civilian authority. The head of state is also the commander in chief of the armed forces. The president can appoint

and replace the commanders and is the head of the military chain of command, supported by civilian personnel who oversee the day-to-day activities of the armed forces through the Ministry of Defense.

AMENDMENTS TO THE CONSTITUTION

Most amendments to the constitution may be accomplished by a two-thirds majority of the members of parliament. However, certain parts, such as the Bill of Rights and Article 79 relating to the mode of adoption of the constitution, may only be amended by way of a referendum.

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Abraham Mwansa

ZIMBABWE

At-a-Glance

OFFICIAL NAME
The Republic of Zimbabwe

CAPITAL
Harare

POPULATION
12,671,860 (July 2004 estimate)

SIZE
150,804 sq. mi. (390,580 sq. km)

LANGUAGES
English, Shona, Ndebele

RELIGIONS
Christian (various, with traditional influences) 75%, traditional religions 24%, Muslim and other 1%

NATIONAL OR ETHNIC COMPOSITION
Shona 82%, Ndebele 14%, other indigenous 2%, other (mixed, Asian, and European descent) 2%

DATE OF INDEPENDENCE OR CREATION
April 18, 1980

TYPE OF GOVERNMENT
Parliamentary democracy

TYPE OF STATE
Unitary state

TYPE OF LEGISLATURE
Unicameral parliament

DATE OF CONSTITUTION
December 21, 1979

DATE OF LAST AMENDMENT
May 2000

Zimbabwe is, theoretically, a parliamentary democracy with a clear division of executive, legislative, and judicial powers. The current constitution is a much-amended remnant of the 1979 constitution that ended the liberation war in Southern Rhodesia. Amendments made in the 1980s removed racist provisions that protected the undemocratic influence of a white minority, increased the power of the president, and replaced a bicameral parliament with a unicameral one. In the 1990s, amendments were made to limit civil and political rights after judicial decisions in their favor. In 2000, an amendment that gave the administration greater legal power to acquire privately owned land for resettlement was enacted.

For the first 20 years the administration respected the constitution to the extent that it obeyed judicial rulings that held that the administration had breached the constitution. However, the administration refused to enforce orders of the Supreme Court to evict illegal settlers from privately owned land between 2000 and 2001. Interference with the membership of the Supreme Court and the High Court and political pressure exerted on the magistrates' courts have damaged respect for the constitution and the independence of the judiciary.

In the late 1990s a parliamentary opposition that was strong enough to block amendments to the constitution, but not the passing of ordinary legislation, emerged.

CONSTITUTIONAL HISTORY

The area of present-day Zimbabwe was colonized by the British South Africa Company in the 1890s. The country was ruled by the company as Southern Rhodesia until 1923, when the British government gave limited self-rule to the white settlers. The period of administration by the company had seen the violent dispossession of the indigenous communities from their land, labor, and property. This process continued under minority white rule up to 1980.

In 1953, Southern Rhodesia entered the Federation of Rhodesia and Nyasaland with what are now Zambia

and Malawi. The federation eventually failed when the political system's favoring of the white settlers of Southern Rhodesia became clear. In 1963 Britain granted a new constitution to Southern Rhodesia under continued white minority rule. That same year, Britain granted independence to Zambia and Malawi under majority African rule. Fearful that Britain would follow a similar path in Southern Rhodesia, the white government there declared independence as Rhodesia in 1965 and continued the political repression of the indigenous population. After a war of liberation fought from 1973 to 1979, Zimbabwe achieved its independence from Britain in 1980 under a negotiated constitution that established a parliamentary democracy.

In 2000, the Zimbabwean electorate rejected a constitution drafted by a Constitutional Commission appointed by the ruling administration. Although the draft was more liberal than the existing constitution, civil society objected that the administration had dominated the drafting process. In May 2000, immediately before parliamentary elections in which the governing party was expected to lose its constitutional majority, parliament amended the constitution to allow the executive greater power to acquire land for resettlement.

FORM AND IMPACT OF THE CONSTITUTION

Zimbabwe has a written constitution called the Constitution of Zimbabwe, which takes precedence over all other law, including common law, statutes, and customary international law. Customary international law is applicable in Zimbabwe to the extent that it does not contradict the constitution.

BASIC ORGANIZATIONAL STRUCTURE

Zimbabwe is a unitary state with a number of provinces nominally under the leadership of governors appointed by the executive. A parallel local administration includes councils, both rural and urban, elected by popular vote. However, administrative power lies with the central government and not the local government. Further, conflict between the Ministry of Local Government and urban councils dominated by the opposition has weakened the urban councils.

LEADING CONSTITUTIONAL PRINCIPLES

Zimbabwe's system of government is a parliamentary democracy. Although the president is not a member of parliament, all the cabinet ministers are. The judiciary is supposed to be independent, but its independence has been reduced in recent years as a result of forced resignations, intimidation, and political appointments. The result has been an increase in proadministration decisions, although most members of the judiciary continue to be professional and independent. The division of power has thus been eroded with the strengthening of the executive.

CONSTITUTIONAL BODIES

The predominant bodies provided for in the constitution are the president and the cabinet, parliament, and the judiciary.

The President

The president is the head of state and administration. The president appoints and dismisses all members of the cabinet, which together with the president constitutes the executive arm of government. Members of the cabinet must be members of parliament; however, having the right to appoint 12 members of parliament directly, the president can choose ministers who were never elected, place them in parliament, and fill the cabinet with unelected personnel.

The president is elected by universal suffrage for a six-year term and can be reelected. The president and the cabinet administer the country and determine which legislation is put before parliament. While the executive's control over parliament depends on its majority in parliament, direct and indirect appointments by the president make it easy for the executive to achieve such a majority.

The Parliament

The Zimbabwean parliament, the House of Assembly, is the legislative organ of the state and the representative of the constituencies set up under the constitution. Of the 150 members of parliament, 120 are elected every five years. Members of parliament are elected on a constituency roll in a secret ballot. However, accusations of electoral violence, voter intimidation, and vote rigging have made parliamentary and presidential elections subject to local and international condemnation. The president directly appoints 12 members of parliament and eight governors who have ex officio seats in parliament and appoints traditional leaders who select eight members to represent them in parliament.

The Lawmaking Process

Most legislation is enacted by the House of Assembly. Presidential approval is required before an act is promulgated. If parliament tries to force this approval, the president has the power to dismiss the body. Further, parliament passed an act granting the president power to enact emergency legislation. The act has been questioned as unconstitutional.

The Judiciary

The judiciary is appointed by the president on the recommendation of the Judicial Services Commission, a body created by the constitution and consisting of the chief justice and other members appointed by the president. The judiciary consists of a Supreme Court, which hears appeals and functions as the Constitutional Court; a High Court, which hears most serious civil and criminal cases; and the magistrate courts, which hear civil and criminal cases that are not considered serious enough for the High Court.

The executive may not fire a judge, who can only be legally removed after a panel of judges or legal practitioners nominated by the Law Society finds the judge guilty of misconduct. However, the de facto independence of the judiciary during the 1980s and 1990s was a result of executive choice rather than constitutional fact. After 1999 interference with the judiciary became common, and a new Supreme Court, more amenable to the executive, was constituted. The new bench has been markedly less proactive in protecting constitutionally enshrined civil and political rights, using technicalities to refuse to hear important matters. It has, however, been more willing to allow land reform.

Many earlier decisions by the Supreme Court enforcing constitutional rights continue in effect and continue to protect human rights in Zimbabwe; these include a decision that the administration could not force individuals to carry identification, and a ruling that allowed public demonstrations. However, legislation such as the Public Order and Security Act (which requires identification at police roadblocks and in the vicinity of crimes and allows police banning of demonstrations) appears to be in violation of the constitution but has not been overturned.

THE ELECTION PROCESS

All Zimbabweans over the age of 18 have both the right to stand for election to parliament and the right to vote in the election. All Zimbabweans over the age of 18 have the right to vote in a presidential election, but only a Zimbabwean citizen by birth or descent, and over the age of 40, can be elected president.

