

TABLE OF CONTENT

I. Introduction

- Highlighting the problem of access to documentation
- Mentioning of Western countries' provisions which are not included in West African countries' systems

II. Different Legal Systems and Sources of Law

1. Common Law (to be answered by researchers for Ghana, Liberia, Nigeria, Sierra Leone)

Structure and kind of judgments	
Are judgments written together or rather individually by each judge?	
Is it possible to identify single judges (in general, through dissenting/concurrent opinions)?	
What are relevant features of the British Common Law compared to the US Common Law?	
Which of those features are also reflected in the respective countries?	

a. The Judicial Structure under the British Common Law System

Special features of the British common law system	
What are relevant features of the British Common Law compared to the US Common Law?	
Which of those features are also reflected in the respective countries?	

b. The Judicial Structure under the US Common Law System

Special features of the US common law system	
What are relevant features of the British Common Law compared to the US Common Law?	
Which of those features are also reflected in the respective countries?	

2. Civil Law

a. The Judicial Structure under French Civil Law System (to be answered by researchers for Benin, Burkina Faso, Gambia, Guinea, Ivory Coast, Mali, Mauretania, Niger, Senegal, Togo)

Special features of the French civil law system	
What are relevant features of the French Civil Law system?	
Which of those features are also reflected in the respective countries?	

b. The Judicial Structure under the Portuguese Civil Law System (to be answered by researchers for Cape Verde, Guinea Bissau)

Special features of the Portuguese civil law system	
What are relevant features of the Portuguese Civil Law system?	<p>The Portuguese legal system has the following features (with respect to judicial review):</p> <ol style="list-style-type: none"> 1. The legal system in general has Roman - Germanic roots; In public and constitutional law, Portugal has a strong French influence.; At the same time there is a considerable German influence (eg. constitutional control and "Drittwirkung" – third party effect of fundamental rights); 2. It includes preliminary and subsequent judicial review

of constitutionality (Article 278 and following of the Constitution of the Portuguese Republic - CRP) of actions or omissions;

3. Combines the specific review and diffused (abstract) review of the constitutionality of legislative acts;
4. The specific review is exercised by the Constitutional Court (art. 221-224 CRP);
5. Diffused review is exercised by all courts (from the lower claims court - for example, "Justices of Peace" - to the Supreme Court through appeal). Any judge may in the process of judicial proceedings, decline to apply legislation on the ground of unconstitutionality. This decision not to apply certain legislation may be appealed to a higher court, with the Constitutional Court as last instance, which takes the final decision on the matter (specific review).
6. Abstract review is required by certain entities and determined only by the Constitutional Court (Art. 281);
7. The effects of the decision of unconstitutionality within specific review are *inter partes*
8. If the Constitutional Court states in 3 cases that a specific legislation/provision is unconstitutional or illegal, the CC may (if requested by the parties , the public prosecutor or judge TC) declare it unconstitutional *erga omnes*;
9. The effects of the decision of unconstitutionality in abstract review are automatically *erga omnes*;
10. Whenever the Constitutional Court determines that unconstitutionality by omission exists, it has to notify competent legislative body thereof
11. The effects of the declaration of preliminary/prior review are as follows:
 - a) The President may veto a treaty or statute;
 - b) With the veto, the document is returned to the body that passed it; this body can expunge the unconstitutional part or confirmed by a majority that is at least equal to two thirds of all Members present and greater than an absolute majority of all the Members in full exercise of their office. modify the act;
 - c) In the case of a Government treaty, the veto is final;
 - d) If the Constitutional Court pronounces the unconstitutionality of any rule contained in a treaty, the said treaty shall only be ratified if the Assembly of the Republic passes it by a majority that is at least equal to two thirds of all Members present and greater than an absolute majority of all the Members in full exercise of their office.
 - e) Thus, the declaration of unconstitutionality of the CC and the presidential veto can be overcome by the Assembly of the Republic (art. 272/2/4 CRP), and thereby keep in force a rule declared unconstitutional and vetoed.

