A Practical Guide to Constitution Building:

Principles and Cross-cutting Themes

Nora Hedling

This paper appears as chapter 2 of International IDEA's publication *A Practical Guide to Constitution Building*. The full Guide is available in PDF and as an e-book at <http://www.idea.int> and includes an introductory chapter (chapter 1), and chapters on building a culture of human rights (chapter 3), constitution building and the design of the executive branch, the legislature and the judiciary (chapters 4, 5 and 6), and decentralized forms of government in relation to constitution building (chapter 7).

International IDEA resources on Constitution Building

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Foreword

The oldest constitutions in the world were framed in the 17th century and have been described as revolutionary pacts because they ushered in entirely new political systems. Between then and now, the world has seen different kinds of constitutions. Quite a number following the end of the cold war in 1989 have been described as reformatory because they aimed to improve the performance of democratic institutions.

One of the core functions of any constitution is to frame the institutions of government and to determine who exercises the power and authority of the state, how they do so and for what purpose. But constitutions neither fall from the sky nor grow naturally on the vine. Instead, they are human creations and products shaped by convention, historical context, choice, and political struggle.

In the democratic system, the citizen claims the right of original bearer of power. For him or her, the constitution embodies a social contract that limits the use of power by government to benefit the citizen in exchange for his or her allegiance and support. The term 'constitutionalism' sums up this idea of limited power.

At the same time, the core importance of constitutions today stretches beyond these basic functions. Constitutions come onto the public agenda when it is time to change to a better political system. People search for constitutions that will facilitate the resolution of modern problems of the state and of governance. Today, these problems are multifaceted and increasingly global—from corruption to severe financial crises, from environmental degradation to mass migration. It is understandable that people demand involvement in deciding on the terms of the constitution and insist upon processes of legitimizing constitutions that are inclusive and democratic. The term 'new constitutionalism' has entered the vocabulary of politics as further testament to this new importance of constitutions. Its challenge is to permit the voices of the greatest cross section of a society to be heard in constitution building, including women, young people, vulnerable groups and the hitherto marginalized.

Conflict still belies constitutions. Older constitutions were the legacy of conflict with colonialism; newer constitutions have aimed to end violent internecine rivalry between groups with competing notions about the state and to whom it belongs. Certainly, these new constitutions are loaded with the expectation that they will herald a new era of peace and democracy, leaving behind authoritarianism, despotism or political upheaval.

Constitutions are now being framed in an age when the dispersal of norms and of the principles of good governance is fairly widespread in all the continents of the world. This would have taken longer without the role of international organizations, in particular the United Nations and others such as International IDEA. It is noteworthy that declining levels of violent conflict between states have also catalysed international dialogue on shared values, such as human rights, the rule of law, freedom, constitutionalism, justice, transparency and accountability—all of them important ingredients of any constitutional system. Shared values

permit organizations such as the African Union and the Organization of American States to be stakeholders of constitutional governance in their member states which may legitimately intervene when constitutions are not respected, for instance in the holding and transfer of power after free elections.

I encourage constitution builders to take advantage of the lessons and options that other countries and international agencies can offer. There is little need to reinvent the wheel to deal with issues such as incorporating human rights in constitutions, guaranteeing the independence of the judiciary, subsuming security forces under civilian democratic control, and guaranteeing each citizen the exercise of a free, fair and credible vote. The mistake is to believe that this superficial commonality justifies a blueprint approach to framing constitutions.

The idea of shared norms and values should not discount the fact that constitution builders have been learning by doing. Each instance of constitution building will present tough issues to be resolved, for instance, what to do with incumbents who refuse to leave power and use all means in order to rule. The concentration of power observed recently by Mikhail Gorbachev in his assessment of the world today, after the legacy of the 1990s, is indeed a real threat to constitutional democracy everywhere.

The world is changing at a rapid pace. The constitution builder today has an advantage lacked by his or her predecessor. National constitutions have become a world-wide resource for understanding shared global values and at the click of a button information technology permits an array of constitutional design options to be immediately accessed.

What this new Guide from International IDEA offers actors who are engaged in the constitution-building process is a call for more systematic ways for reviewing constitutions and an emphasis that there are neither inherently stable or superior constitutional systems nor one-size-fits-all formulas or models. The Guide highlights the fact that each country must find its own way in writing its own constitution. Furthermore, designing a constitution is not a purely academic exercise in which actors seek the best technical solution for their country. The drafters and negotiators of constitutions are political actors aiming to translate their political agendas into the text of the constitution. Thus, the constitutional documents that result are rarely the best technical option available, but the best constitutional compromise achievable.

The Guide aims to enhance debates in the search for a model that reflects the needs of a particular country as the result of a political compromise. Addressing constitution builders globally, it is best used at an early stage during a constitution-building process. It supplies information that enriches initial discussions on constitutional design options and will prove extremely useful as an introduction to the understanding of the complex area of constitution building.

The world may soon witness a regional wave of democratic constitution building as a result of the current dynamics in the Arab world. Thus, this Guide is published at a timely moment.

Cassam Uteem,
former President of Mauritius

Preface

In recent decades countries from all continents have reframed their constitutional arrangements—in the last five years alone Bolivia, Ecuador, Egypt, Iceland, Kenya, Myanmar, Nepal, Sri Lanka, Sudan, Thailand and Tunisia have all been involved in one stage or another in a constitution-building process. In the aftermath of the people-led uprisings in the Arab world in 2011, constitution building is set to play a fundamental role in creating sustainable democracy in the region.

Constitution building often takes place within broader political transitions. These may relate to peace building and state building, as well as to the need for reconciliation, inclusion, and equitable resource allocation in a post-crisis period. Many constitutions are no longer only about outlining the mechanics of government, but also about responding to these broader challenges in a way which is seen as legitimate and widely accepted. As the demands placed on constitutions have increased, they have often become complex and lengthy, and hence more challenging to design, as well as implement. As a result, those involved in shaping constitutions require access to broad, multidisciplinary and practical knowledge about constitution-building processes and options.

The sharing of comparative knowledge about constitution building is one of International IDEA's key areas of work, and this publication draws together this comparative knowledge and expertise for the first time in a *Practical Guide to Constitution Building*, which has been carefully compiled by expert authors.

This publication aims to respond to the knowledge gaps faced by politicians, policymakers and practitioners involved in contemporary constitution building. Its principal aim is to provide a first-class tool drawing on lessons from recent practice and trends in constitution building. It is divided into chapters which can be read as individual segments, while the use of a consistent analytical framework across each chapter provides a deeper understanding of the range of issues and forces at play in processes of constitutional development.

The *Practical Guide to Constitution Building* reflects how fundamental constitution building is to the creation of sustainable democracy. Constitution building is a long-term and historical process and is not confined to the period when a constitution is actually written. While focusing on constitutions as key documents in themselves, this publication stresses understanding constitutional systems as a whole, including the relevant principles (chapter 2) and the need to build a culture of human rights (chapter 3), as well as the provisions for institutional design (chapters 4 to 6) and decentralized forms of government (chapter 7). It does not offer a blueprint or model for constitutions, but draws lessons from recent practice and knowledge. Among those lessons is that constitutions may well say one thing on paper but work differently in practice.

I would like to express my sincere gratitude to the authors, to the practitioners who contributed insights derived from their experience, and to the government of Norway for its support. *A Practical Guide to Constitution Building* would not have become a reality without them.

Vidar Helgesen
Secretary-General, International IDEA

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Acronyms and abbreviations

NGO	non-governmental organization

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Principles and Cross-cutting Themes

1. Overview

This chapter examines the various ways in which practitioners have used constitutions to establish and elevate certain principles. The chapter also explores the relationship between those principles and the constitution's meaning and operation. It investigates how principles develop, whether through negotiation and explicit incorporation into the constitution, or by subsequent emergence from the text, structure and implementation of the constitution. Moreover, it looks at how constitutional principles can guide the policies of government or support the establishment of certain rights and legal structures. Finally, it explores a selected number of cross-cutting themes that commonly arise in the development of constitutions. Six cross-cutting themes are briefly explored: democratic governance, the rule of law, the management of diversity, gender equality, religion, and principles related to international law. In briefly discussing how constitutions address these concepts, the chapter explores how forces and trends within a country can shape the form and meaning of related constitutional principles and provisions. It provides examples of constitutional principles from different constitutions and constitutional processes for the purpose of illustration, but not necessarily as recommendations. Constitution builders are encouraged to further explore the constitutions and contexts of intriguing examples but should remember that provisions work differently in different contexts and should not be copied or imported from one constitutional setting to another without careful consideration.

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Key ideas

- A constitution embodies certain moral and ethical norms and values in the form of constitutional principles, sometimes explicitly stated and at other times derived subsequently through judicial interpretation. Constitutional principles can either set out general but obligatory rules or serve as aspirational standards to be met to the greatest extent possible. Constitutions are legal documents which are written, enacted, interpreted and accepted in the light of the principles they explicitly or implicitly advance.

- This chapter discusses principles explicit in, supported by, or developed from constitutions. However, societal values derived from other sources, such as religious or cultural norms and values or the values of international law, may also influence the implementation of the constitution, whether or not they are explicitly embraced by the constitution.

- Drafters may articulate constitutional principles explicitly in the text of the constitution. Principles may also be implied or derived from the structure and interaction of provisions. Political choices made and negotiations during constitution building often determine whether a given principle is explicitly embraced.

- In contexts of serious conflict, agreement on common values among individuals and groups who have experienced violence, lawlessness and human rights violations may prove particularly challenging. In some cases, as the implementation of the constitution unfolds, constitutional principles may come to be identified as fundamental, even though the drafters did not specifically designate them as such. Constitutional principles may later emerge from specific provisions and commitments contained in the constitution, as well as customary understanding and the norms of international law.

- Constitutional principles may serve as expressions of shared values, and can thereby provide a general framework for managing differences, even where divisions run deep. Where agreement on specific provisions proves impossible, constitution builders may instead be able to agree on broadly-worded principles, expecting that judges or subsequent legislation will develop them more fully. For instance, all parties may support a firm commitment to equality yet disagree on the wording of specific provisions designed to effectuate that equality. Nevertheless, agreement on principles will often constitute a great achievement. In states affected by conflict, failure to agree on common values and principles can transform constitution building into a dividing rather than uniting process.

- Many constitutional principles relate to the constitutional status of identity. Multi-ethnic, multiracial, multi-religious, multicultural, pluri-national, interracial and non-racial represent just a few terms that are likely to appear

in the constitutions of diverse states. These terms highlight different notions about the relationships between diverse groups and the state. Identity issues are also raised by a constitution's relationship to religion and the way in which it addresses gender equality.

2. The role of constitutional principles

Each constitution contains a set of principles that explain its purpose and normative foundation and guide the understanding of the constitution as a whole. These principles are often rooted in a country's historical experience; they may reflect values that are commonly held or respected by the people. Principles may demonstrate and embrace international and regional standards, either in an obligatory or in an aspirational sense. Other principles generally address current problems confronting the state. Some result directly from a collective experience of conflict and a desire to establish peace.

Each constitution sets out principles that explain its purpose and normative foundation and guide the understanding of the constitution as a whole. Enshrining shared values, these principles can contribute to a sense of unity and enhance belief in and commitment to the constitution among citizens.

2.1. Embodying values

Generally, the principles set out in a constitution serve as a broad definition of the aims and purposes of government. Constitutional principles can reflect the ideology or identity of the state. As such, and at the most basic level, they serve as the symbolic embodiment, as well as a celebration, of a society's commitment to an idea, value, or way of life. Similarly, the articulation of principles also serves an educational purpose. They inform the public and other governmental institutions about the purposes and objectives of the constitution and the government. As the enshrinement and symbol of shared values, constitutional principles can contribute to a sense of unity. Furthermore, principles, as clear statements of the purpose and priorities of the constitution, may increase belief in and commitment to the constitution among citizens, a crucial element for its successful implementation.

2.2. Creating agreement

Constitutional principles have a great capacity to unify even a diverse society with various competing interests. They may permit agreement amidst great conflict, by articulating shared values and aspirations at a level of generality that diverse groups can often accept. Principles can be used to guide, and sometimes limit, negotiations. Commitment to a certain principle up front, such as a certain form of government, can effectively take an issue off the table, limiting the influence of those opposed to that principle. A commitment to certain principles can also be a tool for breaking political deadlock and creating consensus on the basis of which negotiations can be taken forward during the drafting process. Once broad principles can be agreed upon, a commitment to creating a constitution that complies with them can be a motivating reassurance to different groups. One example of principles serving as this kind of commitment is found in the drafting experience of South Africa, where the principles agreed upon served as a form of agreement or a pact among the parties involved. All parties were assured that the agreement established would not be breached—the principles agreed upon became a legally binding, judicially enforceable basis for building the constitution (see box 1).

Constitutional principles may permit agreement amid conflict by articulating shared values and aspirations at a level of generality that diverse groups can accept. Commitment to certain principles can also be a tool for breaking political deadlock and creating consensus.