POLITICAL PARTIES

There is no constitutional restriction on the number of political parties. There is a strong opposition party represented in parliament, although it has indicated that it will boycott future elections.

CITIZENSHIP

Zimbabwean citizenship is primarily acquired by birth, although citizenship may also be acquired by registration (naturalization) or descent.

FUNDAMENTAL RIGHTS

The constitution of Zimbabwe guarantees fundamental rights and freedoms in Chapter 3. The constitution guarantees civil and political rights but not economic, social, and cultural rights. Sections 12 to 23 set out the specific rights, which include life, freedom from torture (amended to allow the imposition of the death penalty after extensive detention), freedom of association and expression, protection of private property (amended to facilitate acquisition of land for resettlement), and freedom from discrimination (amended to include sex and gender as prohibited grounds of discrimination). Section 24 allows direct access to the Supreme Court for remedy.

Impact and Functions of Fundamental Rights

While Zimbabwean legal and judicial thought has given centrality to fundamental rights and freedoms as protected in Chapter 3, the lack of popular participation in the drafting of the 1979 constitution has allowed some to refer to the rights protected as foreign imports. This has helped weaken the human rights culture in Zimbabwe, although the opposition continues to use rights language in its struggle for local and international support.

Limitations to Fundamental Rights

Fundamental rights and freedoms in the constitution are limited internally. The state is empowered to make laws that limit the rights in the interests of defense, public safety, public order, public morality, or public health, but only to the extent that the restriction is reasonably justifiable in a democratic society.

ECONOMY

The constitution of Zimbabwe does not determine the economic system that prevails in the country. However, in protecting private property and freedom of association, and ignoring economic, social, and cultural rights, the constitution predisposes the system toward a liberal market economy. However, massive violation of formal and informal property rights by the current administration, in both agricultural and urban areas, has severely undermined the free economy.

RELIGIOUS COMMUNITIES

There is no state religion and the formal divide between religion and state is maintained. All persons are entitled to practice their faith in freedom, subject to limitations for legitimate purposes. Freedom of conscience is protected as a fundamental right.

MILITARY DEFENSE AND STATE OF EMERGENCY

In a state of emergency, the state may, through an act of parliament, derogate from the list of fundamental rights that is set out in Schedule 2 to the constitution.

There is no compulsory military or national service in Zimbabwe. The military always remains technically subject to civil government, although in recent years members of the armed force and the police forces have made political speeches criticizing the opposition.

AMENDMENTS TO THE CONSTITUTION

The constitution of Zimbabwe may be amended by the vote of two-thirds of members of parliament.

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APPENDIX I

European Union

At-a-Glance

OFFICIAL NAME
European Union

CAPITAL
No capital. European Commission and Council have their seats in Brussels, Belgium; European Parliament has its seat in Strasbourg, France; European Court of Justice and Court of Auditors have their seats in Luxembourg.

POPULATION
461,500,000 (2006 est.)

SIZE
1,535,286 sq. mi. (3,976,372 sq. km)

LANGUAGES
21 official languages: Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, Swedish (Irish from January 1, 2007 onward); multitude of others

RELIGIONS
Roman Catholic 55.35%, Protestant 13.4%, Anglican 6.7%, Orthodox Christian 3.1%, Muslim 2.9%, Jewish 0.3%, other or none 18.25%

NATIONAL OR ETHNIC COMPOSITION
25 member states, many with several nationalities and ethnicities

DATE OF INDEPENDENCE OR CREATION
July 23, 1952 (ECSC), January 1, 1958 (EEC, EAEC), November 1, 1993 (EU)

TYPE OF GOVERNMENT
Supranational and intergovernmental democracy

TYPE OF INSTITUTION
Supranational, federal

TYPE OF LEGISLATURE
Executive and parliamentarian

DATE OF CONSTITUTION
Several documents since April 18, 1951; treaty establishing the European Union, November 1, 1993

DATE OF LAST AMENDMENT
May 1, 2004 (last accession treaty with 10 new member states)

The European Union is an entity consisting of a number of European states that have transferred a substantial amount of their powers onto that entity. Its powers are limited to those transferred on it. The European Union has 25 member states: Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom. Any European state that respects the fundamental principles of the union may apply to become a member. These principles are liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the member states.

The structures of the European Union are complex and often confusing. The European Union can be regarded as a roof on top of a building, this building consisting of communities and policies.

The European Union (EU) is founded on the European Community (EC), which was originally called the

European Economic Community (EEC), and on the European Atomic Energy Community (EAEC or EURATOM). It also consists of a Common Foreign and Security Policy as well as a Police and Judicial Cooperation in Criminal Matters, both of which establish institutional structures that provide for consultation and common policies of the member states in these fields.

In political practice, although technically not quite correct, people refer to the European Union to designate any one or all of those different communities and policies. The European Union must not be confused with the Council of Europe, an institution based on an international treaty among most European states including non-EU members such as Russia, Georgia, and Turkey. It is meant to promote democracy, the rule of law, and fundamental rights throughout Europe.

The European Community is the most important of the communities and policies under the roof of the European Union. A new constitution passed for the European Union in 2004 represents a further step in the process of European integration. This Constitution for Europe has to be ratified by all member states. This ratification process has been disturbed because referendums in the Netherlands and France did not approve the constitution.

The European Union acts through institutions of which the most important ones are the Council, in which the member states are represented; the parliament; the Commission, which can be seen as the executive branch of European government; and the European Court of Justice. There also is a Court of Auditors. The Economic and Social Committee in which societal groups are represented, and the Committee of the Regions representing regions and municipalities have mostly advisory functions.

The European Union protects fundamental rights in law and in fact. It promotes a social market economy by creating and maintaining a common market. The European Union is characterized by a process of integration heading for an ever closer union.

CONSTITUTIONAL HISTORY

Calls for a community of European states have a long history. They are based on a millennium-old common European culture and on a goal of ending the persistent and devastating wars among the European nations.

European unity became imminent after World War II (1939-45), when the British prime minister, Winston Churchill, called for a "United States of Europe." On a proposal by the French foreign minister, Robert Schumann, the six founding members, Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands, signed the Treaty of Paris on April 18, 1951, establishing the European Coal and Steel Community. This treaty was the first step toward the European Union in creating a pool for coal and steel production. These goods were regarded as being central to the ability to make war. From this it is obvious that the first and predominant idea was to prevent further war among the founding states by installing mutual control over these key productions.

In a second step, the European Economic Community was founded by the Treaty of Rome on March 25, 1957, by the same six countries, heading for the step-by-step establishment of a common market. On the same day those states also signed the treaty establishing the European Atomic Energy Community for the promotion of nuclear industries for peaceful purposes.

The success of these three European communities in creating a common market and fruitful cooperation attracted new member states. The United Kingdom, Denmark, and Ireland became full members in 1973. Greenland, forming an autonomous part of Denmark, however, opted out of the communities in 1985. Norway, after having signed an accession treaty, decided in a referendum against membership in 1972, and again in 1994. Greece became a member of the communities in 1981; Spain and Portugal followed in 1986. Austria, Finland, and Sweden are members since 1995. The membership of the Federal Republic of Germany was extended to the territory of the former German Democratic Republic on its reunification with the Federal Republic of Germany in 1990. Ten new member states joined in 2004: Poland, Hungary, the Czech Republic, Slovakia, Lithuania, Latvia, Estonia, Slovenia, Cyprus, and Malta. Bulgaria and Romania are expected to join the European Union in 2007. Negotiations with Turkey and Croatia about their accession to the union are currently under way.

By way of many treaties of the member states in the course of their history, the European communities have achieved ever-closer union. Whereas initially each of the three communities had its own government organs, the 1965 Merger Treaty joined these powers in organs competent for all three communities. The 1985 Single European Act vested intensive powers in the European decision-making process in the European Parliament.

The 1992 Maastricht Treaty on European Union, signed in Maastricht, Netherlands, on February 7, 1992, established the European Union. After a somewhat difficult ratification process the European Union formally began to exist on November 1, 1993.

