

The United Kingdom

REMEDIES – 3

Section 4

(2) If the court is satisfied that the provision [of primary legislation] is incompatible with a Convention right, it may make a declaration of that incompatibility.

The United Kingdom

FEEDBACK – 1

Section 5

(1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.

The United Kingdom

FEEDBACK – 2

Section 10

[if a provision of legislation has been declared to be incompatible with a Convention right -]

(2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

Human Rights and Constitutional Law

CHECKLIST

- ✓ Status of treaties
- ✓ Entry into force
- ✓ Relationship with national law
- ✓ Duty to protect human rights
- ✓ Remedies for violations
- ✓ Feedback mechanism to avoid future violations

Elections and the Constitution: Finding Balance and Building Confidence

- Thanks to OSCE, especially Per, Franklin, Blerim, and Jennifer. Apologies to the translators for speaking so fast!
- First, it is important to stress that elections do not make a democracy, which is a web of values, institutions, and practice. However, democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association.
- But how can a constitution safeguard and nurture the democratic process, and build confidence and legitimacy in the electoral process? When looking at electoral processes in a constitutional process, it is important to strike a balance between entrenching principles and rules in a constitution and allowing for the flexibility and responsiveness that laws and regulations can provide. I should also note that Kosovo already has a strong body of electoral law on the books. What should be in a Constitution?
- Two plugs: the Post Conflict Constitutional Drafters Handbook, and the Venice Commission's Code of Good Practice in Electoral Matters. Both are excellent sources. The Drafter's Handbook covers:
 1. The type of electoral system
 2. Methods of Electoral Districting
 3. Mechanisms for minority and women's representation
 4. Procedure for elections of the legislative and executive branches
 5. Voter Enfranchisement, and
 6. the roles of an electoral management body.

Elections in a Constitutional Context

- Electoral processes are complex, standardized activities requiring clear, simple, and relatively comprehensive legal definition to promote consistency, equity, and a common understanding of the electoral framework by all persons involved in an election, says IFES.
- Constitutions address electoral issues in different ways depending on the individual requirements of the country. Electoral provisions can be a specific chapter or articles in the constitution, while others put the matter in the context of elections for the executive and legislative branches.

An Electoral Legal Framework

- A country's electoral legal framework also should specify the requirements for an Electoral Management Body (EMB). How an EMB operates can be defined in many different types of instruments, including international treaties, the constitution, national and regional laws, and regulations.
- International treaties and agreements provide a framework that can be used to define and assess a country's electoral framework: Copenhagen Document, ICCPR, ECHR
- There is a trend towards defining key electoral issues in the constitution, which can provide a workable way of entrenching electoral norms against ruling party manipulations. Electoral arrangements may be defined in national laws and regulations as well.
- A country's electoral law may be a single law or several laws that of course must be kept in harmony with each other. EMB or the executive branch of government may be able to develop regulations that can fill in gaps in the law; usually these are subject to judicial review. For confidence in the electoral process, it is important that all the pieces of the electoral framework – from treaties to regulations – are discussed and freely available to everyone involved in the process.
- *A balance needs to be struck between providing a consistent and predictable legal framework, while allowing the EMB the flexibility to respond to changing political circumstances. Bottom line is that the amount of detail in the constitution or statute laws is a function of the trust and confidence participants have in the system.*

The Constitution

- A growing number of countries are incorporating electoral provisions in their constitutions, frequently focusing on establishing an Electoral Management Body. Some establish an EMB as a constitutional body, such as:

1. Bangladesh
 2. Costa Rica
 3. Fiji
 4. Ghana
 5. India
 6. Indonesia
 7. Iraq, and
 8. Uruguay
- Putting electoral provisions in a constitution means that they cannot be changed as easily as laws, and constitutions have usually very difficult hurdles for amendment. The barrier that constitutional entrenchment imposes on ruling parties can give opposition groups a feeling of greater protection. On the other hand, entrenchment makes it more difficult for the electoral system to adapt to change.
 - Some electoral provisions that are often included in constitutions include the following:
 1. EMB independence
 2. EMB composition
 3. EMB term of office
 4. EMB powers and functions
 5. Suffrage rights or voter registration qualifications
 6. Political party rights
 7. Boundary delimitation authority or parameters
 8. Presidential election systems
 9. National legislative election systems
 10. Candidacy rights or qualifications
 11. Election schedule or date deadlines, and
 12. Electoral dispute mechanisms
 - *Ultimately, what is inside a constitution or part of laws and regulations depends on local considerations and varies widely.* For example,
 1. Austria's Constitution sets out EMB membership, the franchise, the Constitutional Court's role in election disputes, and the election system;
 2. Bangladesh defines the powers, independence, and functions of the EMB, the franchise, candidate qualifications, and deadlines for setting election dates;
 3. Cameroon's Constitution deals with political party rights, candidate qualifications, election date deadlines, and the powers of the Supreme Court and Constitutional Council to resolve election disputes;
 4. Costa Rica established the independence, membership, and functions of the EMB as well as dealing with the franchise, political party rights (including government funding), election systems, and candidate qualification;
 5. The Czech Republic's Constitution defines the franchise, the election system, and election date deadline;
 6. Ghana addresses the franchise, establishes the EMB, the right to form or join a political party, and delimits electoral districts;
 7. India's Constitution establishes an EMB, defines the franchise, the electoral register, bars the courts from interfering in electoral matters, and reserves seats for legally defined "castes" and "tribes" in the House of the People;
 8. Madagascar sets out candidacy rights, the election system for the senate and the presidency, and the Constitutional Court's role in elections and election disputes.
 9. Namibia's constitution spells out qualifications and procedures for presidential elections; and
 10. Peru's Constitution establishes different institutions that collectively do the work of a single EMB and defines relationships between them and other institutions.
 - While putting many electoral provisions in a constitution can be a way to build confidence and legitimacy in the overall process, *there are clear disadvantages to having too much detail.* The electoral framework may be difficult to change or change may take too much time.
 - The extent to which electoral provisions are included in a constitution is significantly affected by the level of trust in the election administration of a country. In many established democracies, where a high level of trust exists in law-making and public administration, constitutions do not make reference to constituting an EMB.
 - Yet around the world it is common to have independent and robust EMBs, which are supported by sophisticated and detailed legal frameworks which incorporate key electoral provisions in the constitution. This practice fosters stakeholder confidence in the electoral process.

Beyond the Constitution: Electoral Laws and Regulations

- Rather than placing establishment of an EMB in a constitution, an EMB can be established by statute. Countries such as the United Kingdom (which has no written constitution), Australia, Burkina Faso and Canada have established their EMB's entirely by a law.
- Such legislation should define the status of the national EMB and/or any other subsidiary EMBs, including responsibilities, powers, and functions. A law should also provide a clear and sufficiently detailed framework to ensure confidence and efficiency, which should include:
 1. EMB member and staff appointments, as well as tenure;
 2. Operational management issues relating to voter registration, political party and candidate registration, political campaigns, voter education, EMB transparency, voting, vote counting, and announcement of results;
 3. Financial and asset management issues; and
 4. Electoral offenses and electoral dispute resolution.
- Other issues which may also be covered include boundary delimitation, and codes of conduct for EMB members and staff, political parties, media, and election observers.
- Again, there is a fine balance between too much detail and too little that must be struck. Too much detail in the legislation can result in an EMB not being able to respond to new challenges or developments. A good example of this could be electronic voting or changing the organization of the EMB.

Electoral Districting

- Constitutions generally specify the electoral system as a single or multi-district system; states must decide how many representatives will be elected from each electoral district. States must consider how to delineate electoral districts – they can be drawn from existing boundaries or new ones can be configured.
- Texas redistricting example

Minority Mechanisms

- Many states include mechanisms in their constitutions to ensure minority representation, such as set asides or specific party minority requirements. Set asides are seats reserved for ethnic and religious minorities. Party requirements stipulate that all political parties must include candidates from different ethnic or confessional groups.
- The Venice Commission's Code of Good Practice of July 2002 notes that special rules that can guarantee minorities reserved seats (or providing exceptions to normal seat allocation – for example, exemption from a quorum requirement) do not run counter to the idea of equal suffrage. The code also notes that neither candidates nor voters should be forced to reveal their membership in a national minority, and states that voter information should be available in the local language of the minority.