Box 1. South Africa: principles setting the course of constitutional development

Constitutional principles played an important and unique role in the development and implementation of the South African Constitution. Early political negotiations produced agreement on 34 fundamental and legally binding principles, including commitments to a unitary state with common citizenship, racial and gender equality and constitutional supremacy. These principles served not only as a foundation for the Interim Constitution but also as a framework for negotiating and drafting the 1996 Constitution. Before the 1996 Constitution entered into force, the Interim Constitution required the newly constructed Constitutional Court to certify that the 1996 Constitution complied with all 34 fundamental principles. The binding commitment made to these principles exemplifies how legal safeguards can entrench certain norms in the constitutional order: the 34 Principles established by the Interim Constitution guided and—perhaps more importantly—limited the scope of negotiation concerning the final text of the 1996 Constitution.

The South African Constitutional Court rejected the first draft of the 1996 Constitution because it did not fully uphold the 34 Principles. The draft Constitution failed, for example, to allocate sufficient power to provincial governments.* During the drafting process, the various political parties hotly

contested decentralization: the Democratic Party and the Inkatha Freedom Party sought increased decentralization while the majority party, the African National Congress (ANC), sought a highly centralized state.** The draft Constitution presented to the Constitutional Court in May 1996 favoured centralization, reflecting the interest of the ANC. Meanwhile, the 34 Principles emphasized the necessity for 'legitimate provincial autonomy' and explicitly stated that 'The powers and functions of the provinces defined in the Constitution . . . shall not be substantially less than or substantially inferior to those provided for in this [Interim] Constitution'.*** The Court struck down the centralization bias favoured by the ANC. By upholding this principle of decentralization, the Constitutional Court provided a legal safeguard against majoritarian rule. The binding commitment made to the 34 Principles demonstrates how legal safeguards can entrench certain norms in the constitutional order.

* Certification of the Constitution of the Republic of South Africa, 1996. Constitutional Court of South Africa, Case CCT 23/96, paras 471–81.

** Sarkin, Jeremy, 'The Political Role of the South African Constitutional Court', *South African Law Journal*, 114 (1997), p. 138.

*** Principle 20, Schedule 4 of the Constitution of the Republic of South Africa, Act 200 of 1993; and Principle 18, Schedule 4 of the Constitution of the Republic of South Africa, Act 200 of 1993, as amended by section 13(a) of Act 2 of 1994. See the annexe.

As points of agreement, principles provide the foundation for creating an effective government. As discussed above, they may even set concrete limits to and guidelines for the development and enforcement of the constitution. However, providing expressions of shared values that serve as points of agreement for parties in opposition is not the only sense in which principles are meaningful. Though often broad and general, they need not be seen as mere lip service to the ideas they represent. They may also carry significance for matters arising in the future as decision makers rely on principles to determine their course of action, especially where the constitution does not provide more detailed guidance. Furthermore, clarity about a principle's meaning within the constitution often follows from decisions which acknowledge particular principles as the basis for substantive policies or powers. This clarity may, in turn, increase the influence of that principle as constitutional authority. As discussed in the following sections, constitutional principles can carry a significant degree of influence as both courts and government actors rely on constitutional principles to guide their decisions.

Constitutional principles provide the foundation for creating an effective government.

2.3. Informing the meaning of the constitution

Constitutional principles guide the decisions and actions of governmental institutions and officials of the executive and legislative branches, and inform the interpretation of the constitution by members of the judiciary. Constitutions by their nature are

not able to provide detailed rules for every conflict or question that will arise in their implementation. Therefore, general principles are sometimes the only basis on which to understand the demands and requirements of the constitution in a given situation. Additionally, ambiguous constitutional language or an absence of direction on a particular matter is sometimes an intentional characteristic of a constitution. Ambiguity can result from a lack of consensus among the drafters of a constitution who, rather than let the constitution-building process stall, choose to defer particularly contested questions to the decision makers implementing the constitution. When a constitution is silent on particular questions, constitutional principles may become the key source of guidance to later decision makers.

Constitutions cannot provide detailed rules for every conflict or question that will arise in the course of their implementation. General principles are sometimes the only basis on which it is possible to understand the requirements of the constitution in a given situation.

Principles, both written and unwritten, guide courts and governments in their reactions to unforeseen issues or issues otherwise not specifically addressed in the constitution. One example of the influence of principles in the absence of more specific direction comes from Canada, where the Supreme Court has relied on derived constitutional principles to resolve the question of Quebec's ability to secede.[1] Because the constitution does not explicitly address the question of secession, the Court analysed the Constitution and found four fundamental, though unwritten, constitutional principles: federalism, democracy, the rule of law, and respect for minorities. The Court determined that the principles are 'not merely descriptive, but … also invested with a powerful normative force, and are binding upon both courts and governments'. Under this analysis, the Court found that, while unilateral secession was not constitutional, the principles demanded that the federal and provincial governments enter into negotiations if the citizens of Quebec were to vote for secession.

Clarity about the meaning of a principle within the constitution often follows from later decisions which acknowledge particular principles as the basis for substantive policies or powers.

Another example of reliance on constitutional principles to answer such contested questions comes from the South African Constitutional Court, which, in its landmark decision banning the death penalty, referred to and relied on the principle of *ubuntu*.[2] *Ubuntu* is a philosophical concept about human existence and interrelation. It has helped drive the nation's political development and has been at the centre of many political debates, including those over reconciliation and labour relations.[3] While the Constitution in force did not explicitly address the question of whether the death penalty amounted to an unlawful violation of fundamental rights, it did embrace the principle of *ubuntu* in a concluding section,[4] which guided the Court's decision on the matter: capital punishment did not accord with the principle of *ubuntu* and was not constitutional. The principle thus became an important instrument in understanding the meaning of the Constitution for a difficult and disputed question.

3. Enshrining and enforcing constitutional principles

As discussed above, principles may emerge from a process of negotiation and contestation, arising from the voices of the various groups participating in the constitution-building process. Though principles may sometimes reflect the interests of dominant groups, they often represent compromises among participating groups. Principles may also be rooted in norms and values emerging from the cultural, traditional, religious, economic and political spheres. Allowing vigorous debate and encouraging the inclusion of competing voices with divergent opinions about core state values can therefore support the creation of meaningful and enduring constitutional principles. Just as drafters may find it easier to reach agreement on broader levels, other stakeholders including citizens will probably be eager to share input on the broad questions addressed by principles. Once principles have been identified and agreed upon in this way, they should inform every provision of the constitution, ensuring consistency and harmony throughout. They are also usually written into the constitution in specific sections, sometimes with specific guidelines for their enforcement.

Constitutional principles often represent compromises among groups participating in the constitution-building process. Vigorous debate and the inclusion of competing voices with divergent opinions can help to create meaningful and enduring constitutional principles.

Not all constitutional principles, however, are explicitly identified as such in the constitution. They may not even emerge directly from the process of negotiation, debate and public participation. Instead, they may emerge over time from a deeper understanding and development of the constitution as it is implemented and its provisions are carried out. This section now discusses the ways in which constitutional principles are enshrined in the constitution as well as the various ways in which they may be enforced.

Constitutional principles may take the form of founding provisions embodied in the text of the constitution or its preamble; or of directive principles, which set out the fundamental objectives of the state; or of derived principles, underlying the text.

3.1. Founding provisions

A number of constitutions contain sections dedicated to highlighting constitutional principles. The South African Constitution's first chapter sets out its Founding Provisions (see the annexe). These lay out the foundational values of the state and include commitments to human dignity, equality, human rights and freedoms, non-racialism and non-sexism, the supremacy of the Constitution, universal adult suffrage, regular elections, and a multiparty system of democratic government. The section also identifies the official languages and calls for their promotion, as well as for respect for and the promotion of all languages commonly used in South Africa.[5] Turkey's Constitution follows its Preamble with a section dedicated to General Principles, providing the form and characteristics of the state, and describing its fundamental aims and duties, which include safeguarding democracy and ensuring the welfare, peace and happiness of the individual and society.[6] Sections such as these, dedicated to foundational principles, provide the opportunity to set out an unambiguous commitment to the values at the heart of the constitution and the state, providing clear guidance on the interpretation and implementation of the constitution.

Founding provisions provide the opportunity to set out an unambiguous commitment to the values at the heart of the constitution and the state, providing clear guidance on the interpretation and implementation of the constitution.

3.2. Preambles

Drafters often articulate principles in the preamble of a constitution or in a section devoted to founding principles. Preambles set out the purposes and aspirations of the constitutional text, expressing embraced norms, values and principles, often making reference to values developed throughout a country's history. Drafters and judges rarely attach legally enforceable rights to these promises and principles, and the preamble therefore generally serves as a broad benchmark to which political institutions and officials can aspire, but is not necessarily accepted as a source of legal rules. Nevertheless, judges have relied upon the preamble to support an understanding of other constitutional provisions. For example, the Supreme Court of India referred to the Preamble of India's Constitution in its interpretation of other constitutional provisions, thereby endowing the Preamble with a degree of legal force. In the *Kesavananda* case, for example, the Supreme Court ruled that Article 368, which outlines the amendment process, did not permit the passage of amendments that alter the Constitution's basic structure.[7] The Court relied on norms set out in the Preamble to arrive at this decision. Thus, though often lacking direct legal enforceability, preambles can colour legal interpretation. Furthermore, though experience indicates that preambles are unenforceable in the legal context, this is not always so. Barring an

The preamble to a constitution sets out the purposes and aspirations of the text, expressing norms, values and principles often developed throughout a country's history. Drafters and judges rarely attach legally enforceable rights to these principles, but judges have relied on them to support an understanding of other constitutional provisions.

explicit constitutional statement declaring the inapplicability of principles found in the preamble, the judiciary, in interpreting the constitution, will act as the final arbiter of principles found in preambles, determining their influence and application. Moreover, principles found in the preamble are nonetheless meaningful in providing guidance to decision makers on the values of the constitution and as a symbol that creates certain expectations and understandings of the ideals of the constitution.

3.3. Directive principles

Constitutional principles are also found in sections dedicated to directive principles,[8] which set out the fundamental objectives of the state and generally sketch the means by which governments can achieve them. Directive principles direct and inspire legislative policy, as well as provide the impetus for reform. They can potentially address and influence a wide range of constitutional issues, including socio-economic development, reconciliation of divided groups, official ethics, cultural development, or environmental issues. Directive principles often promote social and economic policies intended to guide—rather than tightly bind—future governments.

Directive principles set out the fundamental objectives of the state. They direct and inspire policy and are often intended to guide (but not bind) future governments. They are not usually considered judicially enforceable but may be used to inform interpretation of the constitutionality of legislation.

Directive principles serve mainly to guide or influence political power. If they attain widespread political acceptance, political enforceability will follow, as politicians contravene directive principles at their political peril. Unless enacted in legislation, directive principles are usually not considered to be judicially enforceable. This is not, however, always the case: directive principles can have legal force even without implementing legislation. The Supreme Court in Ghana, for instance, in the *Lotto* decision, determined that all constitutional provisions, including directive principles, are legally enforceable unless the constitution explicitly states otherwise.[9] Similarly, directive principles may be used to inform interpretation of the constitutionality of legislation. The Supreme Court of Sri Lanka and the Supreme Court of India have both recognized and explored the constitutional significance of directive principles.[10]

Whether exhibiting legal force or influence on political decisions, directive principles may prove influential in other ways as well. They can serve to educate the electorate on the government's duties, providing a standard by which to measure a particular government's progress or efforts. They can also help rally political support around the subsequent implementation of those principles into specific legislation. This dynamic can in particular develop when the directive principles reflect concerns for the welfare and economic development of ordinary people. On the other hand, directive principles may be less successful in providing help and service to politically under-represented or marginalized groups since those groups may lack the political support necessary to motivate action under the directive principles.

3.4. Derived principles

The written text of a constitution may not explicitly state all of the norms relevant to its interpretation. Yet the totality of a constitution's provisions or structure may indicate the presence of important underlying principles. As these principles gain prominence and widespread acceptance—through court decisions, academic examination, or general acceptance as such—their impact on the functioning of the state may become significant, influencing conventions, practice, and the considerations of political actors. Moreover, emerging norms may ultimately take on legal force. When the judiciary acknowledges constitutional norms, those norms can inform constitutional interpretation and even drive legal decisions.[11] For instance, politicians and judges may come to interpret a federal structure laid out in the constitution as a commitment to the principle of federalism, though constitutional drafters may not have explicitly identified it as such. An example of reliance on such implied principles by the Supreme Court of Canada was discussed above.

The legitimacy of derived constitutional principles, also known as implied or unwritten principles, is not universally accepted. Though most observers agree that courts and other governmental actors sometimes rely on derived principles, some question whether they should do so. The practice is problematic because it can be seen as undemocratic. Judges are usually not elected officials, subject to the democratic will. Moreover, when a constitution is ratified, it is uncertain what exactly is being ratified if potential unwritten principles emerge later. On the other hand, precisely because future circumstances are not foreseeable, the judicial branch may need to rely on an examination of the underlying values of a constitution in arriving at a decision. This matter need not be settled by the drafters of a constitution but should be noted. Because courts have derived principles from the constitutional text, drafters and other constitution builders may not fully control or be well aware and carefully considerate of the existence of constitutional principles, which will also depend on developments in society at large and the underlying facts of particular cases. Drafters and constitution builders should, however, be aware of the principles supporting and linking the provisions of a coherent constitution, as well as the governmental framework it creates, which sets the background for constitutional interpretation.