In 2000, the member states adopted the Charter of Fundamental Rights of the European Union, which, however, has not yet been given legally binding force, although it has important persuasive effect throughout the work of the European Union. The European Coal and Steel Community ceased to exist on July 23, 2002, while its remaining functions were taken over by the European Communities.

On October 29, 2004, the member states adopted a new Constitution for Europe, which will enter into force upon ratification by all member states. After referendums in France and the Netherlands decided against ratification, the ratification process was interrupted. New solutions are being looked for in order to overcome this difficult situation with the aim of final adoption of the new constitution.

If the process of ratification is successful, there will be one constitutional document instead of the numerous

current documents. This single document would contribute further to the transparency of European Union decision making. The constitution will merge the European Community and the European Union in one new European Union.

The Constitution for Europe takes further steps in implementing democracy in its decision-making process by giving new powers to the European Parliament. The new constitution strengthens fundamental rights by giving directly binding force to the 2000 European Charter of Fundamental Rights, making it an integral part of the constitutional document. The constitution undertakes to contribute further to the development of a common foreign and security policy by providing for a European Union minister for foreign affairs. It makes its identity more visible by introducing the office of a president of the union.

FORM AND IMPACT OF THE CONSTITUTION

It is a controversial question whether the European Union has a constitution or not. There is not a single constitutional document. Some people say that only a state can have a constitution, and since the European Union is not a state, it cannot. From this perspective, even the 2004 Draft Constitution for Europe is not a constitution. However, a broader understanding of the term would allow one to consider that the basic structures of the treaties that formed the European Union are its constitution.

These founding documents are treaties of international law, as are the many treaties amending the founding treaties, the accession treaties, and the treaties creating special relationships with third countries. These international laws taken together are called primary community law. The institutions set up in these treaties can then adopt law, which is called secondary community law. This secondary community law may take the form of regulations of general application, binding in their entirety, and directly applicable within all member states. Secondary community law may also take the form of directives, which establish a result to be achieved by the member states within a given time. Each member state, however, can decide about the specific method and legal form to use in order to achieve this result. Finally there are decisions with binding effect on specific addressees, and recommendations and opinions without binding force.

This system of European legislation has far-reaching effects on the member states in harmonizing their legal systems. Community law takes precedence over member states' law in the specific cases in which it applies.

BASIC ORGANIZATIONAL STRUCTURE

The European Union is a supranational body that exercises its own sovereign powers within its member states. Although the member states have transferred considerable sovereign powers to the union, they remain sovereign states. The member states are very diverse in size, economic strength, and political impact.

LEADING CONSTITUTIONAL PRINCIPLES

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. It respects the national identities of its member states. The union has as its particular objectives promotion of economic and social progress through the creation of a territory without internal frontiers, implementation of a common foreign and security policy, strengthening of the protection of the rights and interests of the nationals of its member states, and maintenance and development of the union as an area of freedom, security, and justice.

The goal of the European Union is to create an ever closer union among the peoples of Europe; toward that end, the member states have transferred a substantial part of their sovereign powers to the European Communities.

The provisions on a common foreign and security policy empower the union to define and implement such a policy covering all areas of foreign and security policy. The treaty foresees greater consultation among the member states and the eventual adoption of common policy positions. The member states, however, will retain the last say in their foreign and security policies. The common policy is more a matter of intergovernmental cooperation than a policy of the union itself. The same applies to the provisions on police and judicial cooperation, for closer cooperation among police forces, customs authorities, and other agencies in the member states.

According to the principle of conferral, the European Union acts only within the limits of the powers conferred upon it by the treaties. Such powers cover major policy areas such as the single internal market, in which all obstacles to the free movement of persons, goods, capital, and services are being removed. There are common policies on agriculture, competition, taxation, immigration, social matters, culture, public health, industry, and research and technical development, and a customs union. Based in the European Community, the union also pursues environmental protection.

A number of member states have signed the 1995 Schengen Accord, which abolishes border controls on persons and goods between them. These states are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. The non-EU members Iceland, Norway, and Switzerland have also joined in this accord.

One group of member states formed the Economic and Monetary Union in 1999, introducing the euro as the common currency. These are Austria, Belgium, Finland,

France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain.

CONSTITUTIONAL BODIES

The major institutions through which the European Union acts are the European Council, the Council, the European Commission, the European Parliament, the Court of Justice, and the Court of Auditors. Also of considerable importance as advisory bodies are the Economic and Social Committee, representing societal groups, and the Committee of the Regions, in which territorial regions and municipalities are represented. The presidency of the European Union is held for a period of six months by one member state in a rotation system.

The European Council

The European Council comprises the heads of state or government of the member states and the president of the commission. It usually meets four times a year to provide the union with the necessary impetus for its development and to define its general political guidelines. It is a body distinct from the Council.

The Council

The Council is the predominant decision-making institution of the European Union. In the majority of cases, the Council shares this power of decision making with the parliament. The Council decides on matters of community legislation such as regulations and directives, ensures coordination of general economic policies and strategies of employment, and acts in all other matters provided for by the treaties.

The Council consists of a representative of each member state at ministerial level. It does not have specific permanent members, but the government ministers of the member states responsible for the area to be discussed in the Council meet for that purpose, in various configurations. Thus, if a question on agriculture is on the agenda, the government ministers for agriculture meet, or on a question of finances the government ministers of finance do so.

The voting system within the Council provides for a majority vote of the member states in cases such as budget and staff matters. For many questions, however, a qualified majority is needed. In this case the votes of the members are weighted according to the size of the member state. There is a minimal factor of 3 that applies for Malta; others, such as Luxembourg, Slovenia, Estonia, and Cyprus, are weighted by 4; some are weighted by 12, such as Hungary or Greece; France, the United Kingdom, Italy, and Germany all have a weight of 29.

Each member state occupies the presidency of the Council in a rotation system for a period of six months. The presidency coordinates the activities of the Council and usually sets priorities for the time of its office.

The European Commission

The European Commission, of 25 members, acts as the executive body of the union. It ensures the proper functioning and development of the common market. Its term of office is five years.

In a sense, the commission fills the role of a council of ministers in a parliamentary system, and its membership is assembled in a similar fashion, except that each member state is entitled to one seat. The Council, meeting in the composition of heads of state or government, nominates a candidate for president of the commission, analogously to a president's or monarch's nominating a prime minister. The nomination has to be approved by the European Parliament, as does a prime minister in most parliamentary systems. Then the Council in its normal composition, and by common accord with the nominee for president, adopts a list of persons whom it intends to appoint as members of the commission. The European Parliament votes on the nominated commission. If this vote is in favor, the members of the commission are appointed by the Council. The European Parliament can pass a motion of censure, by a two-thirds majority of the votes cast, representing a majority of all members of parliament; in that case, the commission must resign as a body.

The European Parliament

The European Parliament is the representative assembly within the European Union. It consists of representatives of the peoples of the member states. Although it has not yet acquired the normal status of parliaments in the member states, it has over time gained considerable powers and political impact. Its powers are to take part in decision making, to advise, to pronounce on a number of matters relating to the union's external relations, to adopt the budget in cooperation with the Council, and to supervise other institutions and bodies of the union.

The European Parliament has a maximum of 732 members. The number of seats allocated to each member state takes into account the size of its population. Malta has five seats; other countries such as Luxembourg, Cyprus, or Estonia have six seats; the Czech Republic or Portugal, 24; Poland, 54; France, Italy, and the United Kingdom, 78; and Germany, 99 seats. Representatives are elected for a term of five years.

The Legislative Process

The right of initiative for community legislation is vested only in the commission. However, the European Parliament by a majority vote of its members may ask the commission to submit proposals on matters on which parliament considers that an act of the community is needed. Also, the Council can make such a request. Such requests are often made.