Which of those features are also reflected in

1. As a result of the strong colonial link with Cape Verde,

the respective countries?	Portugal exerts a makeable influence on Cape Verde, particularly the shape of its legal system. 2. The Roman-Germanic legal system which is prelevant in Portugal, is reflected in Cape Verde (especially in the legislative process, the constitutional framework, as well as doctrinal and jurisprudential concepts). Cape Verde's Constitution, for example, despite the removal in certain solutions, closely resembles the Portuguese Constitution in force.
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3. Religious / Customary / Mixed Legal Systems

Religious / Customary elements in the judicial system	
Does the judicial system in the respective country have religious courts / customary courts?	1. The judicial system of Cape Verde does not include religious courts (the option is not in line with the principle of State secularism stated in article 2/2 CRCV ¹); The constitution does not provide for customary courts
Do (lower) courts apply / accept customary law or religious law?	1. Under the principle of a secular state (guaranteed by art. 2 / 2 CRCV), courts cannot apply religious law. 1. The Religious law is not constitutionally recognized, nor does it have any other formal status. 2. Custom is eligible as a source of law in the Civil Code, in particular.

III. Historical Background of Constitutional Justice in West Africa

Development of Judicial Systems	
Did the judicial system changed compared to the one included in the independence constitution? If so in how far did it change?	1. The system of review of constitutionality in Cape Verde underwent a profound change, looking at the Constitution of 13/10/1980, in which the policy review of constitutionality was provided as follows: art. 62, c) sais: <i>"The National People's Congress' decides over the constitutionality of laws and other legislative acts."</i> 2. Today the system emphasizes judicial review of constitutionality. Art. 215 CRCV provides for the creation of a Constitutional Court (CC), which has not yet taken place. Until its implementation, the Supreme Tribunal of Justice (Supremo Tribunal de Justiça) (STJ) carries out that task. 3. There is an autonomous system of review of constitutionality.

(Political Control)

IV. Different Models of Constitutional Justice

1. Different Constitutional Institutions

What kind of judicial institutions are available in the respective country	
Which institution is considered "the highest court" in the country?	The STJ is the highest court of Cape Verde. With the creation of the envisaged Constitutional Court, the latter will stand at the apex of the court system.

¹ Constitution of the Republic of Cape Verde

Does the “highest court” in the country also stands at the top of the regular court system (highest court of appeal)? Or is it a separate institution?	The STJ is today at the top of the system
Are there various highest courts in the country dependent on the issue to be addressed (e.g. highest court of administration, highest tax court)	1. The STJ 'is the highest in the hierarchy of Courts (Administrative, Tax and Customs and the Military Court (art. 216/1 CRCV). 2. As soon as established, the CC will be the court with jurisdiction to "administer justice in matters of legal and constitutional nature" (Article 215 CRCV).
At the highest court, are constitutional issues addressed in a specific chamber?	All courts can decline to apply a provision, if considered unconstitutional. In that case, the decision may be appealed to the prosecutor or any other entitled person according to the law governing the process of review of constitutionality.
Does the country have a judicial commission / judicial council, etc.	Cape Verde has a Superior Council of the Judiciary (art. 223 CRCV) and a Superior Council of the Public Prosecutor (Art. 226/5 CRCV).

2. Systems of Control

If a lower court assumes that a regulation relevant to the case before it violates the Constitution, what can it do?	
Nothing, no power to question the constitutionality of the law/regulation.	A lower court may question the constitutionality of a provision, not applying it to the case on trial.
If the court has serious doubts about the constitutionality of the law/regulation related to a specific case, it might pause the proceedings and requests a statement of constitutionality from another institution (constitutional court, constitutional council, etc.), which may declare the regulation/law for unconstitutional.	If the court has serious doubts about the constitutionality of a provision applicable to the case, it may refuse to apply the referred standard.
The lower court may declare the regulation/law to be inapplicable in the specific context.	The lower court can only abstain to apply a norm, if it considers unconstitutional, not declare it unconstitutional.
The lower court declares the regulation/law to be unconstitutional.	The lower court cannot declare that a provision is unconstitutional.
Any other action	

a. Diffuse System of Constitutional Review: The Supreme Court

b. Concentrated System of Review: The Constitutional Court

c. Hybrid Systems of Constitutional Review

V. Some Relevant Aspects of Judicial Independence

1. Independence of the Judiciary vs. Independence from the Judiciary – the Judiciary as Legislature

2. The Administration of Courts and the Budget of the Judiciary

Administration of the Judiciary	
Which body / institution is administering the judiciary?	The Superior Council of the Judiciary (SCJ) is the " <i>organ of management and discipline of judges, autonomous management of human, financial and material resources of the courts, as well as itself</i> " (art. 223/1 CRCV), including STJ.
Is the Ministry of Justice involved in the	The Minister of Justice is not involved in the