Derived constitutional principles are also known as implied or unwritten principles. The written text of a constitution may not explicitly state all the norms relevant to its interpretation but the underlying values may be drawn on to inform future decisions. Emerging norms can ultimately take on legal force.

Box 2. Directive principles in the Indian Constitution

Article 37 of India's 1950 Constitution declares that its Directive Principles of State Policy shall not be enforced by any court.* Instead, they constitute socio-economic guidelines, not guarantees, which the government should strive to achieve—a political blueprint for the development of government policies. Although directive principles influence the Supreme Court's interpretation of legally enforceable fundamental rights, they operate mainly as a political safeguard, creating a benchmark against which the electorate can hold political representatives to account. Directive principles include equitable access to property, a prohibition against discrimination based on gender or race, an independent judiciary, proportional representation and empowerment of provincial governments.

Consider education, a field where directive principles have greatly affected Indian society and law. One such principle states that legislation should guarantee children below the age of 14 a free and compulsory education.** In the case *Unni Krishnan JP v. State of Andhra Pradesh*, the Supreme Court cited the directive principle to support its holding that children have an enforceable right to free education until the age of 14.*** After the ruling, non-governmental organizations (NGOs) and other independent actors attempted to build on these achievements by lobbying for legislation that recognized education as a fundamental right. They succeeded in 2001, when the government passed a constitutional amendment recognizing the right to education as a fundamental right. This example illustrates that, while not directly enforceable by courts, directive principles can influence both judicial interpretation and legislative enactments. The example also demonstrates how, through active political and legal engagement, norms and principles can transform law.

* Article 37 of the Constitution of the Republic of India (1950 as amended to 1995).
** Article 45 of the Constitution of the Republic of India (1950 as amended 1995).
*** *Unni Krishnan J.P v. State of Andhra Pradesh*, 1993 SCC (1) 645.
See also the annexe.

4. Exploring selected themes

In addition to examining the nature and purpose of constitutional principles, this chapter looks briefly at a number of issues that constitutions frequently address. This section explores selected cross-cutting or over-arching themes and discusses how constitutions might take up issues related to them in the form of constitutional principles as well as other provisions. The topics covered are democratic governance, the rule of law, diversity, gender, religion, and the principles of international law. In discussing each issue, this section addresses two factors that are part of the underlying analytical framework of this Guide. The first is whether the relevant drivers of change are using the constitution-building process to disaggregate power from, or aggregate power to, the central government or a particular governmental institution. The second is whether constitution builders adopt legal mechanisms or rely on political accountability to enforce the relevant constitutional arrangements and constitutional principles.

4.1. Democratic governance

A commitment to democratic governance exists across modern constitutions. The principle of popular sovereignty, or governance by the people, identifies the people as the source of governmental power and provides legitimacy for the exercise of that power. Many constitutions contain a direct expression of commitment to this principle. The Russian Constitution of 1993 states that the bearer of sovereignty and the source of power in the Russian Federation is the multinational people.[12] This provision both recognizes the diversity within the state and identifies the people as the source of governmental power. In other constitutions the commitment to democratic governance underlies systems and structures put in

Many constitutions directly express commitment to the principle of democratic governance. This can give rise to many forms of government—a federation, a unitary system that centralizes power, and provisions that devolve particular legislative or administrative powers to regional or local governments.

place by the constitution, such as the creation of mechanisms for direct democracy or representative electoral systems. Drafters can acknowledge popular sovereignty by simply including a provision guaranteeing universal voting rights or a declaration that legitimate government must serve the will of the people. Article 7 of the Constitution of East Timor, for example, guarantees universal suffrage and underscores the value of the multiparty system.[13]

Constitutional commitments to democratic governance can give rise to many forms of government. Some constitutions call for democratic governance in the form of a federation that decentralizes some amount of government control to regional entities. Others may establish democratic governance through a unitary system centred on an elected legislative or executive body. Where trends toward aggregation exist, constitution builders will tend to aggregate power at the national level, often within particular institutions. For example, those who favour the aggregation of power may support a unitary system of government and the concentration of decision making in a powerful legislature or executive, the same institution that will control the military or the country's natural resources. Alternatively, drafters can disperse power by including provisions that devolve particular legislative or administrative powers to regional or local governments. Decision making will occur increasingly at lower levels of government. Regional or local authorities may act independently or jointly with federal authorities in areas such as the police force or educational systems. Dispersal may require the distribution of power among the different branches of government at the national level—better known as the separation of powers. A strong separation of powers reflects no single centre of governmental authority, even if the constitution does not devolve power to regional or local authorities.

Democratic governance requires both political and legal safeguards to operate effectively. Political safeguards include periodic elections through which the public holds its representatives accountable for drafting laws and implementing policy. The prospect of losing power has proved historically effective at aligning representatives' and constituents' interests. Fair elections thus serve both as an expression of the people's will and as a check on governmental power. Some constitutions afford politically elected officials and institutions greater discretion when exercising governmental power and trust the electorate to right any resulting wrongs. Direct democracy also provides political safeguards: constitutions might require or permit popular referendums to answer particular policy questions.

Democratic governance requires both political and legal safeguards. Political safeguards include periodic elections but a uniformly political approach may not be enough to prevent powerful interests exerting excessive influence. Legal safeguards guaranteeing rights, as well as designating and limiting governmental power, can counter this, as can oversight by independent bodies.

Nevertheless, history has demonstrated weaknesses in a uniformly political approach. A democracy that is reliant exclusively on political checks and balances could permit powerful interests—whether corporations, the military, foreign governments or

individual politicians—to skew public policy by exerting excessive influence on voters or representatives. Oversight by independent bodies may serve to limit opportunities for such influence. Furthermore, minority interests often lose out in a process that is driven exclusively by majority vote. Legal safeguards guaranteeing rights, as well as designating and limiting governmental power, can counter this majority bias. Legal safeguards generally constitute judicially enforceable provisions protecting individual rights against government violation and separating and limiting governmental powers. In a system of legal controls, constitution builders will have articulated the design of government, the specific powers of particular institutions, and the protections afforded to citizens in the form of individual rights, removing these questions from the discretion of political actors. Oversight bodies—chiefly courts—usually enforce these provisions.

4.2. Principles related to the rule of law

Another principle which most modern democracies embrace within their constitutions is the rule of law. The rule of law dictates that comprehensible and accessible written laws, whether constitutional or legislative, guide government decisions and actions. Moreover, the government must apply these laws fairly and consistently to everyone, including government officials, and everyone must have access to justice and the enforcement of the laws. Therefore, a commitment to the rule of law also requires vigilance against political corruption and the abuse of power, which can uniquely damage a society and a government politically, economically and socially.

Constitutions contain the fundamental and, most often, supreme law of the state and the rule of law dictates the enforcement of those principles above all other laws.

A commonly accepted and practical, rather than theoretical, conception of the rule of law adds an element of justice. So, in addition to law being predicable, accessible and universally applicable, the rule of law requires a just legal system. Moreover, the rule of law demands more than merely adhering to the law or the valid enactment of law. It must encompass equality and human rights and must not discriminate unjustifiably among classes of people.

Many constitutions contain express commitments to the principle of the rule of law. Constitutions can promote the rule of law in a number of other ways, most fundamentally by adopting a coherent legal framework. The doctrines of constitutional supremacy, judicial review, and independent oversight bodies can buttress that framework. Ensuring the enforcement of constitutional guarantees is also fundamental. Many constitutions contain supremacy clauses. For instance, the Constitution of Rwanda, in both the Preamble and a separate provision, declares the supremacy of the Constitution.[14] Any conflicting law is null and void. Thailand features a similar provision declaring the unenforceability of any law that is inconsistent with the constitution.[15] Supremacy protects rule-of-law measures such as legal structures, checks and balances, and guarantees of rights.

Constitutions also preserve fundamental principles and values by making amendment processes burdensome. A higher standard for amendment of the constitution than

for the passing of legislation discourages rash changes to fundamental law. In many constitutions, such as Brazil's, any amendment requires the support of a super-majority.[16] Other constitutions further ensure the permanence of certain principles and values by prohibiting amendment. The German Constitution, for instance, entrenches a number of principles, including a commitment to human rights, democracy, and the separation of powers.[17] The rule of law does not *require* entrenched principles; instead, entrenched provisions should be seen as only one possibility among myriad ways in which the rule of law is pursued constitutionally. Constitutions which are more comprehensive and contain more detail may benefit from less restrictive amendment processes in some areas, enabling development and improvement over time. On the other hand, shorter framework constitutions may benefit from higher barriers to amendment as a protection of the basic rights and principles they enshrine.

Constitutions also preserve fundamental principles and values by making the process of amendment burdensome. Some constitutions ensure the permanence of certain principles and values by prohibiting amendment.

Because the judiciary applies the law to individual cases, it acts as the guardian of the rule of law. Thus an independent and properly functioning judiciary constitutes a prerequisite for the rule of law. The rule of law also requires the right to a fair hearing and access to justice. Judicial processes, including constitutional review, ensure that the other branches of government also adhere to the rule of law. The chapter of this Guide on the judiciary (chapter 6) discusses review mechanisms in greater detail.

The rule of law is also very much concerned with combating corruption. Increasing transparency within the bodies and branches of government, guaranteeing the independence of corruption monitors such as the media and civil society organizations, and establishing designated bodies to fight corruption—all effectively reduce corruption. Checks and balances between the branches of government can also combat corruption by allowing government branches and bodies to oversee each other.

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4.3. Principles related to diversity

Post-conflict settings often require that constitutional principles address the management of diversity and promote a particular concept of identity. Diversity and identity principles are particularly important where ethnicity and religion divide groups. Yet no consensus exists on how constitutions should address diversity, and different conceptions significantly affect both the content of the constitution and the operation of government.

One approach promotes norms that recognize and accept diversity, though it does not view them as a decisive factor in ordering the state. The focus here is on building unity

rather than empowering groups based on their identities. These norms emphasize that governments can manage difference partly by highlighting a shared identity rather than divisions. From this perspective, there is also an argument for maintaining equality among diverse groups by invoking and relying on policies such as non-discrimination. Especially in the presence of aggregated power—which may pose a particular threat to minority or marginalized groups which may have limited access to power—this conception of diversity may require robust legal safeguards to protect equality. A strong bill of rights and oversight mechanisms such as judicial review can provide such safeguards.

Post-conflict settings often require that constitutional principles address the management of diversity, particularly where ethnicity and religion divide groups. Yet no consensus exists on how constitutions should address diversity. One approach is to promote norms that recognize diversity; at the other end of the spectrum, particular rights can be granted on the basis of group identity.

At the other end of the spectrum, another set of norms seeks not only to acknowledge diversity but also to grant particular rights or powers on the basis of group identity. These norms often promote the dispersal of power rather than its aggregation, providing for greater power and autonomy on a regional level. Canada has adopted an approach that allows for a degree of autonomy on the basis of nationality, resulting in asymmetric decentralization. Asymmetric decentralization distributes powers unequally or differently to different regional governments. That is, not all sub-states or regions exercise the same powers. One region might reflect a distinct identity with distinct needs. Thus the constitution might empower that region—and only that region—to provide for those needs. In Canada, following the nationalist movement in Quebec, the constitutional framework has allowed for the decentralization of certain powers to Quebec but not to other provinces.[18]

Power-sharing arrangements also fall at this end of the spectrum, creating particular rights or powers on the basis of identity. In Bosnia and Herzegovina, for example, the Constitution provides for a presidency that consists of three elected members, one Bosniac, one Croat and one Serb. Each member operates as chairperson of the presidency on a rotating basis.[19] These structures attempt to ensure the political participation and representation of distinct groups on the basis of that group identity. Other countries have adopted multilingual policies, proportional electoral systems, or other governmental structures that attempt to promote the representation of minorities—such as reserved seats for minority groups or quota systems. For example, under the Constitution of Pakistan, 10 seats of the National Assembly are reserved for non-Muslims.[20]

Constitution builders have employed both political and legal safeguards to support the conception of a diverse state. Political enforcement can be based on directive principles or other non-binding guidelines. Subsequent legislation or administrative decisions will elaborate on the meaning of these provisions and what they require—such as devolved powers, or enforceable rights and guarantees, or increased protection of minority languages through education. Constitution builders should also consider that vague

constitutional principles will probably require political support, since subsequent judicial or political enforcement will shape the meaning of relevant provisions in everyday life. Article 125 of the Iraqi Constitution guarantees the 'administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians and all other constituents'.[21] While such provisions may be read as straightforward and even expansive guarantees, a lack of detail leaves questions of the extent and manner of enforcement to political bodies and actors who will create and administer supporting legislation and regulations. Without further legislative implementation or judicial interpretation, the open-ended nature of this provision prevents a predictable understanding of how it will be applied.[22]

Reserved seats for minority groups or quota systems and other measures may aim to ensure the political participation and representation of distinct groups on the basis of group identity.