Parliament takes part in legislating by the procedure of codecision with the Council, which is required in many

matters, such as discrimination on grounds of nationality, free movement of workers, education, consumer protection, or environmental protection. If in these matters the Council and the European Parliament do not reach agreement, a Conciliation Committee is convened; unless both parties approve the proposed text, it is deemed not to have been approved. There are also cooperation matters such as the European Monetary Union. In these cases the European Parliament is heard but does not have a decisive vote.

The Judiciary

There are a Court of Justice and a Court of First Instance. They ensure that in the interpretation and application of the treaties the law is observed. The judiciary is independent. The Court of Justice consists of one judge for each member state, assisted by eight advocates general and a registrar. The Court of Justice has always been of high importance in promoting European integration.

THE ELECTION PROCESS

The electoral procedure to the European Parliament is determined by each member state. Throughout the union, there is a direct universal balloting process based on proportional representation.

Every citizen of the union residing in a member state of which he or she is not a national has the right to vote and to stand as a candidate at municipal elections in the member states in which he or she resides, under the same conditions as nationals of that state.

Every citizen of the union residing in a member state of which he or she is not a national also has the right to vote and to stand as a candidate in elections to the European Parliament. This applies also in member states in which he or she resides, and under the same conditions as nationals of that state.

POLITICAL PARTIES

Truly European political parties have not yet been established. However, within the European Parliament, political groups are formed by political parties existing within the member states that have common political convictions and objectives. There is a highly pluralist system of political parties throughout the European Union.

CITIZENSHIP

The European Union has established the citizenship of the union. Every person holding the nationality of a member state is a citizen of the union. Citizenship of the union complements and does not replace national citizenship.

Every citizen of the union has the right to move and reside freely within the territory of the member states, subject only to the limitations and conditions established by the treaties.

FUNDAMENTAL RIGHTS

The law of the European Union provides for a wide range of fundamental rights. The union is founded on the principle of respect for human rights and fundamental freedoms.

Within the scope of their application, the treaties prohibit any discrimination on grounds of nationality. European Union law also guarantees four specific freedoms according to its aim of integration: free movement of goods, free movement of persons, freedom to provide services, and free movement of capital and payments.

Those fundamental rights that form part of the constitutional traditions common to the member states are also fundamental rights valid in European Union law. The European Court of Justice has stated that it always is the highest level of protection of a fundamental right in any member state that constitutes what the constitutional traditions common to the member states require.

The union respects also those fundamental rights guaranteed by the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, which are binding within European Union law. The European Union has also adopted the 2000 European Charter of Fundamental Rights. This is a concise declaration of fundamental rights, including social rights such as the right to work and to form trade unions. The charter also proclaims respect for the diversity of cultures, religions, and languages by the European Union.

Impact and Functions of Fundamental Rights

Fundamental rights guaranteed by the European Union have binding force only within the areas in which European Union law applies. Within that range, however, European Union law provides strong protections. This includes affirmative action. The Council may take appropriate action to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation. The European Court of Justice is a strong and vigilant institution that guarantees the implementation of fundamental rights.

The European Charter of Fundamental Rights has not yet obtained binding force. It remains a declaration of intent, not yet directly enforceable before a court. However,

the European Court of Justice does take the charter into account as an expression of the constitutional traditions common to the member states.

The relationship between the protection of fundamental rights by European Union institutions and member states' courts is still an open question. Several constitutional courts of member states have declared that they would require a final say in whether European institutions have violated fundamental rights. However, they would do so only in a case of gross and unacceptable violation. No such case has occurred so far. The European Court of Justice insists that it and not the courts of the member states would have the final decision.

Limitations to Fundamental Rights

The union may restrict fundamental rights provided that these restrictions in fact correspond to objectives of general interest pursued by the union and that they do not constitute disproportionate and intolerable interference that infringes upon the very substance of the right guaranteed.

The limitation principles included in the 1950 European Convention of Human Rights are applied within European Union law. According to these principles certain fundamental rights are subject only to specifically qualified restrictions. They must be in accordance with the law and necessary in a democratic society pursuing certain specific legitimate interests, such as public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedom of others.

ECONOMY

The treaties provide for a social market economy in a common market; for harmonious, balanced, and sustainable development; for a high level of employment and social protection; and for improvements in the standard of living and the quality of life.

RELIGIOUS COMMUNITIES

The European Union respects and does not prejudice the status of religious communities that they enjoy under member states' law. It equally respects the status of nonconfessional organizations. Religious freedom is guaranteed.

MILITARY DEFENSE AND STATE OF EMERGENCY

The European Union has no direct powers in military matters and commands no armed forces. It also does not provide for any state of emergency.

However, the provisions on a common foreign and security policy set out a number of basic objectives in the area of security policy. The most important of these objectives are to safeguard the common values, fundamental interests, independence, and integrity of the union; to strengthen the security of the union; to preserve peace and strengthen international security; to promote international cooperation; and to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms. The treaty has set up a regime of consultation, information, and cooperation in matters of security policy. The union can adopt joint actions.

In a state of emergency according to member states' law the relevant member state has the right to adopt certain measures otherwise not permitted under European Union law, such as to prohibit the entry of goods or persons of other member states in its territory.

AMENDMENTS OF THE TREATIES

The treaties constituting the European Union, as international law treaties, can be changed by mutual consent of all member states, who thus have the role of a constituent assembly. The European Parliament does not have a decisive say in the procedure for amending the treaties. Amendments to the treaties and new treaties need ratification by the member states according to their internal law. In some member states referendums are needed, in others not.

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Gerhard Robbers

APPENDIX II
Special Territories

Akrotiri

Akrotiri is a peninsula on the southwest coast of the island of Cyprus. It is an overseas territory of the United Kingdom. Akrotiri is administered by an administrator for the United Kingdom. This administrator is the same person as the commander of the British Forces Cyprus.

American Samoa

American Samoa is a group of islands in the South Pacific Ocean, east of the independent state of Samoa. American Samoa is an unorganized and unincorporated U.S. territory. American Samoa is administered by the Office of Insular Affairs in the U.S. Department of the Interior.

Anguilla

Anguilla is a Caribbean Island, east of Puerto Rico. It is an overseas territory of the United Kingdom. The British monarch is chief of state, represented by a governor. The governor appoints the chief minister and the cabinet ministers from among the elected members of the House of Assembly.

Antarctica

Most of the continent of Antarctica lies south of the Antarctic Circle. The Antarctic Treaty has more than 40 signatory nations and establishes a legal framework for managing the territory. Several nations maintain research stations on the continent.

Aruba

Aruba is an island of the Caribbean, north of Venezuela. It is an integral part of the Kingdom of the Netherlands. Aruba enjoys full autonomy in internal affairs. The Dutch government remains responsible for defense and foreign affairs.

Ashmore and Cartier Islands

Ashmore and Cartier Islands is a territory of Australia comprising a number of islands north of Australia in the Indian Ocean. Ashmore and Cartier Islands is administered by the Australian Department of Transport and Regional Services.

Baker Island

Baker Island is an atoll in the Pacific Ocean north of Australia. It is an unincorporated U.S. territory administered by the Fish and Wildlife Service of the U.S. Department of the Interior.

Bassas da India

Bassas da India is an atoll in the Indian Ocean, between Madagascar and Mozambique. It is an overseas possession of France. Bassas da India is administered by a high commissioner of France, who is resident in Réunion.

Bermuda

Bermuda is a group of islands in the North Atlantic Ocean. It is an overseas territory of the United Kingdom. Bermuda enjoys internal self-government. The British monarch is head of state, represented by a governor. The governor appoints the prime minister and on his or her nomination the cabinet ministers. The members of parliament are popularly elected and the leader of the majority is usually appointed prime minister.

Bouvet Island

Bouvet Island is an island in the South Atlantic Ocean, situated southwest of South Africa. It is a territory of Norway, administered by the Polar Department of the Ministry of Justice and Police.

British Indian Ocean Territory

The British Indian Ocean Territory is a group of islands south of India in the Indian Ocean. It is an overseas territory of the United Kingdom. The British Indian Ocean Territory is administered by a commissioner in the Foreign and Commonwealth Office. The United States and the United Kingdom run a joint military base on the most southerly island, Diego Garcia.