Gender Provisions

- States may also choose set asides or specific party requirements for women. The Venice Commission Code of Good Practice also states that legal rules requiring a minimum percentage of persons of each gender *among candidates* should not be considered as contrary to the principles of equal suffrage *if they have a constitutional basis*.

Procedure for Electing the Legislature and Executive

- There can also be provisions about the legislature: the legislature can be a unicameral body, which promotes efficiency and unity. In states with bicameral legislatures, the first chamber usually serves the interests of the entire state, while the second chamber can represent regions, provinces, and other interests or units. Constitutions also can include provisions concerning electing the executive, including eligibility, length of term, nomination and re-election requirements, and the percentage of votes required to win the election.

Right to Vote and the Right to be a Candidate

- Venice Commission Code of Good Practice in Electoral Matters, issued in October 2002 outlines the “underlying principles of Europe’s Electoral Heritage.” This is a useful source on constitutional standards. The Venice Commission outlines five principles: universal, equal, free, secret, and direct suffrage.
- *Universal Suffrage* means in principle that all human beings have the right to vote and the right to stand for election. This right may, and indeed should be subject to certain conditions: Age, Nationality, Resident, and deprivation of the right to vote and to be elected.
- Procedurally, the Venice Commission stresses that this means that electoral registers must be accurate, published, up-to-date, and have dispute resolution mechanisms. The Commission also notes that part of universal suffrage includes clear procedures for the submission of candidacies.
- *Equal Suffrage* entails equal voting rights, voting power (a clear and balanced distribution of seats based on specific criteria, equality of opportunity for parties and candidates alike, national minority representation, and gender equality and parity).
- *Free Suffrage* includes several principles, including the freedom of voters to form an opinion (this means that the state must be neutral in terms of funding parties, media, demonstrations, etc., and that the authorities must enable voters to know who they are voting for, as well as impose sanctions for violations).
- Free Suffrage also means that voters should be able to express their wishes and combat electoral fraud: this means voting procedures should be simple and administration should be transparent.
- *Secret Suffrage*: For the voter, a secret ballot is not only a right but also a duty, and any disclosed ballots should be disqualified. Voting should be individual, and no list of persons actually voting should be published.
- *Direct Suffrage*: The Venice Commission’s Code also notes that the following must be elected by direct suffrage:
 1. At least one chamber of the national parliament;
 2. Sub-national legislative bodies; and
 3. Local Councils.
- So to go back full circle, every constitutional process is local, and whatever happens with Kosovo’s constitution, it should and must reflect the special circumstance of Kosovo. A balance must be struck between laws and the Constitution, and the process must be transparent, so that there is confidence in the system.
- Thank you for listening, and sorry for taking so long!

THE ELECTORAL SYSTEM.

1. The need for fairness in electoral procedures, the drawing of constituency boundaries and the administration of elections. Role of an impartial electoral commission.
2. The electoral system. Proportional representation more appropriate for a divided society. BUT – proportional representation is not the name of a **single** electoral system, but of a whole variety of systems, each of which seeks to attain the ideal of representing in accordance with opinion.

THE FUNDAMENTAL CHOICES TO BE MADE;

- a. A **national** or **constituency** list system. The example of Israel.
- b. The level of the **threshold** below which a party is not represented.
- c. Most important of all – whether the system allows the elector to choose between different candidates of their preferred party – or even across parties – or whether it confines them to voting for a party list, with the order of the candidates being determined by the party.

CLOSED lists. Israel and Germany. The German system.

FLEXIBLE lists. Belgium.

OPEN list. Finland. Combines general election with a primary election.

FREE list. Switzerland and Luxembourg. More suitable perhaps for consensual societies.