Constitutions can also permit legal mechanisms for the management of diversity. Legal controls are more likely to appear as explicit and detailed provisions addressing equality and identity rights. The controls may proscribe discriminatory practices on the basis of ethnicity, sexual orientation or gender; offer entitlements for historically oppressed or under-represented groups—such as positive discrimination provisions to promote inclusion in society and government; or create enforceable rights to protect religious and cultural freedom. Legal efforts include constitutional provisions that guarantee rights aimed at cultural preservation—such as a guarantee of education in one's native language. Legal controls may also appear as constitutional provisions mandating representation according to identity, through reserved legislative seats—seats filled only by a member of an under-represented group—or through quota systems that reserve a threshold number of candidates or governmental positions for under-represented groups.

A key characteristic of legal controls is judicial enforcement or other independent oversight to monitor and potentially override political power, whether decentralized or otherwise dispersed. That is, even if particular regions exercise autonomy, a constitution may require that all government institutions respect diversity and ensure equality. If they fail, it may be possible for alleged victims to bring their complaints to the judiciary or another non-political authority such as an ombudsperson, who is charged with investigating and representing their interests.

Legal mechanisms for the management of diversity may proscribe discriminatory practices on the basis of ethnicity, sexual orientation or gender; offer entitlements for historically oppressed or under-represented groups, such as positive discrimination provisions; or create enforceable rights to protect religious and cultural freedom.

Box 3. Addressing diversity: Bolivia's pluri-national state

In 2006, Bolivia, which has the highest indigenous population of any South American country, elected its first indigenous President, Evo Morales. He had

won popular support as part of the nationwide indigenous movement aimed at restoring indigenous rights and rewriting the Constitution. Upon taking office, Morales instigated a series of political changes designed to disperse power to indigenous communities. The 2009 Constitution emphasizes the 'pluri-national' character of the state. Entitled the Constitution of the Pluri-national State of Bolivia, it highlights the importance of diversity within Bolivia, a norm that is particularly apparent in the Preamble, which recalls Bolivia's diverse origins and the other aspects of indigenous culture, such as an intimate relationship with land and territory.

The Constitution further addresses the issue of diversity within a unified state. Confronting a history of under-representation and inequality, the drafters of the Constitution included several commitments to empowering Bolivia's indigenous population. The Constitution focuses on affirming the rights of indigenous people throughout and devotes an entire chapter to 'Derechos de las Naciones y Pueblos Indígena Originario Campesinos', which can be translated 'Rights of the Nations and Rural Native Indigenous Peoples'. In addition to officially recognizing numerous indigenous groups and their languages, the Constitution extends territorial autonomy and self-government rights by vesting a number of exclusive competences in indigenous regional authorities while also creating other concurrent or shared competences between the regional and national authorities. Bolivia's extension of power to regional and ethnic authorities represents a significant disaggregation of power in support of empowering traditionally under-represented groups.

* Chapter 4 of the Constitution of the Pluri-national State of Bolivia, 2009.

4.4. Principles related to gender

Constitution builders also should consider gender equality and women's rights. Though a commitment to gender equality is commonly proclaimed, the forms of these commitments vary widely among constitutions. Some constitutions require a strict commitment to non-discrimination. Others articulate affirmative action or positive discrimination policies to support gender inclusion and participation. Under other constitutions, equality provisions result in political bodies passing enforcing measures. In addition to provisions directly and specifically related to gender equality, constitutional principles regarding gender are expressed in human rights provisions, general equality provisions, provisions addressing citizenship, and even the language of the constitution.

Constitution builders should consider gender equality and women's rights—in some cases a strict commitment to non-discrimination, in others affirmative action or positive discrimination policies to support gender inclusion and participation.

4.4.1. Constitutional language

To ingrain principles of gender equality, one immediate and simple method is to include gender-neutral language in the text of the constitution. The use of gender-neutral language signifies an apparent commitment to equality between men and women. Though a preference for 'masculine' language over gender-neutral language can be seen as a reinforcement of a hierarchy of men over women, it is commonly found in constitutions and other official documents. Masculine pronouns (such as he or him) are often used in reference to individuals described in a constitution. Indeed, masculine language is often embedded throughout the constitution in terms such as 'mankind' or the 'founding fathers'. While some view masculine pronouns as encompassing males *and* females, exclusive use of masculine pronouns and masculine language can obscure and undermine the inclusion and experiences of women, since most often in other settings, including everyday speech, masculine pronouns are used to refer only to men.[23] A number of modern constitutions therefore refer to both individuals and groups without using pronouns, or use pronouns relating to both genders—for instance, 'he or she' or 'every person'—in an effort to eliminate any aspect of gender inequality. Constitutions that employ gender-neutral language include those of Fiji, South Africa, Switzerland and Uganda.[24]

The use of gender-neutral language in a constitution signifies an apparent commitment to equality between men and women.

4.4.2. Equal rights

Equal rights provisions provide another opportunity to address gender equality. Under many constitutions, a guarantee of equal rights does not entail a separate delineation of gender rights, but rather ensures the application of rights to everyone, including women. Provisions prohibiting discrimination on the basis of identity, including on the basis of gender, frequently accompany such provisions. Other constitutions specifically refer to women in discussing equality generally or in specific areas such as familial rights and labour rights. The Swiss Constitution contains an article which guarantees equality generally and prohibits discrimination on a number of grounds, including race, origin, gender and lifestyle (see the annexe). The same article then goes on to emphasize the equal rights of men and women, stating "Men and women have equal rights. The law provides for legal and factual equality, particularly in the family, during education, and at the workplace. Men and women have the right to equal pay for work of equal value".[25] Another set of constitutions contain provisions that specifically refer to the rights of women, committing the state to certain actions, such as the promotion of gender equality and eradicating gender discrimination. The Constitution of Paraguay states a commitment to 'foster the conditions and create the mechanisms adequate for making this equality real and effective by removing those obstacles that prevent or curtail its realization, as well as by promoting women's participation in every sector of national life'.[26]

4.4.3. Representation

Equal participation and representation in politics is another key constitutional concern.

Many constitutions introduce quota systems to ensure women's inclusion in law-making bodies, as well as other governmental institutions. Such systems compel the integration of women into political processes and governance. Some reserve a certain number of seats for women in a legislative or other government body. The Interim Constitution of Nepal required at least one-third of the members of the Constituent Assembly, the body responsible for drafting the new Constitution, to be women.[27] The Rwandan Constitution contains such provisions, reserving 24 out of 80 seats in the legislature's lower house as well as 30 per cent of the seats in the Senate for women.[28] The numbers of elected women in parliament in various countries has frequently exceed the quotas or number of reserved seats. Not long after the implementation of these quotas, women held 56.3 per cent of the seats in the Rwandan Parliament, the highest level of female parliamentary representation in the world.[29]

Another form of quota system is found in constitutions that require that a certain minimum number of women to stand as candidates in elections. To prevent political parties from placing women at the bottom of their electoral lists, and thus limiting their chance of election, many constitutions further require a certain proportion of women candidates across the party list or at the top of a party list. Such a system exists in Argentina, which has a constitutional provision mandating affirmative action as a measure to ensure equal opportunity to run for elected office and an implementing decree setting in place a mechanism to ensure that parties put up women candidates.[30] Quotas may also be used to achieve equality in representation outside legislatures. Some constitutions employ quota systems or other measures to maintain a level of gender balance in governmental positions in other areas or levels of government. Pakistan's Constitution institutes reserved seats for women in provincial assemblies.[31] The Colombian Constitution features a provision calling for the 'adequate and effective participation of women in the decision-making ranks of the public administration'.[32]

Notably, many countries employ quota systems designed by the legislature or by political parties rather than the constitution. That is, constitutions are not the only, nor necessarily the most desirable, level at which to introduce quota systems. Moreover, quota systems alone do not guarantee the full inclusion of women in political life. There are often also deep-seated social, cultural, and economic factors that contribute to disproportionate gender representation. In striving for a constitution of gender equality, focus should be placed on identifying and combating the structural disincentives that limit women's participation, as well as increasing positive mechanisms that promote participation.[33] However, although quota systems may have limited effect on the participation and inclusion of many women, they invariably increase the number of women in politics and improve their chances of participation.

Women's participation and representation in politics is a key constitutional concern. Many constitutions introduce quota systems to ensure women's inclusion in law-making bodies (as well as within political parties and at different levels of government) but in themselves are not enough to guarantee the full inclusion of women in political life.

The dispersal of governmental power through decentralization or other means may introduce a complicating factor for gender rights. As earlier discussed, decentralization can be a significant means of empowering traditionally disadvantaged groups. However, because women do not constitute a homogeneous, insular group in society but rather exist in every social class, ethnic group and religion, decentralization may fail to advance women's rights to the same extent as it can strengthen minority rights. To put it another way, a decentralized system may permit a minority group greater autonomy to govern itself, but no degree of decentralization will affect women similarly. On the contrary, in some circumstances progress on women's rights may require a powerful national centre. Some experts have concluded that decentralization may neglect the needs of groups that are not defined regionally or territorially.[34] Furthermore, traditional and religious beliefs can support the exclusion of some for certain roles on the basis of gender; yet preserving the culture embodied in traditional or religious beliefs may actually motivate the devolution of power. As such, regional authorities may favour traditional beliefs over gender equality, particularly if the two principles conflict. Moreover, in a system of dispersed power, efforts to promote equality could look very different across regions, depending on decisions made by different departments, regions or bodies. On the other hand, in some situations decentralized governments may have greater information and a greater capacity to address the particular needs and conditions of women in a given region. While seemingly unrelated, the degree of aggregation or disaggregation of governmental power will have implications for the protection and promotion of women's equality. For this reason alone, constitution builders should carefully consider these issues together.

Enforcement mechanisms ought to accompany constitutional provisions mandating gender equality. Some provisions forbid action by the government or private parties and these are often enforceable in the courts. Such provisions often prohibit discrimination on the basis of ethnicity, religion, sexual orientation, or gender. Or the constitution may guarantee, as Poland's has, non-discrimination in governmental services, such as education.[35] Particular provisions may outlaw gender discrimination in the private sphere, constitutionally guaranteeing equal pay for equal work, as in Mexico.[36] Other provisions that require government action, such as the constitutional quotas or reservation systems mentioned above, may also be enforceable by courts which can compel the government to put into action the promises of the constitution. Particularly in a government characterized by dispersed power, such provisions can support a uniform standard of gender equality, a floor below which various regions and government institutions may not descend.

On the other hand, constitutional measures aimed at gender equality may additionally or alternatively rely on political enforcement. For example, provisions which allow or require affirmative action or positive discrimination but do not outline specific systems for implementing them leave room for political actors to make choices in how the constitution's requirements will be met.

Enforcement mechanisms ought to accompany constitutional provisions mandating gender equality. They may rely on legal and/or political means, being enforceable by the courts or dependent on political support.

Consider also directive principles, which express a government's commitment or signal the direction of state policy but do not bind it to a specific course of action. Such general provisions provide constitutional recognition of gender equality yet still permit political actors to determine how that equality should be realized. The form of implementation depends on political support—on the formation of interest groups with a mandate to promote equality and on political representatives passing and implementing legislation advancing gender equality and women's rights.

Box 4. A foundation for gender equality: Ecuador's 2008 Constitution

The struggle for gender equality and women's rights has cast light on intractable problems in Ecuador. According to the Office of Gender in the Ministry of Government, women reported over 50,794 cases of sexual, psychological or physical mistreatment in the year 2000 alone.* As of 2009, the wage differential between men and women was as high as 30 per cent.** Maria Soledad Vela began a lively discussion in the Ecuadorian Constituent Assembly on women's rights and the enshrinement thereof during the drafting process for the 2008 Constitution. This issue gained salience given the repeated failures to implement gender equality after the 1998 Constitution and the Quota Act and the consequent heightened demands from the NGO and civil service sectors.***

The resulting Constitution not only guarantees equal treatment for men and women—including in education, health care, voting, social security and work—but also provides women with sexual and reproductive rights, property rights, and equal rights in the household. Furthermore, it bans media sexism and intolerance towards women and acknowledges women as a vulnerable constituency—particularly pregnant women, victims of domestic violence, sexually abused children, and elderly women.**** Importantly, the Constitution recognizes an origin of discrimination by distinguishing between gender and sexual identity.***** By recognizing different sexual orientations as well as comprehensively addressing rights guaranteed to women, the Constitution maximizes the chances of effective implementation and enforcement of equality, and represents an advancement of human rights protection.

* US Department of State, Country Reports on Human Rights Practices 2002, *Ecuador*, 31 March 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18330.htm>.

** 'Ecuadorian Legislators Face Gender Equality Challenge', available at <http://www.idea.int/americas/ecuador/legislators_face_gender.cfm> (last accessed October 2010).

*** Rosero, Rocío and Goyes, Solanda, 'Los derechos de las mujeres en la constitución del 2008', *La Tendencia: Revista de Analisis Politico,* 8 (October/November 2008), pp. 77–82, available at <http://library.fes.de/pdf-files/bueros/quito/05108/tendencia2008,8.pdf>.

**** See, for example Article 11(2) of the Constitution of Ecuador (2008) in the annexe to this chapter.

***** Rosero Garces, Rocio and Goyes Quelal, Solanda, 'Los Derechos de las Mujeres en la Constitucion del 2008'. See also the Constitution of Ecuador 2008, Article 11(2).