British Virgin Islands

British Virgin Islands is a group of islands in the Caribbean Sea, east of the U.S. Virgin Islands. It is an overseas territory of the United Kingdom enjoying internal self-government. The British monarch is head of state, represented by a governor. The leader of the majority of the popularly elected legislature is usually appointed chief minister by the governor, who also appoints the members of the Executive Council from among the members of the Legislative Council.

Cayman Islands

Cayman Islands is a group of islands in the Caribbean Sea, between Cuba and Honduras. It is an overseas territory of the United Kingdom. The British monarch is head of state, represented by a governor. After elections to the Legislative Assembly, the leader of the majority is appointed as leader of government business by the governor. The governor also appoints three members of the Executive Council; the other four members of the Executive Council are elected by the Legislative Assembly.

Christmas Island

Christmas Island is an island in the Indian Ocean, south of Indonesia. It is a territory of Australia. Christmas Island is administered by the Australian Department of Transport and Regional Services.

Clipperton Island

Clipperton Island is an island in the Pacific Ocean, southwest of Mexico. It is a possession of France. Clipperton Island is administered by a high commissioner of France residing in French Polynesia.

Cocos (Keeling) Islands

Cocos (Keeling) Islands is a group of islands in the Pacific Ocean, north of New Zealand. It is a territory of Australia. Cocos (Keeling) Islands is administered by the Australian Department of Transport and Regional Services.

Cook Islands

Cook Islands is a group of islands in the Pacific Ocean, north of New Zealand. It is a self-governing territory in free association with New Zealand. Cook Islands enjoys full self-government in internal affairs. External affairs and defense are administered by New Zealand in consultation with the Cook Islands.

Coral Sea Islands

Coral Sea Islands Territory is a group of islands in the Pacific Ocean, northeast of Australia. It is administered by the Australian Department of the Environment, Sport, and Territories.

Dhekelia

Dhekelia is a territory situated on the southeast coast of Cyprus. It is an overseas territory of the United Kingdom. Dhekelia is administered by an official who at the same time is the commander of the British Forces Cyprus.

Europa Island

Europa Island is an island in the Indian Ocean, west of Madagascar. It is a possession of France. Europa Island is administered by a high commissioner of France, who resides in Réunion.

Falkland Islands (Islas Malvinas)

Falkland Islands (Islas Malvinas) is a group of islands in the Atlantic Ocean, east of southern Argentina. It is an overseas territory of the United Kingdom. It enjoys internal self-government. Matters of defense and foreign affairs remain with the British government. The British monarch is head of state, represented by a governor. The Legislative Council consists of the governor, the chief executive, and the financial secretary as ex officio members and three other members elected by the Legislative Council. Falkland Islands (Islas Malvinas) is also claimed by Argentina.

Faroe Islands

Faroe Islands is a group of islands in the Atlantic Ocean, north of Great Britain. It is a part of the Kingdom of Denmark. Faroe Islands enjoys self-government, forming an overseas administrative division of Denmark. The Danish monarch is head of state, represented by a high commissioner. The leader of the majority in the popularly elected parliament is usually appointed prime minister.

French Guiana

French Guiana is a country in northern South America, between Brazil and Suriname. It is an overseas *département* of France.

French Polynesia

French Polynesia is a group of islands in the Pacific Ocean, between Australia and South America. It is an overseas land of France.

French Southern and Antarctic Lands

French Southern and Antarctic Lands is a group of islands in the Indian Ocean, among Africa, Antarctica, and Australia. It is an overseas territory of France.

Gibraltar

Gibraltar is a country in southwestern Europe on the southern coast of Spain. It is an overseas territory of the United Kingdom. The British monarch is head of state, represented by a governor and commander in chief. The leader of the majority of the elected House of Assembly is usually appointed chief minister. A council of ministers is appointed from among the members of the House of Assembly on consultation with the chief minister.

Glorioso Islands

Glorioso Islands is a group of islands in the Indian Ocean, northwest of Madagascar. It is an overseas possession of France. Glorioso Islands is administered by a high commissioner of France, who resides in Réunion.

Greenland

Greenland is an island in the Atlantic Ocean, northeast of Canada. It is an integral part of the Kingdom of Denmark. Greenland enjoys self-government as an overseas administrative division of Denmark. Greenland opted out of the European Union in 1985. The Danish monarch is head of state, represented by a high commissioner. The prime minister and the members of the cabinet are elected by the parliament according to the strength of the political parties.

Guadeloupe

Guadeloupe is a Caribbean island, southeast of Puerto Rico. It is an overseas *département* of France.

Guam

Guam is an island in the Pacific Ocean, between Hawaii and the Philippines. It is an organized but unincorporated territory of the United States. Guam has policy relations with the United States under the jurisdiction of the Office of Insular Affairs in the U.S. Department of the Interior.

Guernsey

Guernsey is an island in the Bristol Channel in Western Europe. It is a British Crown dependency. The British monarch is head of state, represented by a lieutenant governor and commander in chief. The States of Deliberation (parliament) is elected by a popular vote. The chief minister is elected by the States of Deliberation.

Heard Island and McDonald Islands

Heard Island and McDonald Islands is a group of islands in the Indian Ocean, between Madagascar and Antarctica. It is a territory of Australia. Heard Island and McDonald Islands is administered by the Australian Arctic Division of the Department of the Environment and Heritage.

Hong Kong

Hong Kong is a country in eastern Asia bordering China and the South China Sea. It is a special administrative region of China. Hong Kong is guaranteed internal autonomy by an agreement signed by China and the United Kingdom.

Howland Island

Howland Island is an island in the Pacific Ocean, between Hawaii and Australia. It is an unincorporated U.S. territory. Howland Island is administered by the Fish and Wildlife Service of the U.S. Department of the Interior.

Jan Mayen

Jan Mayen is an island northeast of Iceland, between the Norwegian Sea and the Greenland Sea. It is a territory of Norway. It is administered through the county governor of Nordland. This authority has been delegated to a station commander of the Norwegian Defense Communication Service.

Jarvis Island

Jarvis Island is an island in the South Pacific Ocean, about halfway between the Cook Islands and Hawaii. It is an unincorporated U.S. territory. Jarvis Island is administered by the Fish and Wildlife Service of the U.S. Department of the Interior.

Jersey

Jersey is an island in the English Channel, between the United Kingdom and France. It is a British Crown dependency. The British monarch is head of state, represented by a lieutenant governor, who is also the head of the executive branch of government. There is an Assembly of the States, which in its majority is popularly elected. Some members are appointed by the monarch.

Johnston Atoll

Johnston Atoll is a group of islands in the North Pacific Ocean, southeast of Hawaii. It is an unincorporated U.S. territory. Johnston Atoll is administered by the Pacific Air Forces at Hickam Air Force Base and the Fish and Wildlife Service of the U.S. Department of the Interior.

Juan de Nova Island

Juan de Nova Island is an island in the Indian Ocean, between Mozambique and Madagascar. It is a possession of France. Juan de Nova Island is administered by a high commissioner of France, who resides in Réunion.

Kingman Reef

Kingman Reef is a reef in the North Pacific Ocean, between Hawaii and American Samoa. It is an unincorporated U.S. territory. Kingman Reef is administered by the U.S. Fish and Wildlife Service of the Department of the Interior.

Macau

Macau is a territory in eastern Asia bordering the South China Sea. It is a special administrative region of China. China has promised that Macau, until 1999 administered by Portugal, will enjoy far-reaching internal autonomy and that China's socialist economic system will not be practiced in the territory.

Man, Isle of

The Isle of Man is an island in the Irish Sea, between Ireland and the United Kingdom. It is a British Crown dependency. The British monarch is the head of state, represented by a lieutenant governor. The chief minister as

the head of the executive branch of government is elected by the bicameral parliament.