Vernon Bogdanor,
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Other Constitutional Issues

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Content

- Comparing Constitutions
- Constitutional Development
- Transfer of Sovereignty

Comparing Constitutions



Normative and Symbolic Constitutions
→ degree of impact on the political and social reality

Comparing Constitutions



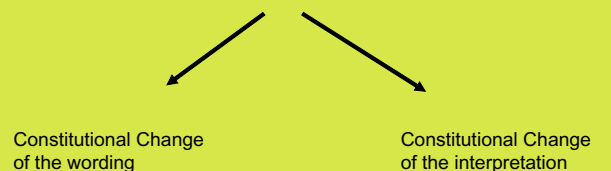
Relevant and Ritual Constitutions
→ degree of effectiveness to regulate political and social behaviour

Comparing Constitutions



Demanding and Descriptive Constitutions
→ relationship to the de facto powers in the society

Constitutional Development



Constitutional Change of the Wording

Flexible/Rigid Constitutions

- No one-document written constitution
- Parliamentary Majority
- Diverse constitutional sources
- Only a few examples
- One-document written constitution
- Protection against too much flexibility
- Theoretically the text should be the sole source
- Most common model

Germany

Article 79 [Amendment of the Constitution]

(1) This Constitution can be amended only by statutes which expressly amend or supplement the text thereof.

[...]

(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.

Germany

- Proposal by Government, 5% of MPs or the Senate (Bundesrat)
- Amendments have to be clearly stated
- 2/3 majority in both chambers
- Absolute limit

Denmark

Section 88 [Constitutional Amendments, Electors' Vote]

When the Parliament passes a Bill for the purposes of a new constitutional provision, and the Government wishes to proceed with the matter, writs shall be issued for the election of Members of a new Parliament. If the Bill is passed unamended by the Parliament assembling after the election, the Bill shall within six months after its final passing be submitted to the Electors for approval or rejection by direct voting. Rules for this voting shall be laid down by Statute. If a majority of the persons taking part in the voting, and at least 40 per cent of the Electorate has voted in favour of the Bill as passed by the Parliament, and if the Bill receives the Royal Assent it shall form an integral part of the Constitution.

Denmark

- Any MP can introduce a bill
- Parliament passes the bill
- Parliament gets dissolved
- Parliamentary Election
- New Parliament passes the bill
- Approval by referendum with at least 40% participation

Slovenia

[Part] IX Procedure for Amending the Constitution

Article 168 (Proposal to Initiate the Procedure)

(1) A proposal to initiate the procedure for amending the Constitution may be made by twenty deputies of the National Assembly, the Government or at least thirty thousand voters.
 (2) Such proposal is decided upon by the National Assembly by a two-thirds majority vote of deputies present.

Article 169 (Acts Amending the Constitution)

The National Assembly adopts acts amending the Constitution by a two-thirds majority vote of all deputies.

Article 170 (Confirmation of Constitutional Amendments by Referendum)

(1) The National Assembly must submit a proposed constitutional amendment to voters for adoption in a referendum, if so required by at least thirty deputies.
 (2) A constitutional amendment is adopted in a referendum if a majority of those voting voted in favour of the same, provided that a majority of all voters participated in the referendum.

Article 171 (Promulgation of Constitutional Amendments)

Constitutional amendments enter into force upon their promulgation in the National Assembly.

Slovenia

- Proposal by 20 MPs, the Government or at least 30.000 voters
- 2/3 of MPs present approve the proposal to initiate the process
- Adoption by 2/3 of MPs
- 30 MPs can require a referendum
- Approval by referendum with at least 50% participation

Constitutional Development



Constitutional Change of the wording

Constitutional Change of the interpretation

Constitutional Change of the Interpretation

Denmark

- Supreme authority
- The King shall not be answerable for his actions; his person shall be sacrosanct.
- Appointment/Dismissal of Ministers
- Dissolve parliament/new election

Transfer of Sovereignty

Germany

Article 24 [Collective Security System]

(1) The Federation may by legislation transfer sovereign powers to intergovernmental institutions.
 [...]