4.5. A constitution's relationship to religion

Religious belief undeniably shapes group and individual identities, as well as societies. Religion has historically provided the foundation on which many legal systems have developed. Because of the deep-rooted and inextricable link between religion and society, religion can also contribute to constitution building. Yet in post-conflict settings, religious belief may constitute a source of conflict and thus is a key matter to address in the constitution-building process.

Religious belief has been the foundation on which many legal systems have developed and can contribute to constitution building, but it may itself constitute a source of conflict and thus be a key matter to address in the constitution-building process.

Constitution builders have taken many different paths in incorporating religion into the constitutional order. Constitutions may embrace one or many religions; they may incorporate religious teachings into the legal order or use religious ideology to support or guide their laws; or constitutions may simply recognize religion or religious freedoms. Where religious beliefs are diverse or there are religious conflicts, constitution builders may aim to address religion in a constitution in order to contribute to the creation of a society in which people of different faiths can live peacefully together.

Constitutional provisions related to religion reflect a country's history, culture, traditions and belief systems. They also establish a relationship between religion and the constitution and constitutional laws. There are numerous ways in which constitutions incorporate religion or religious principles but one area of focus in understanding the relationship between religion and a constitution is the degree to which the constitution binds law to religion. The relevant question here is how much influence the principles of any one religion have over the law. A constitution may be closely linked to a specific religion. Conversely, a constitution may embrace many religions, be silent on the question of religion, or draw a clear line between religion and the state.

A legal system that identifies completely with a particular religion lies at one end of the spectrum. Some constitutions prioritize or favour one religion above others. Indeed, several countries decree an official religion in their constitutions. Under the constitution of Costa Rica, Roman Catholicism is the country's official state religion.[37] Yet even within countries that adopt official religions, the influence of religion over government varies. Some constitutions proclaim that the legal system must conform to the tenets of a particular religion. A religious body or actor may interact with government or government functions, as in Iran.[38] In other countries, while the official religion may serve as the foundation of the legal system, the constitution may derive force independent of religious law, as in Iraq.[39] In still other countries, the recognition of

There are numerous ways in which constitutions incorporate religion or religious principles but one area of focus is the degree to which the constitution binds law to religion. The relevant question here is how much influence the principles of any one religion have over the law.

an official religion may be largely symbolic or historical and religious leaders may not exert significant influence over governmental policy. Another example of dispersal has occurred in Indonesia, which recognizes multiple religions but does not privilege one above another.[40]

A number of constitutions sponsor no official religion. The constitutions of some countries, such as France, emphasize secularity, creating a strict separation of religion from the legal system and public life.[41] Although the constitution guarantees religious freedom, it relegates religion to the private sphere and closely protects the legal system from its influence. Government policies or laws address religion and delineate the borders between the public and private sphere. Where the exercise of private religious beliefs tests those borderlines, courts may be called upon to arbitrate.

A constitution may be closely linked to a specific religion, or embrace many religions, or be silent on the question of religion, or draw a clear line between religion and the state. The principle of freedom of religion is considered internationally to be a fundamental human right, and a state's relationship to religion must not lead to any discrimination against non-believers or adherents to a particular belief.

Another important aspect of the relationship of religion to the state is the establishment of freedom of religion. Regardless of whether constitutions acknowledge official religions, derive their principles or laws from religious teachings, or strictly limit the influence of religion in governmental activity, democratic constitutions recognize and provide protection for the right to religious freedom. Freedom of religion is considered internationally to be a fundamental human right and is protected by the 1966 International Covenant on Civil and Political Rights (ICCPR).[42] A state's relationship to religion must not impair the enjoyment of any of the rights established in the Covenant, including freedom of religion and the right to religious practice, nor must it result in any discrimination against non-believers or adherents to a particular belief.[43]

Box 5. Uniting a religiously divided country: Indonesia's *pancasila*

The Preamble of Indonesia's 1945 Constitution referenced *pancasila*, the state philosophy that serves as a basis of Indonesian law. When drafting the five principles listed under *pancasila*, President Sukarno intended to unite the disparate islands of Indonesia under particular state principles and to provide a resolution of the relationship between Islam and the state. The five principles of *pancasila* are: (1) one and only God; (2) just and civilized humanity; (3) the unity of Indonesia; (4) democracy; and (5) social justice. Putting it another way, these principles together seek to promote unity while accepting Indonesia's diversity. Despite its dated origins, *pancasila* and its traditional principles have survived to this day: the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR) re-adopted these principles in the country's recent constitutional amendment process (1999–2002) for the stated reason that *pancasila* had become a symbol of tradition and national unity.* When the MPR began the constitutional reform

process in 1999, it made the important decision to amend the Constitution instead of drafting an entirely new one, in part to keep the existing Preamble, which included *pancasila*, retaining the pan-religious state ideology it embodies.**

* Morfit, Michael, 'Pancasila: The Indonesian State Ideology According to the New Order Government', *Asian Survey*, 21/8 (1981), pp. 838–51; Weatherbee, Donald E., in *Asian Survey*, 25/2 (1985), pp. 187–97; Prawiranegara, Sjafruddin, 'Pancasila as the Sole Foundation', *Indonesia*, 38, Southeast Asia Program Publications at Cornell University (1984), pp. 74–83; and Denny Indrayana, Kompas, 'Indonesian Constitutional Reform, 1999–2002: An Evaluation of Constitution-Making in Transition', Book Publishing, Jakarta, December 2008, available at <http://www.kas.de/wf/doc/kas_19023-544-1-30.pdf>.

** Morfit, 'Pancasila: The Indonesian State Ideology According to the New Order Government'; Weatherbee in *Asian Survey*, 25/2; Prawiranegara, 'Pancasila as the Sole Foundation'; and Denny Indrayana, 'Indonesian Constitutional Reform, 1999–2002'.

4.6. Principles related to international law

International law provides a number of principles that inform modern constitutions. To attain legitimacy in the global community, constitutions must adhere to the most fundamental norms of international law, such as respecting fundamental human rights. However, beyond implementing minimum requirements to achieve international recognition and acceptance, constitutions vary in their treatment of international law and international relations.

Constitutions usually incorporate a means by which states can fulfil treaty obligations undertaken, though such means vary as between constitutions, often reflecting diverging visions of the relationship of the state and the international order. Some constitutions provide that international obligations become part of the legal order directly. The Constitution of East Timor provides an illustration, stating that the rules of international agreements apply internally 'following their approval, ratification or accession by the respective competent organs and after publication in the official gazette'.[44] This conception of international obligations, often designated *monism*, can also mean that international obligations will have primacy over domestic law. This is the case, for instance, under the Constitution of the Czech Republic, which provides that treaties 'constitute part of the legal order' and that international treaty provisions should be applied even where they are 'contrary to a [domestic] law'.[45] The Constitution of Hungary also explicitly recognizes international obligations but does not give them supremacy. Instead, it calls for domestic law to harmonize with international obligations.[46] Furthermore, the Hungarian Constitutional Court has determined that the Constitution and domestic law should be interpreted in a manner that gives effect to generally recognized international law.[47] Under other constitutions, such as Germany's, customary international law has primacy over domestic

Constitutions vary in their treatment of international law and international relations. Some provide that international obligations become part of the legal order directly. Some incorporate particular international charters. Others require international obligations to be incorporated into domestic law before they become binding.

law, but treaty obligations are treated as domestic law. When treaty obligations and domestic law conflict, the last-in-time provision prevails.[48]

Alternatively, some constitutions embrace a so-called *dualist* conception which requires that the government incorporate international obligations into domestic law before they become binding. Such an arrangement requires action by the legislature before a treaty gains force in the domestic legal system, even though under international law the treaty already binds the country.

Box 6. Perspectives on international law at the national level

Monism is the view of international law that domestic and international laws are united into a single system.	**Dualism** is the view of international law that national and international legal systems are distinct.
• International law does not need to be translated into domestic law in order to take effect. • Ratification of international law, by treaty for example, incorporates the law into the domestic legal scheme. • Accepted international law may be relied upon by judges and invoked by citizens. • In some countries with an monist perspective, the international law has precedence over domestic law. • In some countries, a ratified treaty is equal to domestic law and the last in time has precedence.	• International law must be incorporated into domestic law in order for it to have force at a national level. • Ratification of international law alone is not sufficient to give it effect at the national level. The domestic law must adapt to comply with the international law in order to give effect to a treaty. • Judges and citizens must rely on the national law that gives international law effect, rather than directly on the international law. • If domestic law conflicts with treaty obligations, the domestic law is still valid at a national level, even though the conflict may result in a violation of international law.

Not only do most constitutions provide a framework for ratifying and enforcing treaties, but many constitutions actually incorporate particular international charters—such as those relating to human rights—or model certain provisions on those charters, all of which can legally constrain the operation of government. Some constitutions merely reference specific treaties but others incorporate the charters into their constitutional law. Under Nicaragua's Constitution, the rights contained in a number of charters, including the 1948 Universal Declaration of Human Rights and the American Declaration of the

Rights and Duties of Man (also of 1948), apply fully to all government institutions.[49] Similarly, Ghana's Constitution calls for the government to 'adhere to the principles enshrined in or as the case may be, the aims and ideals of' a number of charters and treaties, as well as other international organizations of which Ghana is a member.[50] Constitutions can also refer to particular treaties. For instance, the Preamble to the Constitution of Cameroon affirms an 'attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and The African Charter on Human and Peoples' Rights'.[51]

In the area of international relations, the national executive often assumes primary authority, usually holding the power to enter or withdraw from international agreements. However, some constitutions require legislative approval of treaties or even judicial involvement in treaty making. Other limitations on the national executive's discretion in this area may include mandatory or optional referendums that pose questions influencing international relations—such as joining a supranational organization such as the European Union—directly to a country's citizens.

In a constitutional structure that disperses governmental power, principles related to international relations may incorporate greater involvement or even control by regional or local authorities. In some cases, the constitution may permit regional authorities to enter into international agreements. For example, Argentina's Constitution provides that provinces may join treaties under certain prescribed circumstances, though they cannot contradict national foreign policy or domestic law.[52] Conflicting practices and commitments among regions may be problematic and national governments may fear collapse if regions secure too much autonomy in international relations, therefore the majority of states retain the authority to conduct international relations and to control the military at the national level.

Box 7. International law as a mechanism for dispersal: Nicaragua and indigenous rights

The 1986 Political Constitution of the Republic of Nicaragua made great advances towards codifying human rights principles in domestic law by constitutionally adopting the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights of the Organization of American States.* The human rights principles in these treaties have proved a significant factor in promoting indigenous rights in Nicaragua. In accordance with these treaties, the 1986 Constitution guaranteed the rights of the indigenous and created decentralized governance structures for their communities.** By upholding international human rights laws, Nicaragua's courts have promoted the policy of decentralization espoused in the constitution.

The impact of international law is particularly evident in the court case *Awas*

Tingni v. Nicaragua. The Awas Tingni, an indigenous group, resides in the Atlantic Coast region. In 1995, the Nicaraguan government gave logging rights to a private company in Awas Tingni territory, an act that the Awas Tingni believed violated their right to customary land and resource tenure. After gaining much international awareness and support, particularly from the NGO sector, the Awas Tingni prevailed in Nicaragua's highest court of law. The Supreme Court upheld the property rights based on the American Convention on Human Rights and further ruled that the government no longer had authority to decide the fate of traditional communal lands of indigenous groups. This case not only upheld international law in a domestic setting, but also increased the autonomy accorded to indigenous peoples.

* Article 46 of the Political Constitution of the Republic of Nicaragua (1986 as amended to 2005).

** Article 181 of the Political Constitution of the Republic of Nicaragua (1986 as amended to 2005).

5. Conclusion

Constitutional principles embody the most fundamental ideas and aims of a society, which inform the constitution's interpretation and application. Constitutional principles play a wide range of roles—from serving as a symbol or expressing an ideal, to empowering and guiding political actors or guaranteeing adherence to legal structures and rights. Frequently, similar principles can reflect different meanings depending on the trends at play during a constitution-building process or in the political dynamics that arise later, such as whether the relevant drivers of change have sought or seek to aggregate or disperse power. The impact of constitutional norms also depends on whether political or legal safeguards attach—whether the constitution obliges government actors and institutions to adhere to and enforce them, or whether these norms merely act as guidelines. The answer to this question often depends on the language and placement of these norms within the constitution. Broad language or placement within a preamble often means that the principle functions as a guideline, rather than a dictate. Similarly, some principles are labelled 'directive', which often is taken as shorthand to mean they are reinforced through political, rather than legal, means. As discussed above, however, the political–legal distinction is not absolute, nor is the correlation between directive principles and political enforcement. Constitutional principles may also emerge as a natural consequence of the design of the constitution and the totality of its provisions or from a deeper reading or interpretation of the constitution by courts. These derived principles, though not expressly written into a constitution, may come to have real impact on the constitution's meaning, and drafters should therefore be aware that the potential symbolism, understandings, and ultimate meaning of the constitution often exceed its stated principles and mechanisms.

Certain constitutional principles or commitments inform the entire constitutional order. How will diversity be managed? How can equal rights be achieved for all, regardless of gender? These questions and other fundamental concerns should be thought through by constitution builders and addressed in the constitution with careful consideration for how different provisions will support positive change and the fulfillment of constitutional values within a specific country context.