administration of the judiciary)? If so, to what extent (hiring, promoting, evaluating judges, disciplinary measures)?	administration of the STJ.
Is there a body within the Judiciary / highest court that is responsible for administering the resources? To whom is this body accountable? Who has the administrative oversight over the administration of the judiciary?	The Superior Council of the Judiciary (SCJ) is the main management organ of the judiciary. Combining this assumption with the provisions of art. 223/1/2/4, 224/1 CRCV and art. 122/VIII/2011 of the Statute of Judicial Magistrates, it can be induced that there is only one organ of external control: the National Assembly, to which the SCJ must annually submit its report on the status of Justice (art. 223/4 CRCV).

What kind of impact does the judiciary / the constitutional court has in the process of drafting / approving its budget	
What kind of involvement does the judiciary in devising its budget (who originally submits the budget of the judiciary)?	According to Article 29, p), q) of Law No. 90/VII/2011 (law of the SCJ): The SCJ is to prepare and approve the draft annual budget of the SCJ and the courts. - Article 40/2: the SCJ approves the draft budget and submits it to the Government to including a <i>"bill from the state budget to be submitted to the National Assembly."</i> - Article 42: It is for the SCJ, in relation to its budget management skills under the law in terms of financial management and may delegate them the President.
Who might have the right to alter the budget (of the judiciary / of the highest court) within the approval procedure?	Art. 45 of Law No. 90/VII/2011 (law SCJ): It is incumbent upon the SCJ's Administrative Commission opinion on the draft annual budget and its amendments, submitting for approval to the SCJ. - In the process of approving the budget, nothing prevents the STJ request more resources to fulfill their duties.
In how far do court statistics (case workloads, etc.) play a role in the determination of the budget?	Information not available. But it is reasonable to anticipate consideration of judicial statistics in the making of a court budget.
Is the budget (of the judiciary / the highest court) an integral part of the overall budget or is it separated?	Provided in art. 39 of 90/VII/2011 Law: the SCJ has its own budget, enrolled in general government spending.

3. Judicial Commission / Judicial Council

Judicial Commission / Judicial Council	
Is there any institution like a Judicial Commission / Judicial Council (see also IV.1)?	Yes, there is a Superior Council of the Judiciary and also a Ministerio prosecutor.
What are the tasks of the Judicial Commission / Judicial Council?	The Superior Council of the Judiciary (SCJ) is the "organ of management and discipline of judges, autonomous management of human, financial and material resources of the courts, as well as their own" (art. 223/1 CRCV), including STJ.
What are the criteria of eligibility for membership?	The selection criteria for membership of the SCJ are as follows (art. 223/5/6 CRCV; article 4 of Law 90/VII/2011): <ul style="list-style-type: none"> - Appointment of one judge by the President of the Republic; - Election by peers (4 judges);

	<ul style="list-style-type: none"> - Election by the National Assembly (4 magistrates not citizens, not lawyers; recognized probity and merit); - Designation of President of the SCJ by PR from among the members of the SCJ and upon its proposal of these.
How is the Judicial Commission / Judicial Council composed?	<p>The SCJ is composed of 9 members: 5 judges; 4 citizens, not judges or lawyers. The President of the SCJ is appointed from among the members of the SCJ.</p>
Do ex-officio members have the same authorities like other members?	All members have the same authority.
Who selects members of the Judicial Commission / Judicial Council?	<p>The selection of members of the SCJ is made by the following entities, as follows:</p> <ul style="list-style-type: none"> - One judge appointed by PR; - 4 magistrates elected by peers; - 4 citizens, not judges or lawyers, of recognized probity and merit, elected by the National Assembly; <p>The President of the SCJ designated by PR from among the members of the SCJ and upon its proposal of these.</p>
What kind of relation exists between the “highest court” and the Judicial Commission / Judicial Council?	The SCJ gives general guidance to the court and is the organ of management and discipline of judges.