[...]

(2) For the maintenance of peace, the Federation may join a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.
 [..]

Germany

Article 23 [European Union]

(1) To realize a unified Europe, Germany participates in the development of the European Union which is bound by democratic, rule of law, social, and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to that of this Constitution. The federation can, for this purpose and with the consent of the Senate [Bundesrat], delegate sovereign powers. Article 79 II & III is applicable for the foundation of the European Union as well as for changes in its contractual bases and comparable regulations by which the content of this Constitution is changed or amended or by which such changes or amendments are authorized.

Germany

- the European Union which is bound by democratic, rule of law, social, and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to that of this Constitution
- 2/3 majority in both chambers
- absolute limit

Denmark

Section 20 [Delegation of Powers]

(1) Powers vested in the authorities of the Realm under this Constitution Act may, to such extent as shall be provided by Statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation.

(2) For the passing of a Bill dealing with the above a majority of five-sixths of the Members of the Parliament shall be required. If this majority is not obtained, whereas the majority required for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the Electorate for approval or rejection in accordance with the rules for Referenda laid down in Section 42.

Denmark

- Law
- for the promotion of international rules of law and co-operation
- 5/6 majority
- If majority in parliament is not reached, it shall be sent to the electorate for approval
→ Majority but not less than 30% of the electorate

Slovenia

Article 3a [European Union]

(1) Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.

(2) Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal is passed in the referendum if a majority of those voting have cast valid votes in favour of the same. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

(3) Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations.

(4) In procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercise of part of its sovereign rights, the Government shall promptly inform the National Assembly of proposals for such acts and decisions as well as of its own activities. The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present.

Slovenia

- to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values
- two-thirds majority vote of all MPs
- Parliament may call for a referendum (if yes, then they are bound by it)
- Government action in respective organisation



PUBLIC INTERNATIONAL LAW & POLICY GROUP

Additional Constitutional Provisions

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Provisions

- Constitutional Enactment
- Constitutional Amendment
- State Identity
- Supremacy of the Constitution
- National Identity
- Citizenship
- Official Capital, Flag, Anthem, Symbol, and Holidays
- Official Language
- State of Emergency

Constitutional Enactment

- Providing effective mechanisms to enact and amend a constitution are crucial for ensuring the document's integrity and stability.
- Most post-conflict states condition a new constitution's entry into force on its formal adoption. States most commonly choose to adopt their constitutions in one of two ways: (1) vote of the legislature or (2) popular referendum. A small number of post-conflict constitutions allow for both of these adoption mechanisms. Regardless of the adoption scenario, the constitution may also specify the date on which it comes into force.

Vote of the Legislature

Some post-conflict states enact their constitutions through legislative approval, typically by a vote of two-thirds or three-fourths majority. After the required number of legislators approves the constitution, it may come into force on the day it is declared in the legislature. An advantage of requiring more than a simple majority is that it signifies widespread support and assures that the constitution represents the will of more than just a narrow majority of parties, which will help promote greater stability.

Sample Language: Vote of the Legislature

This constitution is adopted by a [two-thirds/three-fourths] majority vote of the total number of members in the Assembly.

This constitution comes into force on the day it is declared in the Assembly.

Constitutional Amendment

Most post-conflict constitutions establish a fixed procedure for proposing and approving amendments. The procedure is important because changes to a constitution may alter the state's basic principles and potentially affect much or all of the general population. In outlining the process of amending a constitution, there are several key points a post-conflict states consider: the process for proposing amendments; the process for drafting amendment; the process for approving amendments; and deciding whether to impose restrictions on the subject matter and/or the timing of amendments.

Process for Proposing Amendments

Constitutions may specify one or more methods for proposing amendments; the options fall into four general categories.

First, an amendment may be proposed by a vote of a fixed number of members of the state's legislature. For example, this fixed number may be one-fifth, one-third, one-half, or two-thirds of the members. A second option is to allocate the authority to the Executive alone. A third option is to allocate the power to a large group of voting-eligible citizens. The size of this group should be small enough to allow for meaningful deliberation, but large enough to demonstrate the commitment of a significant portion of the populace. A final option is to allow the general public to propose amendments through a popular referendum. A constitution may include any combination of these four options.