Table 1. Issues highlighted in this chapter

Issues	Questions
1. Different roles that constitutional principles can play	• What purposes can the expression of broad principles serve in a constitution? • How do constitutional principles represent the values, aims and purposes of a government? • What value do principles have as symbolic, educational, legitimizing elements of constitutions? • How do constitutional principles help to create agreement among divided groups? • How do principles inform the meaning of the constitution?
2. Enshrining and enforcing constitutional principles	• Where are constitutional principles found in constitutions? • What are founding provisions? • What is a preamble? • What are directive principles? • Are some principles unwritten? Can principles be derived from a constitution? • Do constitutional principles provide guidance to governments? • Are constitutional principles enforced by courts?
3. Democratic governance	• How do constitutions commit countries to democratic governance? • Does the form of government express a commitment to democratic governance? • What legal safeguards are there to protect this principle? • What political safeguards are there to protect this principle?
4. Rule of law	• How do constitutions promote the rule of law? • What legal safeguards are there to protect this principle? • What political safeguards are there to protect this principle?
5. Principles related to diversity	• How can constitutional principles contribute to the management of diversity? • What legal safeguards are there to protect principles related to diversity? • What political safeguards are there to protect principles related to diversity?

6. Principles related to gender	• How do constitutional principles contribute to promoting gender equality? • How does the language of the constitution reflect a commitment to gender equality? • How can systems of representation contribute to gender equality? • How can rights provisions contribute to gender equality? • What legal safeguards are there to protect this principle? • What political safeguards are there to protect this principle?
7. A constitution's relationship to religion	• How does a constitution express the state's relationship to religion? • How can a constitution maintain a commitment to freedom of religion?
8. Principles related to international law	• How do constitutions incorporate a commitment to international law? • How are international obligations incorporated into a state's internal legal order?

Notes

1 McLachlin, Beverley, 'Unwritten Constitutional Principles: What is Going On?', Remarks by Chief Justice Beverley McLachlin, Supreme Court of Canada. Given at the 2005 Lord Cooke Lecture, Wellington, New Zealand, 2005, available at <http://www.canadianjusticereviewboard.ca/NZ_Speech.pdf> (accessed November 2010).

2 *The State vs T Makwanyane and M Mchunu*. Constitutional Court of the Republic of South Africa, Case no. CCT/3/94.

3 Masina, Nomonde, 'Xhosa Practices of Ubuntu for South Africa', in William Zartman (ed.), *Traditional Cures for Modern Conflicts: African Conflict 'Medicine'* (London: Lynne Rienner, 2000).

4 See Act 200/1993, the Interim Constitution of South Africa, Section (251). See the annexe.

5 Chapter 1 (§1-6) of the Constitution of the Republic of South Africa (1996 as amended 2007). See the annexe.

6 Article 5 of the Constitution of the Republic of Turkey (1982 as amended 2007). See the annexe.

7 *His Holiness Kesavananda Bharati v. The State of Kerala and Others*, Supreme Court of India (AIR 1973 SC 1461). See also, for instance, the French Constitutional Council's reliance on the Preamble and the Declaration of the Rights of Man and of the Citizen, which is referenced in the Preamble, as legally enforceable: Decision 77-44 DC 16 July 1971.

8 See, for example, I–XXIX of the Constitution of the Republic of Uganda (1995 as amended to 2005). See also Part IV of the Constitution of the Republic of India (1950 as amended 1995).

9 *Ghana Lotto Operators Association v. National Lottery Authority*. Supreme Court of Ghana [2007–2008] SCGLR 1088.

10 See, for example, Re the Thirteenth Amendment to the Constitution Bill, [1987] 2 Sri LR 312; *His Holiness Kesavananda Bharati v. The State of Kerala and Others; and Minerva Mills v. Union of India* (AIR 1980 SC 1789), 1981 SCR (1) 206.

11 For example, the Hungarian Constitutional Court has relied on the idea of a 'common constitutional law of Europe' in arriving at decisions. See also Scheppele, Kim Lane, 'Declarations of Independence: Judicial Reactions to Political Pressure', in Stephen B. Burbank and Barry Friedman (eds), *Judicial Independence at the Crossroads: An Interdisciplinary Approach* (Thousand Oaks, CA: Sage, 2002), p. 258.

12 Article 3 of the Constitution of the Russian Federation (1993). See the annexe.

13 Article 7 of the Constitution of the Democratic Republic of East Timor (2002). See the annexe.

14 Article 200 and Preamble, Constitution of the Republic of Rwanda (2003). See the annexe.

15 Section 6, Constitution of the Kingdom of Thailand (1997). See the annexe.

[16] Article 60, Constitution of the Federative Republic of Brazil (1988 as amended 1993). See the annexe.

[17] Article 79 of the Basic Law of the Federal Republic of Germany (1949 as amended 2006). See the annexe.

[18] Béland, Daniel and Lecours, André, 'Federalism, Nationalism, and Social Policy Decentralisation in Canada and Belgium', *Regional and Federal Studies*, 17/4 (2007), pp. 405–19, esp. p. 412.

[19] Article V of the Constitution of Bosnia and Herzegovina (1995). See the annexe.

[20] Article 51(4) of the Constitution of Pakistan (1973 as modified 2004). See the annexe.

[21] The Permanent Constitution of the Republic of Iraq (2005).

[22] McGarry, John and O'Leary, Brendan, 'Iraq's Constitution of 2005: Liberal Consociation as Political Prescription', *International Journal of Constitutional Law*, 5/4 (2007), pp. 670–98.

[23] Irving, Helen, *Gender and the Constitution: Equity and Agency in Comparative Constitutional Design* (Cambridge: Cambridge University Press, 2008), p. 41, citing Sandra Petersson.

[24] The Federal Constitution of the Swiss Confederation (1999); the Constitution of the Republic of South Africa (1996 as amended 2007); the Constitution of the Republic of Uganda (1995 as amended 2005); and the Constitution (Amendment) Act of 1997 of the Republic of the Fiji Islands (1997 as amended 1998).

[25] Article 8(3) of the Federal Constitution of the Swiss Confederation (1999). See the annexe.

[26] Article 48 of the Constitution of Paraguay (1992). See the annexe.

[27] Article 63 of the Interim Constitution of the Federal Democratic Republic of Nepal (2063), 2007. See the annexe.

[28] Articles 76 and 82 of the Constitution of the Republic of Rwanda (2003). See the annexe.

[29] 2008. <http://www.quotaproject.org/aboutQuotas.cfm>, accessed 27 August 2010.

[30] Article 37 of the Constitution of the Argentine Nation (1994) (see the annexe); and Article 4, Decree 1246.

[31] Article 106 (1), Constitution of the Islamic Republic of Pakistan (1973 as amended 2004). See the annexe.

[32] Article 40, Political Constitution of Colombia (1991 as amended 2005). See the annexe.

[33] Irving, *Gender and the Constitution*, p. 115.

[34] Irving, *Gender and the Constitution*, p. 82, citing Jill Vickers.

[35] Article 33 of the Constitution of the Republic of Poland (1997). See the annexe.

[36] The Sixth Title (Labor and Social Security), Article 123 (A)(VII) in the Political Constitution of the United Mexican States (1917, as amended 2007). See the annexe.

[37] Article 75 of the Constitution of the Republic of Costa Rica (1949 as amended to 2003): 'The Roman Catholic and Apostolic Religion is the religion of the State, which contributes to its maintenance, without preventing the free exercise in the Republic of other forms of worship that are not opposed to universal morality or good customs'. See the annexe. See also Article 2 of the Constitution of the Kingdom of Norway (1814 as amended to 1996) in the annexe.

[38] Constitution of the Islamic Republic of Iran (1979 as amended 1989).

[39] Article 2 of the Constitution of the Republic of Iraq (2005). See the annexe.

[40] Chapter XI, Article 29 of the Constitution of the Republic of Indonesia (1945 as amended 2002). See the annexe.

[41] Article 1 of the Constitution of the French Republic of 4 October 1958 (1958 as amended 23 July 2008). See the annexe.

[42] Articles 18 and 27 of the International Covenant on Civil and Political Rights, 1966. See the annexe.

[43] United Nations, Office of the High Commissioner for Human Rights, General Comment No. 22: The right to freedom of thought, conscience and religion (Article 18) CCPR/C/21/Rev.1/Add.4).

[44] Article 9(2) of the Constitution of the Democratic Republic of East Timor, 2002. See the annexe.

[45] Article 10 of the Constitution of the Czech Republic (1992 as amended 2009). See the annexe.

[46] Article 7 of the Constitution of the Republic of Hungary (1949 as amended 2003). See the annexe.

[47] Decision of the Constitutional Court No. 53/1993. (X.13) AB.

[48] Ginsburg, Tom, Elkins, Zachary and Chernykh, Svitlana, 'Commitment and Diffusion: How and Why National Constitutions Incorporate International Law', *University of Illinois Law Review*, 2008, p. 205, citing Cassese.

[49] Ginsburg, Tom, Zachary Elkins, and Svitlana Chernykh. 2008. 'Commitment and Diffusion', p. 207, citing Article 46 of the Nicaraguan Constitution.

[50] Article 40(d), Constitution of the Republic of Ghana (1992 as amended 1996). See the annexe.

[51] Preamble, Constitution of the Republic of Cameroon (1972 as amended 1996). See the annexe.

[52] Articles 124–125 of the Constitution of the Argentine Nation (1994).

Key words

Constitutional principles, Shared values, Governance, Rule of law, Diversity, Gender equality, Women's rights, Religion, International relations, Explicit principles, Derived principles, Preamble, Directive principles, Founding provisions

Additional resources

- **United Nations Rule of Law**

  <http://www.unrol.org/article.aspx?article_id=31>

  The United Nations (UN) Rule of Law seeks to strengthen the rule of law at the national and international levels. Constitution making is one of the cross-cutting themes addressed on this site, which contains links to documents on constitutional assistance and constitution making in post-conflict settings.

- **iKnow Politics**

  <http://www.iknowpolitics.org/>

  The International Knowledge Network of Women in Politics, iKNOW Politics, is an interactive network of women in politics from around the world who share experiences, access resources and advisory services, and network and collaborate on issues of interest.

- **Quota Project**

  <http://www.quotaproject.org/>

  The Global Database of Quotas for Women contains information on the use of electoral quotas for women, including electoral quotas found in constitutions. The website provides a searchable database about the use of quotas for women in countries around the world.

- **UNDP Crisis Prevention and Recovery: Gender and Crisis**

  <http://www.undp.org/cpr/how_we_do/gender.shtml>

  Through its Eight Point Agenda for Women's Empowerment and Gender Equality in Crisis Prevention and Recovery, the United Nations Development Programme (UNDP) focuses on making a positive difference in the lives of women and girls affected by crisis.

- **United Nations Entity for Gender Equality and the Empowerment of Women**

  <http://www.un-instraw.org/>

  UN Women aims to accelerate progress towards the goals of gender equality and women's empowerment. It provides support to intergovernmental bodies in the formulation of policies, global standards, and norms, and aims to help member states to implement these standards. It also aims to provide suitable technical and financial support to countries that request it and to forge effective partnerships with civil society.

- **United States Institute of Peace**

  <http://www.usip.org/>

  The United States Institute of Peace (USIP) provides analysis, training, and tools to prevent and end conflicts and promote stability. Of particular interest may be the site's sections devoted to the issues in the areas of the rule of law, young people and women.

- **Westminster Foundation for Democracy**

  <http://www.wfd.org>

  The Westminster Foundation for Democracy (WFD) promotes participation in the political process. As a part of this effort, the encouragement of women to participate in the decision-making process, together with support for the development of an environment that will ensure their inclusion, has been a priority for the Foundation. The WFD also supports works in the area of the rule of law.

- **Inter-Parliamentary Union, Women in Politics**

  <http://www.ipu.org/iss-e/women.htm>

  The Inter-Parliamentary Union is a focal point for worldwide parliamentary dialogue with a commitment to the firm establishment of representative democracy. This site contains a section that focuses on the role of women in legislatures.

- **United Nations Treaty Collection**

  <http://www.ipu.org/iss-e/women.htm>

  This site provides a searchable database and links to the full texts of all multilateral treaties, as well as some bilateral treaties, deposited with the Secretary-General of the United Nations and those formerly deposited with the League of Nations.

- **Center for the Study of Law and Religion**

  <http://cslr.law.emory.edu/>

  The Center for the Study of Law and Religion (CSLR) is dedicated to studying the religious dimensions of law, the legal dimensions of religion, and the interaction of legal and religious ideas and institutions, norms and practices.

- **United Nations Educational, Scientific, and Cultural Organization**

  <http://www.unesco.org/most/rr2nat.htm>

  The Management of Social Transformations (MOST) Programme is the United Nations Educational, Scientific and Cultural Organization (UNESCO) programme that fosters and promotes social science research. To strengthen a comparative perspective in social science research on governance in multi-faith societies as well as in policymaking, the MOST Programme has collected constitutional provisions pertaining to the rights to non-discrimination and equality, to the freedom of religion or belief, and to the rights of persons belonging to religious minorities.