4. Challenges of Neutrality and Impartiality

VI. Composition

Composition of Constitutional Courts / Supreme Courts	
<p>Eligibility: (a) minimal age / (b) maximal age / (c) legal education / (d) special legal qualification (e.g. sitting judge; being an expert in one legal system (for example Sharia law)/ (e) years of professional experience / (f) limitations (no party membership, no other positions while sitting in the court) / (g) other requirements</p>	<p>(a) The minimum age for access to the judiciary is 25 years (art. 10 /1, a.) EMJ; Access is by “public invitation open to magistrates” (art. 216/3 CRCV) .</p> <p>(b) - The maximum age is the retirement of civil servants [art. 118/1 , a) and 119 EMJ] .</p> <p>(c) - A law degree is the minimum requirement for access to judiciary [art . 215/3 CRCV , 10 / 1 , c) EMJ] .</p> <p>To access the CC, the following is necessary: (art. 215/3 CRCV): Degree in Law; reputed merit and competence; recognized morality.</p> <p>(d) - ...</p> <p>(e) - for access to the court, this is the condition (art. 22/1 EMJ): Magistrate Judge with a minimum rating of Excellent with Distinction; 5 years of effective and uninterrupted service as Magistrate Judge.</p> <p>(f) - Exceptions to the Judge of the STJ: Prohibition of the exercise of any other public or private capacity, except in the function of teaching or scientific research of legal nature (art. 28/1 EMJ); Magistrates in office cannot be affiliated to any political parties or associations, nor engage in any partisan political activity (art. 30 EMJ) .</p>

<p>Selection of Constitutional Court / Supreme Court Judges: all judges selected in the same manner? / who / which institution is involved in the selection process?</p>	<p>- To the TC, all judges are chosen (elected) in the same manner and parliament (art. 215/3 CRCV). - The term of office of all judges of the TC is 9 years and is not renewable. This implies a total replacement of the judges, if all reach the end of the term, at the same time (Art. 215/5 CRCV). For the STJ, judges are appointed by the SCJ and the substitution of judges is usually partial. The President of the STJ is appointed by the PR from among the judges who compose the STJ for a term of 5 years, renewable once (art. 216/4 CRCV).</p>
<p>Selection of Constitutional Court / Supreme Court Judges: if selected in different processes: who / which institutions are involved in the respective processes?</p>	<p>–</p>
<p>How many institutions are involved in the selection process?</p>	<p>- For the TC, is the National Assembly that is involved in the selection of judges; For the STJ, the SCJ is what is involved in the selection of judges; fits the PR appointment of the President of the STJ.</p>
<p>Sequence of the selection process (recommendation, advise; election, consultation; appointment; cooption)</p>	<p>The selection of judges of the STJ has this sequence: Open competition under the existing vacancies of Judges Directors; The degree of competitors covers Judges (these are considered 'competing necessary' - Art 22/1 EMJ.); The selection of which won the bid is made in accordance relative merit of competing (art. 23 EMJ); Nomination of Judges of the STJ by the plenary of SCJ; Appointment of the President of the STJ by PR; Swearing in of the President and Judges of the STJ by President [Art. 24, a) EMJ].</p>
<p>What are the terms of office</p>	<p>The term of office of judges of the TC is 9 years non-renewable.</p>
<p>Is a re-selection possible?</p>	<p>no</p>
<p>Is the representation of minorities guaranteed (are ethnic, linguistic, religious differences to be considered)? How?</p>	<p>no</p>
<p>Is the opposition involved in the selection process?</p>	<p>Political power and the opposition will be involved in the selection of judges of the STJ, only to the extent that the PR process and AN have their representatives in SCJ (organ that chooses and appoints the Judges of the STJ) - art. 4th of 90/VII/2011 Law, Law of the SCJ; The opposition is involved in choosing the President of the STJ because although fit to appoint the Chairman of the PR STJ, this is appointed from among the judges of the STJ (who are appointed by a body which has the involvement of opposition parties).</p>
	<p>* Presently and temporarily (until the installation of the Constitutional Court) , the Supreme Court also performs the functions of the TC . When operating as TC , the Supreme Court shall have the following characteristics (art. 295 CRCV) : It ' consists of five or seven judges , appointed for a term of five years, in the following paragraphs .</p>