Martinique

Martinique is an island in the Caribbean Sea, north of Trinidad and Tobago. It is an overseas *département* of France.

Mayotte

Mayotte is an island in the Indian Ocean, between Madagascar and Mozambique. It is a territorial collectivity of France.

Midway Islands

Midway Islands is a group of islands in the Pacific Ocean, between Hawaii and Japan. It is an unincorporated U.S. territory administered by the Fish and Wildlife Service of the U.S. Department of the Interior.

Montserrat

Montserrat is an island in the Caribbean Sea, southeast of Puerto Rico. It is an overseas territory of the United Kingdom.

Navassa Island

Navassa Island is an island in the Caribbean Sea, west of Haiti. It is an unincorporated U.S. territory. Navassa Island is administered by the Fish and Wildlife Service of the U.S. Department of the Interior.

Netherlands Antilles

Netherlands Antilles are two island groups in the Caribbean Sea, east of Venezuela and east of the U.S. Virgin Islands. It is an autonomous country within the Kingdom of the Netherlands. Netherlands Antilles enjoys full autonomy in internal affairs. The Dutch government remains responsible for defense and foreign affairs.

New Caledonia

New Caledonia is a group of islands in the South Pacific Ocean, east of Australia. It is an overseas territory of France.

Niue

Niue is an island in the South Pacific Ocean, east of Tonga. It is a self-governing territory in free association with New Zealand. Niue is fully responsible for its internal affairs. The government of New Zealand remains responsible for external affairs and defense. These responsibilities are exercised only at the request of the government of Niue and confer no rights of control.

Norfolk Island

Norfolk Island is an island in the South Pacific Ocean, east of Australia. It is a territory of Australia. Commonwealth responsibilities on Norfolk Island are administered through the Australian Department of Environment, Sport, and Territories.

Northern Mariana Islands

Northern Mariana Islands is a group of islands in the North Pacific Ocean, between Hawaii and the Philippines. It is a commonwealth in political union with the United States. Federal funds to the Commonwealth are administered by the U.S. Department of the Interior, Office of Insular Affairs.

Palmyra Atoll

Palmyra Atoll is a group of islands in the North Pacific Ocean, between Hawaii and American Samoa. It is an incorporated U.S. territory. Palmyra is privately owned by the Nature Conservancy. However, it is administered by the Fish and Wildlife Service of the U.S. Department of the Interior. The Office of Insular Affairs of the U.S. Department of the Interior continues to administer nine excluded areas, which comprise certain islets and submerged lands.

Paracel Islands

Paracel Islands is a group of islands in the South China Sea. It is held by China, but also claimed by Vietnam and Taiwan.

Pitcairn Islands

Pitcairn Islands is a group of islands in the South Pacific Ocean. It is an overseas territory of the United Kingdom.

Puerto Rico

Puerto Rico is an island in the Caribbean Sea, east of the Dominican Republic. It is a commonwealth associated with the United States. The chief of state is the president of the United States. There is an elected governor, who appoints the cabinet with the consent of the popularly elected bicameral legislature.

Réunion

Réunion is an island in the Indian Ocean, east of Madagascar. It is an overseas *département* of France.

Saint Helena

Saint Helena is a group of islands in the South Atlantic Ocean, between South America and Africa. It is an overseas territory of the United Kingdom. The British monarch is head of state. The governor is appointed by the monarch and is the head of the executive branch of government. The Executive Council (cabinet) consists of the governor, nonelected members, and members elected by the unicameral legislature, which in turn is elected by popular vote.

Saint Pierre and Miquelon

Saint Pierre and Miquelon is a group of islands in the North Atlantic Ocean, south of Newfoundland, Canada. It is a self-governing territorial collectivity of France.

South Georgia and the South Sandwich Islands

South Georgia and the South Sandwich Islands is a group of islands in the South Atlantic Ocean, east of South America. It is an overseas territory of the United Kingdom, also claimed by Argentina. South Georgia and the South Sandwich Islands is administered from the Falkland Islands by a commissioner, who is also the governor of the Falkland Islands.

Spratly Islands

Spratly Islands is a group of islands in the South China Sea, between Vietnam and the Philippines. The more than 100 islands are in total or in part claimed by China, Taiwan, Vietnam, Malaysia, and the Philippines.

Svalbard

Svalbard is a group of islands in the Arctic Ocean, north of Norway. It is a territory of Norway. Svalbard is administered by the Polar Department of the Ministry of Justice through a governor residing in Spitzbergen.

Tokelau

Tokelau is a group of islands in the South Pacific Ocean, between Hawaii and New Zealand. It is a self-administering territory of New Zealand.

Tromelin Island

Tromelin Island is an island in the Indian Ocean, east of Madagascar. It is a possession of France. Tromelin Island is administered by a high commissioner of France, who resides in Réunion.

Turks and Caicos Islands

Turks and Caicos Islands are two groups of islands in the North Atlantic Ocean, north of Haiti. It is an overseas territory of the United Kingdom. The British monarch is head of state, represented by a governor. After election to the unicameral legislature the leader of the majority in parliament is usually appointed chief minister.

Virgin Islands

Virgin Islands is a group of islands in the Caribbean Sea, east of Puerto Rico. It is an organized, unincorporated U.S. territory. Policy relations with the United States are under the jurisdiction of the Office of Insular Affairs of the U.S. Department of the Interior.

Wake Island

Wake Island is a group of islands in the North Pacific Ocean, between Hawaii and the Northern Mariana Islands. It is an unincorporated U.S. territory. Wake Island is administered by the Department of the Interior.

Wallis and Futuna

Wallis and Futuna is a group of islands in the South Pacific Ocean, between Hawaii and New Zealand. It is an overseas territory of France. There is a unicameral Territorial Assembly elected by popular vote. The cabinet consists of three kings and three members appointed by the high administrator of France on the advice of the Territorial Assembly.

Western Sahara

Western Sahara is a territory in northern Africa, between Morocco and Mauritania, boarding the Atlantic Ocean. It is practically annexed by Morocco.

APPENDIX III
Glossary

absolute majority more than half of the number of qualified voters. In a parliament the absolute majority is more than half of the members of parliament regardless of whether they have participated in the actual voting or not.

absolutism a political doctrine or system in which the ruler has unlimited power; all legislative, executive, and judicial power is vested in the person of the ruler.

administration the leading body of the executive branch of government, especially in American English; composed of, e.g., a presidency and cabinet, or a prime minister and council of ministers.

administrative law law that regulates the powers of the executive branch of government; it controls the structure and functions of the administrative authorities and remedies against their abuse.

Allies, the the countries (United States, United Kingdom, Soviet Union, France, and many others) that fought together against the CENTRAL POWERS in World War I (1914–18) and against the AXIS powers (predominantly Nazi Germany, Fascist Italy, and the Empire of Japan) in World War II (1939–45).

amparo a proceeding before court in predominantly Spanish legal systems originally protecting against unlawful imprisonment and now extended to the protection of other fundamental rights.

annexation addition of a territory of a state or unorganized area to the territory of another state by a law.

bicameral consisting of two chambers or houses; used to describe many parliaments or legislatures; e.g., the bicameral Congress of the United States of America consists of the Senate and the House of Representatives.

Bolshevik Revolution the Russian Communist revolution of November 1917. The bolshevik (majority) faction of the Russian Social Democratic Party in 1903 developed into the Communist Party, known as the Bolsheviks.

cabinet the policymaking body at the top of the executive branch. It usually consists of a prime minister, cabinet ministers, and/or other department heads.

capitalism a system of economy based on private ownership and private economic enterprise.