Glossary

Asymmetric decentralization	An arrangement which distributes power unequally or differently to different regional governments
Constitution building	Processes that entail negotiating, consulting on, drafting or framing, implementing and amending constitutions
Decentralization	The dispersal of governmental authority and power away from the national centre to other institutions at other levels of government or levels of administration, for example, at regional, provincial or local levels. Decentralization is thereby understood as a territorial concept. The three core elements of decentralization are administrative decentralization, political decentralization, and fiscal decentralization.
Democracy	A system of government by and for the people. Literally means 'rule by the people'. At a minimum democracy requires (a) universal adult suffrage; (b) recurring free, competitive and fair elections; (c) more than one serious political party; and (d) alternative sources of information. It is a system or form of government in which citizens are able to hold public officials to account.
Directive principles	Guidelines which set out the fundamental objectives of the state and generally sketch the means by which governments can achieve them
Dualism	The view of international law that national and international legal systems are distinct
Enforcement mechanisms	Laws or arrangements that give officials the necessary authority to ensure that constitutional provisions are carried out
Federal system	A system of government made up of a federation of organizations or states which maintain their own independent powers but cede authority to a central federal government in certain defined areas. One level of government cannot unilaterally change the existing distribution of powers or exclusive competences at the sub-national level. Any alteration of authority between governmental levels requires the consent of all affected levels.
Founding provisions	Provisions or a section of a constitution dedicated to expressing the foundational values of the state

Framework constitutions	Brief constitutions that can be useful in establishing firm protections of certain basic rights and principles, while leaving many processes and details to be determined later through political or judicial processes
Implied (derived) principles	Principles not explicitly stated in the text of a constitution that are often drawn from a perception of the 'true meaning' or spirit of the text
Monism	The view of international law that domestic and international laws are united into a single system
Preamble	The introductory section of a constitution, which usually describes the purpose and intentions of the constitution
Reserved seats	Seats set aside for specific minorities and/or women in the legislature. Representatives from these reserved seats are usually elected in the same manner as other representatives, but are sometimes elected only by members of the particular minority community designated in the electoral law/constitution.
Rule of law	A state of affairs whereby or a doctrine that holds that no individual or government is above the law and everyone regardless of their social status is equal before law. It is a condition in which every member of society including its ruler accepts the authority of the law.
Separation of powers	The distribution of state power among different branches and actors in such a way that no branch of government can exercise the powers specifically granted to another
Women's rights	Rights relating to women such as equality in political and public life, equality in employment, equality before the law, and equality in marriage and family relations

About the author

Nora Hedling is a key staff member with International IDEA's Constitution Building Processes Programme, where her work focuses primarily on the development of knowledge tools. She has previously researched in the areas of election law and judicial reform at the University of Minnesota and with the US Department of State, among others. She has also worked in both the non-profit and the education sectors. Ms. Hedling holds a Bachelor of Arts degree from Tufts University and a Juris Doctor degree from the University of Minnesota Law School and is a member of the Minnesota State Bar. Most recently she received a Master's in European Law at Stockholm University where she was awarded the Oxford University Press Law Prize.

Annexe. Constitutional and statutory provisions referenced in this chapter

These texts appear in the order in which they are referred to in the endnotes and the chapter text. The constitutional provisions are reprinted here from the International Constitutional Law (ICL) Project (http://www.servat.unibe.ch/icl/info.html), unless otherwise noted.

Principle 20, Schedule 4 of the Constitution of the Republic of South Africa Act 200 of 1993

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognizes the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.

Principle 18, Schedule 4 of the Constitution of the Republic of South Africa Act 200 of 1993, as amended by sec. 13(a) of Act 2 of 1994

The powers, boundaries and functions of the national government and provincial governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

From Act 200/1993, the Interim Constitution of South Africa, Section 251

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

Chapter 1 (§1–6) of the Constitution of the Republic of South Africa, (1996 as amended 2007)

Section 1 Republic of South Africa

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

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

Section 2 Supremacy of Constitution

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

Section 3 Citizenship

(1) There is a common South African citizenship.
(2) All citizens are -
(a) equally entitled to the rights, privileges and benefits of citizenship; and
(b) equally subject to the duties and responsibilities of citizenship.
(3) National legislation must provide for the acquisition, loss and restoration of citizenship.

Section 4 National anthem

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

Section 5 National flag

The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.

Section 6 Languages

(1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.
(3) National and provincial governments may use particular official languages for the purposes of government, taking into account usage, practicality, expense,

regional circumstances, and the balance of the needs and preferences of the population as a whole or in respective provinces; provided that no national or provincial government may use only one official language. Municipalities must take into consideration the language usage and preferences of their residents.

(4) National and provincial governments, by legislative and other measures, must regulate and monitor the use by those governments of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) The Pan South African Language Board must -

(a) promote and create conditions for the development and use of

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language.

(b) promote and ensure respect for languages, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu, Urdu, and others commonly used by communities in South Africa, and Arabic, Hebrew, Sanskrit and others used for religious purposes.

Article 5 of the Constitution of the Republic of Turkey (1982 as amended 2007)

Fundamental Aims and Duties of the State

The fundamental aims and duties of the state are; to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence.

Article 37 of the Constitution of the Republic of India (1950 as amended 1995)

Part IV Directive Principles of State Policy

The provisions contained in this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 45 of the Constitution of the Republic of India (1950 as amended 1995)

Provision for free and compulsory education for children

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

(Note that this provision has since been amended)

Article 3 of the Constitution of the Russian Federation (1993)

(1) The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power in the Russian Federation.
(2) The people of the Russian Federation exercise their power directly, and also through organs of state power and local self-government.
(3) The referendum and free elections are the supreme direct manifestation of the power of the people.
(4) No one may arrogate to oneself power in the Russian Federation. Seizure of power or appropriation of power authorization are prosecuted under federal law.

Article 7 of the Constitution of the Democratic Republic of East Timor (2002)*

Article 7 Universal Suffrage and Multi-Party System

1. The people shall exercise the political power through universal, free, equal, direct, secret and periodic suffrage and through other forms laid down in the Constitution.
2. The State shall value the contribution of political parties for the organised expression of the popular will and for the democratic participation of the citizen in the governance of the country.

* Reprinted from and available at www.constitutionnet.org

From Article 200 and Preamble of the Constitution of the Republic of Rwanda (2003)*

Article 200

Any law which is contrary to this Constitution is null and void.

Preamble

Now hereby adopt, by referendum, this Constitution as the supreme law of the Republic of Rwanda.

* Reprinted from and available at http://mhc.gov.rw/

Section 6 of the Constitution of the Kingdom of Thailand (1997)

The Constitution is the supreme law of the State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable.

Article 60 of the Constitution of the Federative Republic of Brazil (1988 as amended 1993)

Amendment of the Constitution

(0) The Constitution may be amended on the proposal of:
    I. at least one third of the members of the House of Representatives or of the

Federal Senate;

II. the President of the Republic;

III. more than one half of the Legislative Assemblies of the units of the Federation, each of which expresss itself by a simple majority of its members.

(1) The Constitution may not be amended during federal intervention, state of defense or state of siege.

(2) The proposal is discussed and voted in each Chamber of Congress, in two rounds, and it is considered approved if it obtains three-fifths of the votes of the respective members in both rounds.

(3) An amendment to the Constitution is enacted by the Presiding Boards of the House of Representatives and of the Federal Senate, with a respective sequence number.

(4) No resolution is discussed concerning an amendment proposal which tends to abolish:

I. the federative form of the State;

II. the direct, secret, universal, and periodic vote;

III. the separation of the Government Branches;

IV. individual rights and guarantees.

(5). The subject dealt with in an amendment proposal that is rejected or considered impaired cannot be the subject of another proposal in the same legislative term.

Article 79 of the Basic Law of the Federal Republic of Germany (1949 as amended to 2006)

Amendment of the Basic Law

(1) This Constitution can be amended only by statutes which expressly amend or supplement the text thereof. In respect of international treaties, the subject of which is a peace settlement, the preparation of a peace settlement or the phasing out of an occupation regime, or which are intended to serve the defense of the Federal Republic, it is sufficient, for the purpose of clarifying that the provisions of this Constitution do not preclude the conclusion and entry into force of such treaties, to effect a supplementation of the text of this Constitution confined to such clarification.

(2) Any such statute requires the consent of two thirds of the members of the House of Representatives [Bundestag] and two thirds of the votes of the Senate [Bundesrat].

(3) Amendments of this Constitution affecting the division of the Federation into States [Länder], the participation on principle of the States [Länder] in legislation, or the basic principles laid down in Articles 1 and 20 are inadmissible.

From Article V of the Constitution of Bosnia and Herzegovina (1995)

The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac

and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

Article 51 of the Constitution of Pakistan (1973 as amended 2004)*

51. National Assembly

(1) There shall be three hundred and forty-two seats of the members in the National Assembly, including seats reserved for women and non-Muslims.

(2) A person shall be entitled to vote if—

(a) he is a citizen of Pakistan;

(b) he is not less than eighteen years of age;

(c) his name appears on the electoral roll; and

(d) he is not declared by a competent court to be of unsound mind

(3) The seats in the National Assembly referred to in clause (1), except as provided in clause (4), shall be allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under:

	General Seats	Women	Total
Balochistan	**14**	**3**	**17**
Khyber Pakhtunkhwa	**35**	**8**	**43**
Punjab	**148**	**35**	**183**
Sindh	**61**	**14**	**75**
The Federally Administered Tribal Areas	**12**	**–**	**12**
The Federal Capital	**2**	**–**	**2**
Total	**272**	**60**	**332**

(4) In addition to the number of seats referred to in clause (3), there shall be in the National Assembly ten seats reserved for non-Muslims.

(5) The seats in the National Assembly shall be allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital on the basis of population in accordance with the last preceding census officially published.

(6) For the purpose of election to the National Assembly—

(a) the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by direct and free vote in accordance with the law;

(b) each Province shall be a single constituency for all seats reserved for women which are allocated to the respective Provinces under clause (3);

(c) the constituency for all seats reserved for non-Muslims shall be the whole country;

(d) members to the seats reserved for women which are allocated to a Province under clause (3) shall be elected in accordance with the law through a proportional representation system of political parties' lists of candidates on the basis of total number of general seats secured by each political party from the Province concerned in the National Assembly:

Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates;

(e) members to the seats reserved for non-Muslims shall be elected in accordance with the law through a proportional representation system of political parties lists of candidates on the basis of the total number of general seats won by each political party in the National Assembly:

Provided that for the purpose of this sub-clause the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.

* Reprinted from and available at http://www.pakistani.org/

Article 125 of the Permanent Constitution of the Republic of Iraq (2005)*

This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.

* Reprinted from and available at http://aceproject.org/

Article 8 of the Federal Constitution of the Swiss Confederation (1999 as amended 2010)

Equality

(1) All humans are equal before the law.

(2) Nobody may be discriminated against, namely for his or her origin, race, sex, age, language, social position, way of life, religious, philosophical, or political convictions, or because of a corporal or mental disability.

(3) Men and women have equal rights. The law provides for legal and factual equality, particularly in the family, during education, and at the workplace. Men and women have the right to equal pay for work of equal value.

(4) The law provides for measures to eliminate disadvantages of disabled people.

Article 48 of the Constitution of Paraguay (1992)

About Equal Rights for Men and Women

Men and women have equal civil, political, social, and cultural rights. The State will foster the conditions and create the mechanisms adequate for making this equality real and effective by removing those obstacles that prevent or curtail its realization, as well as by promoting women's participation in every sector of national life.

Article 63 of the Interim Constitution of the Federal Democratic Republic of Nepal (2063), 2007*

Formation of the Constituent Assembly

(1) There shall be a Constituent Assembly constituted to formulate a new Constitution by the Nepalese people themselves, subject to the provisions of this Constitution.

(2) After the commencement of this Constitution, the Election of the Constituent Assembly shall be held on the date as specified by the Government of Nepal.

(3) The Constituent Assembly shall consist of the following four hundred twenty five members, out of which four hundred and nine members shall be elected through Mixed Electoral System and sixteen members shall be nominated, as provided for in the law:-

  (a) two hundred and five members shall be elected from among the candidates elected on the basis of First-Past-the-Post system from each of the Election Constituencies existed in accordance with the prevailing law before the commencement of this Constitution.

  (b) two hundred and four members shall be elected under the proportional electoral system on the basis of the votes to be given to the political parties, considering the whole country as one election constituency.

  (c) sixteen members to be nominated by the interim Council of Ministers, on the basis of consensus, from amongst the prominent persons of national life.

(4) The principle of inclusiveness shall be taken into consideration while selecting the candidates by the political parties pursuant to sub-clause (a) of clause (3) above, and while making the list of the candidates pursuant to sub-clause (b) above, the political parties shall have to ensure proportional representation of women, Dalit, oppressed tribes/indigenous tribes, backwards, Madhesi and other groups, in accordance as provided for in the law.

  Notwithstanding anything contained in this clause, in case of women there should be at least one third of total representation obtained by adding the number of candidature pursuant to sub-clause (a) of clause (3) to the proportional representation pursuant to sub-clause (b) of clause (3).

(5) The election of the members of the Constituent Assembly shall be held through secret ballots, as provided for in the law.

(6) For the purpose of election of the Constituent Assembly, every Nepali citizen who has attained the age of eighteen years by the end of Mangsir, 2063 (15th

December 2006) shall be entitled to vote, as provided for in the law.