	<p>2 . When the composition of the Supreme Court for five Judges:</p> <p>a) One is appointed by the President from among eligible judges or lawyers ;</p> <p>b) A is elected by the National Assembly from among judges or lawyers eligible for two-thirds of the votes of the Members present provided that exceeds an absolute majority of votes of the Members of functions ;</p> <p>c) Three are appointed by the Superior Council of the Judiciary from magistrates who are not eligible , unless inherently members of the Board .</p> <p>3 . When the composition of the Supreme Court is of seven judges :</p> <p>a) One is appointed by the President from among eligible judges or lawyers ;</p> <p>b) Two are elected by the National Assembly from among eligible judges or lawyers, by two thirds vote of the Members present provided that exceeds an absolute majority of votes of the Members of functions ;</p> <p>c) Four are appointed by the Superior Council of the Judiciary from magistrates who are not eligible , unless inherently members of the Board . "</p> <p>"Only judges of the Supreme Court may be appointed under this Article , the nationals of renowned merit , law graduates and the full enjoyment of their civil and political , on the date of designation, have exercised rights for at least five years , employment in the judiciary or any other forensic activity or teaching of law ' "</p>
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1. Eligibility for Appointment as a Constitutional Court Judge / Supreme Court Judge
2. Selection of Judges of the Constitutional or Supreme Court
3. Terms of Office
4. Representation of Minorities

VII. Competences

1. Preliminary Review

Preliminary Review	
Available?	Yes, preliminary review exists (art. 278 CRVC)
Who can trigger the procedure (or is it part of the legislative process) (who has standing)? What is required to take action?	<p>The following people can trigger preliminary review of constitutionality (Art. 278/2 CRCV):</p> <ul style="list-style-type: none"> - The President of the Republic (PR) - A minimum of 15 Members of the Assembly of the Republic - The Prime Minister. <p>For PR, the request can involve specific rules contained in legislation before its enactment into law, a legislative decree or ordinance, as well as parts of any treaty or international agreement before its ratification;</p> <ul style="list-style-type: none"> - With respect to Members of the Assembly, the request may involve rules contained in legislation sent to the RP for promulgation into law, legislative decrees or ordinances.

At which state of the legislative process can the preliminary review be triggered?	The preliminary review may be requested prior to the enactment of the piece of legislation and before the ratification of a treaty or international agreement.
Applicable to all bills / drafts?	The preliminary review is applicable to all legislative acts under the conditions described above.
Also consultative opinions available?	Legislative acts and international treaties and agreements are subject to preliminary review.

2. Abstract Review

Abstract Review	
Available?	Yes it exists in accordance with art. 280 CRCV
Who can trigger the procedure (who has standing)? What is required to take action?	May trigger the abstract review of constitutionality (Art. 280 CRCV): The President of the Republic; The President of the National Assembly; 15 members, at least; The Prime Minister; The Attorney General's Office; The Ombudsman. - The request must be based on the unconstitutionality or illegality of "any rules or resolutions of normative or individual material and specific content"
Applicable to all laws (or are there any restrictions: (organic laws?))?	The review may be imposed on any laws or resolutions.
What kind of judgments may be rendered (nullification; directions to the legislature to fix the unconstitutional parts of a law within a specific period of time; others)?	I. Abstract preliminary review (art. 279 CRCV): <ul style="list-style-type: none"> - If the CC is to rule unconstitutional a treaty or international agreement, the PR cannot ratify it but must return it to parliament. - Other effects may include the following: <ul style="list-style-type: none"> a) If the National Assembly, after hearing the Government, confirmed its approval by a majority of two thirds of its Members, "<i>the international treaty or agreement which includes the rule declared unconstitutional may be ratified by the President.</i>" - If the CC is to rule unconstitutional a provision of any legislative act, the PR has to veto the legislation and return it to the agency that approved it. - Other effects may include the following: <ul style="list-style-type: none"> a) In the case of an act of the Government , the veto is final; the Government must then expunge the unconstitutional norm, so that the PR may enact the legislative act; b) In case of an act of parliament, the following can happen: <ul style="list-style-type: none"> aa) parliament does not do anything (and the legislative process dies); bb) or the parliament purges the unconstitutional norm (so that the PR may enact the legislative act; cc) Or parliament reapproves the legislative act confirming the same act by a majority of two thirds of the Members in office.