Central Powers, the an alliance of the German, Austro-Hungarian, and Ottoman Empires with Bulgaria during World War I (1914–18). They fought against Russia in the east and France and the United Kingdom in the west of Europe, which are also referred to as the ALLIES.

checks and balances a principle of government organization in which each of the branches of government has powers to oversee or limit the other branches.

civil law the law governing the relationships between private persons; the law of private rights. It is usually distinguished from criminal law, administrative law, constitutional law, and other fields of law.

civil law systems those systems of law that have developed from the law of the Roman Empire in Europe. Civil law systems are usually distinguished from common law systems, which characterize Great Britain and many of its former dependencies, such as the United States.

cohabitation in the French political system, a situation in which the president and the prime minister are members of different political camps.

cold war the decades-long political conflict (c. 1946–90) between the capitalist powers led by the United States and the Communist powers led by the Soviet Union.

common law systems those systems of law that have developed from the legal culture of England. In common law systems, precedents deriving from court decisions are dominant over statute law. Common law systems are usually distinguished from the civil law systems that characterize the European Continent.

Commonwealth (of Nations) an association of independent states united by their common allegiance to a mother country. Usually the British Commonwealth of Nations.

concordat a treaty between a national government and an external religious group, usually the Roman Catholic Holy See, regulating religious affairs.

confederation a political system combining a group of independent states for permanent joint action, such as common defense.

constitutional in accordance with the constitution.

constitutional directive provisions in the constitution providing for an aim to be pursued by the authorities but not providing for a fundamental right of individuals.

constitutional law the field of law dealing with the constitution of a state or a similar entity.

constitutional monarchy a system of government headed by a monarch who is bound by a constitution. Constitutional monarchies developed in Europe in the late 18th and 19th centuries.

constructive motion of confidence a rule by which the holder of an office such as president, chancellor, or prime minister can only be removed from office through the election of a successor in the office. Contrary to a destructive motion of confidence, by which the holder of the office can be removed without immediate election of a successor.

co-optation election or selection to a body by vote of its own members.

corporative state a political system in which the government of a state depends on professional corporations or organizations.

coup d'état an overthrow of the government by means contrary to the constitution.

criminal law a field of law that relates to crimes.

Crown dependency a territory in possession of the British Crown, applied to overseas territories or colonies.

customary international law international law that develops by custom, i.e., by the accepted practice of states.

data protection the legal protection of a person's personal or professional data such as names, addresses, religion, or economic situation.

decree a special form of legal rule issued either by order of a ruler or by an ordinance enacted by a council or administrative body. Decrees usually have inferior rank to general laws.

decree law an ordinance or other authoritative decision with the force of a law. In many countries decree laws, when issued, need subsequent approval by parliament.

delegated legislation legislation by an executive authority empowered to do so by parliament.

democratic centralism a concept in communist theory by which the will of the people is expressed and often determined by a centralist government.

double standard test a method of judicial review used by the U.S. Supreme Court. While the court upholds legislation in the economic realm as long as it is supported by any rational basis, it scrutinizes governmental attempts to regulate or abridge other civil liberties rather closely.

encomienda a system of tributes to be paid by the Native American people, introduced to all the Spanish colonies by the 1512 Laws of Burgos.

entrenched provision a provision of a constitution that either can never be changed or requires an extraordinary procedure to change.

European Council one of the governing bodies of the European Union.

European Community the most important of the communities and policies under the roof of the European Union.

ex officio member one who is a member of a body by virtue of another office he or she holds.

executive the branch of a government that is responsible for the day-to-day activity of a state, formulation of its general policy, and execution and implementation of the laws.

extraterritoriality exemption from the application of the law of a state. Usually, a diplomatic mission of one state in another state is extraterritorial of that latter state.

federal state a nation-state in which government power is distributed between a national government and component provincial or state governments.

federation See FEDERAL STATE.

free development of the personality; often also: free development of the person A widespread human right that guarantees freedom of action and privacy.

feudalism a system of government widespread in medieval Europe in which a ruler divides territory among his or her followers, who render military service in exchange; in a wider sense, any system in which large landholders exercise government functions in their domains.

first-generation rights the set of fundamental rights that historically were the first to be generally protected, such as freedom of religion, protection against unfair arrest (habeas corpus), and right to a fair trial.

first past the post election in which only the candidate who receives the most votes in a constituency obtains a mandate.

fiscal of or relating to financial matters of government.

flagranti delicto in the very act of committing a crime; caught in the act.

fundamental rights basic rights of a person, generally guaranteed in constitutions; often divided into human rights and citizens' rights.

general international law the law governing the relations between states and other subjects of international law.

government in American English, the sum of all the organs through which a state exercises its authority and performs its functions—legislative, executive, and judicial. In England and many other states the term often refers to the body heading the executive branch (including the prime minister, cabinet, etc.), which in the United States is known as the administration.

habeas corpus the right of a citizen against illegal imprisonment.

Hashemite an Arab dynasty from the Hejaz region of Arabia, along the Red Sea, who provided kings to Iraq and Jordan in the 20th century. The Hashemites trace their ancestry from Hashem (died 510 C.E.), the great-grandfather of the Prophet Muhammad.

hierarchy of norms in a given legal system there are usually a variety of types of norms or legal requirements, which can be ranked in a hierarchy of precedence; usually the constitution has the highest rank (it prevails in any conflict with a lower norm); below

that is ordinary or statute law; government regulations or ordinances are of still lower status, followed by other types of provisions.

impeachment conviction of misconduct normally leading to removal from office.

imperative mandate the rule that a representative has to vote in a given matter according to the will of his or her elector.

imperialism the policy of seeking control over (many) other nations.

imprescriptable inalienable, unable to be removed.

injunction order a decision granted by a court whereby one is required to do or to refrain from doing something.

incompatibility the legal inability to exercise an office while holding another office.

incorporated territory in the United States, a territory over which the U.S. Constitution applies in its entirety, as it does in the 50 states.

initiative the power or the right to introduce a bill of law in a parliament; the power to start the legislative process.

international law See GENERAL INTERNATIONAL LAW.

interpellation the act of formally putting in question in parliament a policy or an action of the executive branch of government.

ius officii the right or power of an office.

ius sanguinis: right of blood the rule of citizenship law that determines the citizenship of a person by the citizenship of his or her parents.

ius soli: the right of the soil in citizenship law the rule by which the citizenship of a person is determined by the place of birth.

judiciable enforceable in court.

judicial review the practice of courts to decide on the legality or constitutionality of an act or a matter.

judiciary the court system.

laicist (from the French term *laïc*) characterized by a complete, principled separation of state and religion.

law a specific kind of legal provision usually passed by a parliament. Law usually has a higher rank in the legal order than regulations, ordinances, or decrees. Often synonymous with *statutory act.*

legal person an entity that by law has full legal rights. An association or company can be a legal person and as such take part in legal transactions.

legislature the branch of government having the right to make laws.

liberal rights in most constitutional systems those fundamental rights characterized by preventing government from limiting the freedom of individuals. These liberal rights usually include freedom of speech, freedom of the press, freedom of religion and belief, freedom of association, freedom of assembly, and the right against unlawful imprisonment.

liberalism in most countries, a political philosophy insisting on the freedom of the individual and on limited government, especially in the economic and social spheres. Liberalism also describes a 19th-century European movement of economically independent citizens struggling to limit the power of monarchs and, often, of state churches; in the United States, liberals are the equivalent of social democrats in Europe.

margin of appreciation a widespread rule of law by which government authorities enjoy a certain freedom of judgment beyond what a court can claim; e.g., authorities can usually decide freely whether it is preferable to build a street with two or three lanes.

martial law suspension of the normal way of government and enforcement of the law by the military.