(7) Subject to the provisions of this Article, election for the Constituent Assembly and other matters pertaining thereto shall be regulated as provided for in the law.

* Reprinted from and available at www.constitutionnet.org

Articles 76 and 82 of the Constitution of the Republic of Rwanda (2003)*

Article 76

The Chamber of Deputies is composed of eighty (80) members as follows:

1. fifty-three (53) are elected in accordance with the provisions of Article 77 of this Constitution;
2. twenty-four (24) women; that is: two from each Province and the City of Kigali. These shall be elected by a joint assembly composed of members of the respective District, Municipality, Town or Kigali City Councils and members of the Executive Committees of women's organizations at the Province, Kigali City, District, Municipalities, Towns and Sector levels;
3. two (2) members elected by the National Youth Council;
4. one (1) member elected by the Federation of the Associations of the Disabled.

Article 82

The Senate is composed of twenty-six (26) members serving for a term of eight (8) years and at least thirty per cent (30%) of whom are women. In addition, the former Heads of State become members of the Senate upon their request as provided for in paragraph 4 of this article.

These twenty-six (26) members are elected or appointed as follows:

1. twelve (12) members representing each Province and the City of Kigali are elected through secret ballot by members of the Executive Committees of Sectors and District, Municipality, Town or City Councils of each Province and the City of Kigali;
2. eight (8) members appointed by the President of the Republic who shall ensure the representation of historically marginalized communities;
3. four (4) members designated by the Forum of Political organizations';
4. one (1) university lecturer of at least the rank of Associate Professor or a researcher elected by the academic and research staff of public universities and institutions of higher learning;
5. one (1) university lecturer of at least the rank of Associate Professor or researcher elected by the academic and research staff of private universities and institutions of higher learning.

The organs responsible for the nomination of Senators shall take into account national unity and equal representation of both sexes.

Former Heads of State who honorably completed their terms or voluntarily resigned from office become members of the Senate by submitting a request to the Supreme Court.

Dispute relating to the application of Article 82 and 83 of this Constitution which may arise, shall be adjudicated by the Supreme Court.

* Reprinted from and available at http://mhc.gov.rw/

Article 37 of the Constitution of the Argentine Nation (1994)

(1) This Constitution guarantees the full exercise of political rights, in accordance with the principle of popular sovereignty and with the laws derived therefrom. Suffrage shall be universal, equal, secret and compulsory.

(2) Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system.

Article 106 (1) of the Constitution of the Islamic Republic of Pakistan (1973 as amended 2004)*

106. Constitution of Provincial Assemblies

(1) Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as specified herein below:

	General seats	Women	Non-Muslims	Total
Balochistan	**51**	**11**	**3**	**65**
Khyber Pakhtunkhwa	**99**	**22**	**3**	**124**
Punjab	**297**	**66**	**8**	**371**
Sindh	**130**	**29**	**9**	**168**

(2) A person shall be entitled to vote if—

(a) he is a citizen of Pakistan;

(b) he is not less than eighteen years of age;

(c) his name appears on the electoral roll; and

(d) he is not declared by a competent court to be of unsound mind.

(3) For the purpose of election to a Provincial Assembly—

(a) the constituencies for the general seats shall be single member territorial constituencies and the members to fill such seats shall be elected by a direct and free vote;

(b) each Province shall be a single constituency for all seats reserved for women and non-Muslims allocated to the respective Provinces under clause (1);

(c) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected in accordance with law through a proportional representation system of political parties lists of candidates on the basis of the total number of general seats secured by each political party in the Provincial Assembly:

Provided that for the purpose of this sub-clause, the total number of general seats won by a political party shall include the independent returned candidate or candidates who may duly join such political party within three days of the publication in the official Gazette of the names of the returned candidates.

* Reprinted at and available from: http://www.pakistani.org/

Article 40 of the Political Constitution of Colombia (1991 as amended 2005)*

Article 40. Any citizen has the right to participate in the establishment, exercise, and control of political power. To make this decree effective the citizen may:

1. Vote and be elected.
2. Participate in elections, plebiscites, referendums, popular consultations, and other forms of democratic participation.
3. Constitute parties, political movements, or groups without any limit whatsoever; freely participate in them and diffuse their ideas and programs.
4. Revoke the mandate of those elected in cases where it applies and in the form provided by the Constitution and the law.
5. Act in public bodies.
6. File public actions in defense of the Constitution and the law.
7. Hold public office, except for those Colombian citizens, native-born or naturalized, who hold dual citizenship. The law will regulate this exception and will determine the cases where it applies.

The authorities will guarantee the adequate and effective participation of women in the decision making ranks of the public administration.

* Reprinted from and available at http://confinder.richmond.edu/

Article 33 of the Constitution of the Republic of Poland (1997)

(1) Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.

(2) Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.

The Sixth Title (Labor and Social Security), Article 123 (A)(VII) in the Political Constitution of the United Mexican States (1917 as amended 2007)*

Every person has a right to work in a dignified and socially useful way, in order to enforce such a right both employment creation and labour organization shall be promoted under the law.

According to this article's rules, the Congress shall enact labour laws which will regulate:

Contracts of work -- including those in which workers, employees, domestic workers or craftsmen are parties to the contract -- prescribing that:

VII. The principle of equal remuneration for men and women workers for work of equal value without discrimination based neither on sex nor on nationalism, shall be enforced;

* Reprinted from and available at http://biblio.juridicas.unam.mx; Translation by Carlos Pérez Vázquez

Article 11 of the Constitution of Ecuador (2008)*

The exercise of rights shall be governed by the following principles:

1. Rights can be exercised, promoted and enforced individually or collectively before competent authorities; these authorities shall guarantee their enforcement.
2. All persons are equal and shall enjoy the same rights, duties and opportunities.

No one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law.

The State shall adopt affirmative action measures that promote real equality for the benefit of the rights-bearers who are in a situation of inequality.

* Reprinted and available from the Political Database of the Americas (http://pdba.georgetown.edu/)

Article 75 of the Constitution of the Republic of Costa Rica (1949 as amended 2003)

The Roman Catholic and Apostolic Religion is the religion of the State, which contributes to its maintenance, without preventing the free exercise in the Republic of other forms of worship that are not opposed to universal morality or good customs.

Article 2 of the Constitution of the Kingdom of Norway (1814 as amended 1996)

1) All inhabitants of the Realm shall have the right to free exercise of their religion.
(2) The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same.

Article 2 of the Constitution of the Republic of Iraq (2005)*

First: Islam is the official religion of the State and is a foundation source of legislation:

A. No law may be enacted that contradicts the established provisions of Islam
B. No law may be enacted that contradicts the principles of democracy.
C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandean Sabeans.

* Reprinted from and available at http://www.uniraq.org/

Chapter XI, Article 29 of the Constitution of the Republic of Indonesia (1945 as amended to 2002)

(1) The State is based upon the belief in the One and Only God.
(2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

Article 1 of the Constitution of the French Republic (1958 as amended 2008)

(1) France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law, without distinction of origin, race or religion. It respects all beliefs. It is organised on a decentralised basis.
(2) The law promotes the equal access by women and men to elective offices and posts as well as to professional and social positions.

Article 18 of the International Covenant on Civil and Political Rights*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

* Reprinted from and available at http://www.ohchr.org/

Article 27 of the International Covenant on Civil and Political Rights*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

* Reprinted from and available at http://www.ohchr.org/

Article 9(2) of the Constitution of the Democratic Republic of East Timor (2002)*

Section 9 (International law)

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

* Reprinted from and available at www.constitutionnet.org

Article 10 of the Constitution of the Czech Republic (1992 as amended 2009)*

Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied.

* Reprinted from and available at http://www.hrad.cz/en/czech-republic/index.shtml

Article 7 of the Constitution of the Republic of Hungary (1949 as amended 2003)

(1) The legal system of the Republic of Hungary accepts the generally recognized principles of international law, and shall harmonize the country's domestic law with the obligations assumed under international law.

(2) Legislative procedures shall be regulated by law, for the passage of which a majority of two-thirds of the votes of the Members of Parliament present is required.

Article 40 of the Constitution of the Republic of Ghana (1992 as amended 1996)*

40. INTERNATIONAL RELATIONS.

In its dealings with other nations, the Government shall—

(a) promote and protect the interests of Ghana;

(b) seek the establishment of a just and equitable international economic and social order;

(c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means;

(d) adhere to the principles enshrined in or as the case may be, the aims and ideals of—

(i) the Charter of the United Nations;

(ii) the Charter of the Organisation of African Unity;

(iii) the Commonwealth;

(iv) the Treaty of the Economic Community of West African States; and

(v) any other international organisation of which Ghana is a member.

* Reprinted from and available at www.constitutionnet.org

Preamble, Constitution of the Republic of Cameroon (1972 as amended 1996)*

We, the people of Cameroon,

Proud of our linguistic and cultural diversity, an enriching feature of our national identity, but profoundly aware of the imperative need to further consolidate our unity, solemnly declare that we constitute one and the same Nation, bound by the, same destiny, and assert our firm, determination to build the Cameroonian Fatherland on the basis of the ideals of fraternity, justice and progress;

Jealous of our hard-won independence and resolved to preserve same; convinced that the salvation of Africa lies in forging ever-growing bonds of solidarity among African Peoples, affirm our desire to contribute to the advent of a united and free Africa, while maintaining peaceful and brotherly relations with the other nations of the World, in accordance with the principles enshrined in the Charter of the United Nations;

Resolved to harness our natural resources in order to ensure the well-being of every citizen without discrimination, by raising living standards, proclaim our right to development as well as our determination to devote all our efforts to that end and declare our readiness to co-operate with all States desirous of participating in this national endeavour with due respect for our sovereignty and the independence of the Cameroonian State.

We, people of Cameroon,

Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights;

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles:

- all persons shall have equal rights and obligations. The State shall provide all its citizens with the conditions necessary for their development;
- the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law;
- freedom and security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the State;
- every person shall have the right to settle in any place and to move about freely, subject to the statutory provisions concerning public law and order, security and tranquillity;
- the home is inviolate. No search may be conducted except by virtue of the law;
- the privacy of all correspondence is inviolate. No interference may be allowed except by virtue of decisions emanating from the Judicial Power;
- no person may be compelled to do what the law does not prescribe;
- no person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law;
- the law may not have retrospective effect. No person may be judged and punished, except by virtue of a law enacted and published before the offence committed;
- The law shall ensure the right of every person to a fair hearing before the courts;
- every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence;
- every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment;
- no person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy;
- the State shall be secular. The neutrality and independence of the State in respect of all religions shall be guaranteed;
- freedom of religion and worship shall be guaranteed;
- the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike shall be guaranteed under the conditions fixed by law;
- the Nation shall protect and promote the family which is the natural foundation of human society. It shall protect women, the young, the elderly and the disabled;
- the State shall guarantee the child's right to education. Primary education shall be compulsory. The organization and supervision of education at all levels shall be the bounden duty of the State;
- ownership shall mean the right guaranteed to every person by law to use, enjoy and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law;

- the right of ownership may not be exercised in violation of the public interest or in such a way as to be prejudicial to the security, freedom, existence or property of other persons;
- every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment;
- every person shall have the right and the obligation to work;
- every person shall share in the burden of public expenditure according to his financial resources;
- all citizens shall contribute to the defence of the Fatherland:
- the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution.

* Reprinted from and available at http://confinder.richmond.edu/

Articles 46 and 181 of the Political Constitution of the Republic of Nicaragua (1986 as amended 2005)

Article 46

In the national territory, all persons enjoy State protection and recognition of the inherent rights of the individual, unrestricted respect, promotion and protection of human rights and the full enjoyment of rights enshrined in the Universal Declaration of Human Rights, in the American Declaration of the Rights and Duties of Man, in the International Covenant on Economic, Social and Cultural Rights, in the International Covenant on Civil and Political Rights of the Organization of the United Nations, and the American Convention on Human Rights of the Organization of American States.

Article 181

The State shall organize, through a law, the system of autonomy for indigenous peoples and ethnic communities of the Atlantic Coast, which shall contain, among other provisions: the powers of their governing bodies, their relationship with the Executive and legislative and municipalities, and the exercise of their rights. This law, for enactment and amendment, shall require the majority established for the constitutional law reform.

The concessions and contracts for the rational exploitation of natural resources provided by the State in the autonomous regions of the Atlantic Coast, must be approved by the corresponding Autonomous Regional Council.

Members of the Autonomous Regional Councils of the Atlantic Coast will lose its status on the grounds and procedures established by law.

International IDEA at a glance

What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization that supports sustainable democracy worldwide. International IDEA's mission is to support sustainable democratic change by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics.

What does International IDEA do?

In the field of elections, constitution building, political parties, women's political empowerment, democracy self-assessments, and democracy and development, IDEA undertakes its work through three activity areas:

- providing comparative knowledge derived from practical experience on democracy-building processes from diverse contexts around the world;
- assisting political actors in reforming democratic institutions and processes, and engaging in political processes when invited to do so; and
- influencing democracy-building policies through the provision of our comparative knowledge resources and assistance to political actors.

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, it has offices in Africa, Asia and Latin America.