Sample Language: Proposing Amendments

Option 1: Vote of the Legislature

Initiative for revision of this constitution may be undertaken by not less than [two-thirds/three-fourths] of the members of the Assembly.

Option 2: Executive Proposal

A proposal for the amendment of any provision of this constitution may be initiated by the [President/Prime Minister].

Option 3: Constituent Assembly

Proposals to amend this constitution may be made by a constituent assembly, composed of [number] of eligible voters.

Option 4: Popular Referendum

Proposals to amend this constitution may be made by the people through a popular referendum.

Process for Drafting Amendments

Some post-conflict constitutions include special provisions and/or requirements for drafting a proposed amendment. Some post-conflict states require the creation of a governmental committee to prepare a draft of the proposed constitutional amendment. There are virtually limitless options for procedures by which post-conflict states may permit amendments to their constitutions. Regardless of the procedure selected, states may wish to consider the need for a high degree of public support to change the constitution. States may also consider the need for adequate time for the public and the legislature to understand and debate the proposed change.

Sample Language: Drafting Amendments Creation of Special Committee

In order to implement proposals regarding the amendment of the constitution, a commission composed of members of the [Government/Assembly/Supreme Court], shall be established by a Presidential decree, and the commission shall prepare a draft of the amendments.

Process for Approving Amendments

The process of approving amendments to the constitution varies greatly among states. Because constitutions set forth the core principles and basic structures of the state, many states choose to require a greater level of social and political agreement to amend the constitution than that required to pass general legislation.

Possible approval scenarios include:

- (1) approval of the proposed amendment by a fixed number of members of the legislature;
- (2) approval of the proposed amendment by a fixed number of members of the legislature plus the endorsement of the executive;
- (3) approval of the proposed amendment by a fixed number of members of the legislature followed by ratification by popular referendum;
- (4) submitting the proposed amendment for approval in a referendum;
- (5) approval by a fixed number of the legislatures of the nation's member states; and
- (6) public debate and referendum.

Sample Language: Approving Amendments

Option 1: National Legislative Approval
Constitutional amendments must be approved by a [two-thirds/three-fifths] majority of the Assembly.

Option 4: Popular Referendum
The amendment shall become ratified after approval by [two-thirds] of eligible voters in a popular referendum.

*Option 2: National Legislative Approval
Followed by Executive Approval*
Constitutional amendments must be approved by [two-thirds/three-fifths] majority of the members of the Assembly. Following the approval of the legislature, the executive must endorse the amendment before it comes into force.

Option 5: State Legislative Approval
The amendment must be ratified by the legislatures of [two-thirds/three-fourths] of the provinces or by conventions in [two-thirds/three-fourths].

*Option 3: National Legislative Approval
Followed by Popular Referendum*
Constitutional amendments must be approved by [two-thirds/three-fifths] majority of the members of the Assembly. Once the amendment has been passed by the Assembly, it shall be submitted to ratification by referendum, which shall be conducted according to the referendum law.

*Option 6: National Legislative Approval
Followed by Public Debate and Referendum*
A proposed amendment, after adoption by the Assembly, shall be submitted to public debate and to a referendum.

Restrictions

Because constitutions often embody fundamental principles and core principles of the state, post-conflict states may wish to restrict its amendment. Specifically, some states do not allow any amendment of the constitution during a state of emergency or war. Others prohibit amendments regarding religion. Other states restrict constitutional amendments that pertain to fundamental rights so that amendment is impossible unless such rights are afforded greater protection. Finally, some states restrict amendments so that they may not alter fundamental aspects of the state.