	<p>In this case, the act <u>may</u> be enacted by the President.</p> <p><u>II. Abstract Successive Review (art. 284 , 285 CRCV) :</u></p> <p>- If the CC rules that a certain provision is unconstitutional under the abstract (and specific) judicial review, the decision is generally binding (<i>erga omnes</i>). These effects bear the following characteristics:</p> <ul style="list-style-type: none"> a) A declaration of unconstitutionality shall take effect from the “entry into force of the statute deemed unconstitutional or illegal”; b) The declaration of unconstitutionality has the effect of revalidating such rules as the said rule may have revoked; c) However, in the case of unconstitutionality or illegality due to breach of a subsequent constitutional or legal rule, such declaration shall only take effect when the latter comes into force.; d) In the case of an international agreement or treaty, the judgment takes effect from the date of publication of the judgment of CC. e) When required for the purposes of legal certainty, reasons of fairness or an exceptionally important public interest, the grounds for which shall be given, the Constitutional Court may rule that the scope of the effects of the unconstitutionality or illegality shall be more restricted than those provided for in art CRCV 285/2/3; f) Judgments in cases that have already been tried shall stand, save when the CC rules to the contrary in relation to rules that concerned penal or disciplinary matters or administrative offences and their contents were less favorable to the defendant.
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3. Specific or Incidental Review

Incidental Review	
Available (are courts authorized to review the constitutionality of laws)?	Yes (not merely incidental - for preliminary reference). The courts generally do not have powers to apply a standard that they deem unconstitutional. In incidental review, the prosecutor and persons entitled to appeal pursuant to art. 282 CRCV, may appeal to the CC.
What happens if the court presumes that a law relevant to the case at hand is unconstitutional?	If a court finds that an applicable law in a case "decidendum" is unconstitutional, the court may refuse to enforce it (the court cannot declare the law unconstitutional).
Is the doctrine of “stare decisis” legally applied?	<ol style="list-style-type: none"> 1. The decisions of other courts (other than the CC - or, as today, the Supreme Court in the role of the CC) do not constitute binding precedents. 2. To the extent that all declarations of unconstitutionality made by the CC (whether in specific or abstract review) have general binding force and they shall be binding on future judges of the other courts.

Are there restrictions to incidental review?	-
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4. Direct Action before the Constitutional or Supreme Court (individual complaint)

Direct action	
Available?	In certain circumstances, the public has direct access to the Constitutional Court [Art. 20, 215/1 e) CRCV]. It is the "amparo" – "Aid Program / petition for relief"
Who can trigger the procedure (who has standing)?	It is a right of every citizen.
What is required to take action (how)?	Requirements for admissibility of "recurso de amparo": a) Visa guardianship rights, freedoms and fundamental guarantees secured by the Constitution and by law; b) may be brought against harmful acts or omissions of public authorities of rights, freedoms and guarantees; c) The "amparo" can be requested by a simple application; d) The "amparo" takes up the attribute sumariedade and urgency; e) The "petition for relief" can only be requested after exhausting all avenues of Appeals.
Are there restrictions to the right of individual complaint?	There are restrictions on the right of citizens to resort to the CC – need to be a citizen?. These are the constraints and criteria set forth in the preceding paragraph.

5. Limits on the Review of Constitutionality

Limits of Review	
Are there explicit limitations to the review of the constitutionality (for example international treaties, laws approved by referendum, laws that were valid before the constitution came into force, legislation past under emergency power, limitation to manifestly unconstitutional acts)?	1. There are no legal instruments whose constitutionality cannot be reviewed. 2. Article 277/2 CRCV: 'The organic or formal constitutionality of international treaties and agreements dealing with matters of the reserved powers of the National Assembly or the legislative competence of the Government does not prevent the application of its rules in the Cape Verdean law, provided that they are confirmed by the Government and approved by the National Assembly by a majority of two thirds of the Members present at the first plenary session following the date of publication of the decision of the Court '.