Muhammad (570–632 C.E.) the Arab founder and chief Prophet of the religion of Islam, whose preachings are the basis of Sharia, Islamic law.

negative rights in many constitutional systems negative rights are those fundamental rights that restrict government action; freedom of speech is a negative right in that it prevents government from censoring opinions. Negative rights are often opposed to positive rights—the right to be provided with a good or service by the government.

no confidence vote a vote in parliament declaring that parliament no longer supports a current administration; in many systems a no confidence vote means the dismissal of the administration.

ordinance a form of general rule ranking below parliamentary laws; usually issued by the president, the cabinet, an individual cabinet minister, or a local government body.

organic law in many constitutional systems a specific kind of parliamentary law with special constitutional relevance, usually requiring a special majority for its passage; organic laws often structure the government and are often called for in the text of the constitution.

organized territory under U.S. law a territory for which the U.S. Congress has enacted an organic act. Such organic acts usually include a Bill of Rights and rules about a government.

overseas collectivity in French law a territory of France not in mainland France with specially defined status.

overseas *département* in French law an ocean territory of France not in mainland France enjoying the same status as a metropolitan *département.*

overseas land in French law a territory of France not in mainland France with specially defined status.

overseas region in French law a territory of France not in mainland France enjoying the same status as a French metropolitan region. A metropolitan region is the largest territorial division within France and comprises several *départements.* Overseas regions are Guadeloupe, French Guiana, Martinique, and Réunion. Each of these regions also is an overseas *département.*

overseas territory in French law a territory of France not in mainland France with specially defined status. A similar status exists in the laws of several other countries.

parliament representative body of the people; parliaments are usually entrusted with the chief legislative power.

parliamentary system or parliamentarism a system of government in which the executive branch or administration is chosen by and can be dismissed by parliament, often via a vote of confidence.

peoples' rights in human rights law, a third-generation right enjoyed not by an individual but by one or more peoples; it can include language rights, rights to sustainable development, or protection for a threatened minority culture.

personal union different countries or territorial units governed by the same monarch.

plebiscite a referendum in which the voters directly approve or reject a law or any legal provision.

positive rights in many constitutional systems, positive rights give the citizens guaranteed access to a good or service from the government, such as free education, adequate housing, or work; often contrasted with negative rights.

Potsdam Declaration the 1945 Declaration in the German city of Potsdam (near Berlin) in which the Allied powers (United States, Great Britain, and the Soviet Union) decided on the future shape of Germany after World War II (1939–45).

preamble introductory part of a constitution or a law; usually states the basic principles or goals of the government.

preferential voting a system of voting in which the voter indicates his or her order of preference for each of the candidates. If no candidate receives the majority of first preferences, then the second and if necessary lower-order preferences can be added until a majority for one candidate is obtained.

presidential system a system of government in which the executive branch is elected separately from the legislative branch; often contrasted to cabinet government, which is usually a feature of parliamentarism.

primogeniture a rule by which the first-born son follows in a position; when the successor to a monarchical throne is chosen by primogeniture, the oldest son (or sometimes, the oldest child of either sex) inherits the Crown upon the monarch's death or abdication.

private law the law governing the relations between private individuals or corporations.

Privy Council a body of dignitaries and officials constituting an advisory council to the British monarch; usually functions through committees such as the judicial committee, which serves as court of last appeal in several present or former British colonies.

promulgate to pass (a law, a statute) into force.

proportional representation an electoral system in which party representation is proportionate to the overall share of the vote the party receives, either in the whole state or in any constituency.

proportionality a widespread principle of law requiring any legal act, action, or measure to be adequate to its purpose without any overreaching; it is often used to curb excesses when rights must be limited by law.

prorogue to adjourn a session of parliament.

public law the law governing the action of governments.

qualified majority a higher majority than a simple majority, i.e., more than just half plus one of those voting; a qualified majority may be as high as four-fifths for some purposes in some systems.

quorum the minimal number of members of a legislature or cabinet who must be present before a valid vote can be taken.

ratification the formal act of confirmation of an international treaty or constitutional amendment.

referendum a direct poll of all voters by which they may decide important matters, such as a constitutional amendment, a tax, or a change in the territory of a state.

regulation a legal rule ranking below parliamentary law. Regulations are usually issued by the administration and are often of a technical nature.

relative majority the majority of the actual votes casts. See absolute majority.

retroactive having effect on a past action; a retroactive law enters into force at a time before its enactment. A person may be prosecuted by a retroactive law for a crime committed before the law was passed.

retrospective affecting something in the past. A retrospective law affects situations that have since passed.

rule of law the principle that all government action should be based on a law; lawful government.

second-generation rights those fundamental rights that were historically recognized later than first-generation rights. They usually include social rights such as the right to work, to be educated, or to be provided with adequate housing.

semipresidential system (or mixed presidential-parliamentary system) a system of government in which the president has real and not merely symbolic functions, shared with an executive prime minister, who has some responsibility before the legislature.

sharia the body of Muslim sacred law based primarily on the Quran and other traditional sources traced back to the Prophet Muhammad.

Shiite follower of Shiism or Shia, a branch of Islam.

single transferable vote in systems of proportional representation the voter can rank candidates from different lists first, second, third, and so on, without being confined to the list of one party.

socialist legality a concept in communist theory by which the law has to be interpreted and applied according to the Marxist-Leninist revolutionary theory.

social market economy a national economy based on the idea of a free-market system tempered with ideas of social responsibility and welfare programs. In a social market economy freedom of enterprise usually is limited by a set of rights of employees such as pension rights, health insurance, and limitations on firings.

social rights Human or fundamental rights that guarantee basic prerequisites for life; often the right to work, the right to education, or the right to housing.

social state a concept of statehood in many constitutions by which government has to provide actively for the basic needs of life of the people; this can

cover minimal standard of living or a system of social insurance.

sovereignty the foundational power in a government system, endowed with the last word on all matters. In most constitutional systems the people are the sovereign; sometimes—frequently in the past—sovereignty lies with the monarch, the state, or another entity.

statute law (also statutory law) law specified in statutes; usually a law enacted by the supreme legislative branch of a government.

subsidiarity the rule that a smaller or hierarchically lower entity (a community, a county) should decide a matter as long as it can reasonably do so; only when the lower entity is incapable of tackling a problem should the higher entity intervene.

Sunni follower of Sunnism, the larger of the two major branches of Islam.

supranational organization an organization of a number of states transferring part of their sovereign rights to that organization. The European Union is a supranational organization, which has sovereign powers directly over and within its member states.

suspensive veto the refusal by an executive to assent to a decision of parliament, without actually vetoing it. Often, the president of a country can refuse to sign a bill into law, but this refusal can be overridden by subsequent repeated passing of the law by parliament, and thus can only *suspend* the act.

third-generation rights those fundamental rights that have found wide constitutional protection most recently, usually entailing the rights of groups, such as minority protection, protection of cultures and languages, or the right to sustainable development of developing countries.

tutela action the right to act in court in favor of someone else.

two-round system (runoff system or double-ballot system) a system of election in which a candidate must receive an absolute majority to be elected. If no one achieves a majority in the first round, a second round is conducted, usually between the two candidates who have won the most votes in the first round. Often used in presidential elections.

Ulema a group of Muslim scholars and theologians who professionally study and elaborate the Muslim legal system.

unicameral having only one chamber or house; used of parliaments or other representative bodies.

unincorporated territory a territory under U.S. jurisdiction in which only select parts of the U.S. Constitution apply.

unitary state a state system without subdivisions of relevant independence; opposite of a federal state.

United Nations Partition Plan a 1947 plan to resolve the Arab-Jewish conflict in the British Mandate of Palestine, by partitioning the territory into Jewish and Arab states, with the Greater Jerusalem area (encompassing Bethlehem) under international control. The failure of this plan led to the 1948 Arab-Israeli War.

unorganized territory under U.S. law a U.S. territory possessed by the U.S. government that is not within any of the states of the union and has not been organized into a self-governing unit.

Velvet Revolution the period that brought about the bloodless overthrow of the Communist regime in Czechoslovakia (today the Czech Republic and the Slovak Republic).

Versailles, Treaty of the peace treaty that put an official end to World War I (1914–18) between the ALLIES and CENTRAL POWERS.

veto a rejection by the executive of a bill already passed by the legislature; if the president exercises the veto, the law cannot go into force (absolute veto) or has to be enacted again, sometimes with a special majority (suspensive veto).

vote of no confidence See NO CONFIDENCE VOTE.

Westminster type of government a type of government structured as the British system is, characterized by the predominant position of the prime minister and a weak division of powers.

writ a document usually issued by a court.

writ of mandamus order of a higher court to an inferior court.