6. Review of Constitutional Amendments (formal regularity and substance)

Review of Constitutional amendments	
Is it possible to review amendments to the constitution itself?	It is permissible to review the constitutionality of constitutional amendments.
If so, is the review limited to a formal review of constitutionality or is a review on the substance of the constitution also permitted?	Both. The review of constitutionality of constitutional amendments covers the review of the validity of the process and the act substantively.
Does the constitution contain immutable clauses (provision that are excluded from constitutional amendment)?	The Constitution contains a inviolability clause (art. 290 CRCV).
Who can trigger the procedure (who has standing)? What is required to take action?	abstract review may be triggered by (Art. 280 CRCV): The President of the Republic; The President of the National Assembly; A minimum of 15 members of the NA; The Prime Minister; The Attorney General's Office; The Ombudsman.

	- In specific review, the prosecutor or any other person entitled under art 282 may appeal to the CC for review.
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7. Unconstitutional Omission

Unconstitutional Omission	
Is it possible to take action against constitutional obligations that haven't been implemented?	The control system of unconstitutionality by omission is not provided for.
Who can trigger the procedure (who has standing)? What is required to take action?	-
What kind of judgments may be rendered (instruction to the legislature / executive to take action (within a specific period of time); declaration that a law only insufficiently implements a constitutional obligation; court "implements" the obligation by rendering a specific right to the claimant; others)?	-

8. Conflicts between State Bodies

Conflicts between State Bodies	
Available (does the court have jurisdiction to decide whether or not a certain task falls within the authority of a state body or to interpret the limits of authority also in relation to other bodies, be it horizontally (between different institutions at the national level) or vertically (between national institutions and institutions from the province / local institutions)?	The TC has powers to resolve conflicts of jurisdiction in accordance with the law (such conflicts only) - art. 215/1, d) CRCV.
Who can trigger the procedure (who has standing)? What is required to take action (how)?	-

9. Elections

Elections	
Is the Court involved in resolving electoral disputes?	- The TC and the STJ are the competent courts in electoral process (they are both competent, even when the TC will be installed). - Present and temporarily (until the installation of the Constitutional Court), the Supreme Court also performs the functions of the TC. When operating as TC, the STJ has the following functions in electoral matters (see Article 294/2 CRCV; Article 252 ff, 353 ff, 376 ff, 399 ff of the Electoral Code - Law 92 / V..... / 99 of 28 February): a) Receive and accept nominations for President; b) Judge, ultimately, the regularity and validity of acts of the electoral process.
Who can trigger the procedure (who has standing)? What is required to take action?	Complaint may be taken to the Supreme Court, since it is ?????? (art. 252/1/2 Electoral Code): The submitter of the complaint or protest may be: - presidential candidates and candidates of the election - the accompanying circle, as well as their representatives. - The final decisions of the District Court regarding the submission of applications may be appealed to the CC

	(art. 353 Electoral Code) standing to challenge the candidates, leaders and lists of political parties or coalitions competing for election in the constituency
If the court is not empowered, is there another institution that settles electoral disputes?	

10. Fundamental Rights

Fundamental Rights (see also individual complaint)	
Are (all?) human rights subject to review before a court?	If a violation of rights, freedoms and guarantees takes place, citizens may turn to the Constitutional Court under the "petition for relief" (vide supra).
Is there any other kind of institution where aggrieved individuals may turn to (human rights commission, Ombudsperson)? How is its institutional relation to the (highest) courts?	The Ombudsman for Justice (Ombudsmann): He receives complaints from citizens against acts or omissions of public authorities (including fundamental rights offences); The Ombudsman does not have decision making power. He may only make recommendations to the relevant bodies in order to repair illegal acts or injustices (art. 21 CRCV).
Who can trigger the procedure (who has standing: also NGOs / consumer protection organizations on behalf of individuals)? What is required to take action (how)?	The applicant must trigger the court in order to protect the rights that he claims to be violated.
With regard to social rights, does the highest court in the country have jurisdiction to offer less than attributed by lower courts (<i>reformatio in peius</i>) (example: right to water in the constitution, but how many litres/day as a minimum threshold: If lower court admits 30 l/d, but the complainant wants 40 l/d and appeals can the highest court also overturn the lower court to the negative, only offering 25 l)?	<i>reformatio in peius</i> is not expressly forbidden in the Constitution or applicable laws.

11. Other Powers of Supreme Courts / Constitutional Courts

Other powers	
Conduct of referenda	The National Assembly has the power to propose to the PR the conduct of a referendum [art. 175 i) CRCV]; The PR is incumbent upon convening a national referendum [art. 135/1 h) CRCV].
constitutionality and dissolution of political parties	The Supreme Court (in place of the CC, while it is not installed) has jurisdiction to verify the legality of the establishment of parties and their coalitions, and declare them unlawful or order the extinction of parties and their coalitions [art. 294/3, a), c) CRCV].
impeachment procedures for the president	The Constitution does not address the issue of impeachment; - But, as laid down in art. CRCV 132, you can get the result of impeachment (paths and actors is that they are different). Consider: If the PR commits a crime in the exercise of its functions, it is the duty of the National Assembly to request/ask the Attorney General's Office to initiate the prosecution of the PR; The initiative must be proposed by 25 members and

	approved by two thirds of the Members in office; The PR is suspended from his duties from the date of the final judgment of the indictment or equivalent; The PR is judged by the full bench of the STJ and, if convicted, he immediately loses the mandate and is removed from office. A re-election is prohibited.
(binding) interpretation of the constitution	It cannot be spoken of a binding precedent, as in the English system of "binding precedents" (or "stare decisis"). The authority of precedent here, is based on the repetition of trial. If a court does not decide in accordance with a previous ruling, it demonstrates that the previous decision might have been wrong.
Others?	

VIII. Standing

1. Who (see under VII.)

Table Structure

2. How (see under VII.)

Table Structure

IX. Effects of Judgments (Authority of the Judgments)

Authority of Judgments	
Is a judgment written together or rather exists of various parts, individually by each judge?	The judgment is issued by one single judge "Juiz-Relator", submitted to the discussion of the collective and adopted by the majority.
If judgments are written together, is it possible to identify single judges (in general or through dissenting/concurrent opinions)?	---
Do the judgments have <i>erga omnes</i> or <i>inter partes</i> effects (with regard to VIII. 2-4; 7-8)?	The declaration of unconstitutionality by the CC through abstract or specific review (and the STJ, while the TC is not installed), have <i>erga omnes</i> effects (art. 284 CRCV).
Do the judgments have effects for the future only (<i>ex-nunc</i>), do they have even retroactive effects (<i>ex-tunc</i>) or is the effect deferred in order to give the legislation time to adjust the legislation to the court's decision.	See "Table 2" (Abstract Review), Section response to the question 'What kind of Judgments may be rendered (nullification; directions to the Legislature to fix the parts of the law unconstitutional within a specific period of time; others)? »
What legal authority does the judgment have to the relevant groups (below) considering that they have been part of the process?	The effects of unconstitutionality are general.
In general, who (see below) is affected how by the judgments of the Constitutional Court?	The effects of unconstitutionality affects, inter alia, the citizens, administration, legal institutions, political institutions, military.

1. On Citizens

2. On Administrations

3. On other Judicial Institutions

4. On Political Institutions

5. On Military

X. Control of the Constitutional Jurisdictions

Control of the Constitutional Jurisdiction	
Political control (see selection of judges; terms of office)	There is political control (constitutionally) over the selection of judges and the term of office.
Removal / dismissal of highest judges (at all / only by judicial decision within the judiciary / by external institutions?)	The dismissal of the highest judge is executed only as laid out in the Constitution and Law, at the discretion of the SCJ.
What are the criteria for the removal of highest judges (e.g. proven legal misbehavior)	The grounds for the removal of the highest judge are: A conviction for "crime committed in flagrant and serious abuse of functions or a clear and serious violation of the duties inherent therein", the "ultimate inability to adapt to the demands of his function"; "dishonesty, immoral or dishonorable conduct, serious insubordination; professional unsuitability; mistreatment of position" (art. 88 JME).
May decisions of the highest court be overruled by another institution (legislature)? What are the requirements?	The decision of the CC cannot be revoked or invalidated by other institutions; - The decision of the STJ can only be revoked or invalidated by the CC.
Amending the constitution in light of a decision of the highest court.	The Amendment of the Constitution in order to conform to a judgment of the STJ as a result of a constitutional matter is very relevant. Especially when the provision declared unconstitutional has been introduced by way of constitutional review.

1. Independence vs. Accountability
2. Political Control
3. Constitutional Amendment
4. Removal / Impeachment of Judges
5. Overruling of Decisions

XI. Conclusion