Sample Language: Restrictions

- *No Amendments during Emergency or War:*
This constitution may not be amended during a [state of emergency].
- *No Amendments Regarding Religion:*
Amendments regarding the adherence to the fundamentals of the state religion are not permitted.
- *No Weakening of Fundamental Rights:*
Amendments regarding the fundamental rights of the people are permitted only in order to make them more effective.
- *No Change to the Nature of the State:*
Any constitutional amendment cannot infringe on the nature of the state or the integrity of the national territory.

State Identity

The constitution may identify the type of government and the boundaries of the state that it governs, and the nature of the borders. Many post-conflict constitutions also include a provision declaring the independence and sovereignty of the state. Such a declaration may include language that notes that state sovereignty is inalienable, indivisible, and non-transferable. Moreover, this provision may also note the source of the sovereignty – commonly that it derives from and is vested in the people.

Sample Language: State Identity

Borders:

The borders of [state] are [geographic description of boundaries]. Borders may only be altered in accordance with international law, by peaceful means and by agreement.

Type of Government:

[State] is a [parliamentary republic].

Sovereignty:

[State] is an independent, sovereign state. Sovereignty is inalienable, indivisible, non-transferable, and is derived from and vested in the people of [state].

Supremacy of the Constitution

Some post-conflict constitutions include a provision providing that it is the supreme law of the land and any laws inconsistent with it have no force. Including such a provision may prevent provincial or municipal governments from enacting laws inconsistent with constitutional principles.

Sample Language: Supremacy of the Constitution

This Constitution is the supreme law of [state]. Any laws inconsistent with this Constitution shall be void.

National Identity

Post-conflict states containing many nationalities or ethnicities often include a provision in their constitution describing national identity. In defining national identity, constitutions may acknowledge the variety of nationalities within the state while simultaneously noting the commonality and unity of the state's citizens.

Sample Language: National Identity

[State] is a country of many nationalities. [State] belongs to all who live in it, united by our diversity, common history, purpose and destiny, and committed to working together to promote the good governance and the welfare of all citizens of [state].

Citizenship

Most post-conflict constitutions address citizenship in one of two ways: either by describing specific citizenship requirements or simply by noting that citizens have both rights and duties of citizenship. If the state elects to detail requirements for citizenship in its constitution, this section may include means by which individuals qualify for citizenship of the state. Typical ways to gain citizenship are being born in the state, having one or both parents as citizens, or being naturalized as a citizen.

Sample Language: Citizenship

Option 1: Rights and Duties of Citizenship

All citizens of [state] are equally entitled to the rights, privileges and benefits of citizenship; and equally subject to the duties and responsibilities of citizenship.

Option 2: Citizenship Requirements

Any person who was born in [state], born to a parent who is a [state] citizen, or who has been naturalized as a citizen of [state], shall be considered a [state] citizen.

Official Capital, Flag, Anthem, Symbol, and Holidays

Some post-conflict constitutions specify the state's capital city, the official flag, symbol, anthem, and holiday(s). However, some post-conflict constitutions provide that specifics of these matters should be determined by law. If such provisions are detailed in the constitution they generally are simple, straight-forward descriptions.

Option 1: Specify Official state Capital, Flag, Anthem, Symbol, and Holiday(s) in Constitution

The capital city of [state] is [capital city].
The national flag is [description of flag].
The [seal/symbol] of [state] is [description of the seal/symbol].
The national anthem of [state] is [title of national anthem].
The national holiday[s] of [state] [is/are] [title and date of national holiday(s)].

Option 2: Leave Specific Determinations of Official state Capital, Flag, Anthem, Symbol, and Holidays to Law

Determination of the capital city, national holidays, the form and dimensions of the national flag and symbols, the content of the text of the national anthem, and their use shall be regulated by law.

Official Language

Some post-conflict constitutions designate one or more languages as the official state language(s). However in states where multiple languages are spoken, constitutional acknowledgement of an official language may lead to friction or conflict because of a perceived marginalization of individuals who speak the non-official language. One option is to mandate one or more official languages. A second option is to proclaim one or more official languages, while recognizing and allowing and/or protecting the use of other languages. This second option may be desirable in states with many indigenous or regional languages.

Option 1: Mandate One or More Official Language(s)

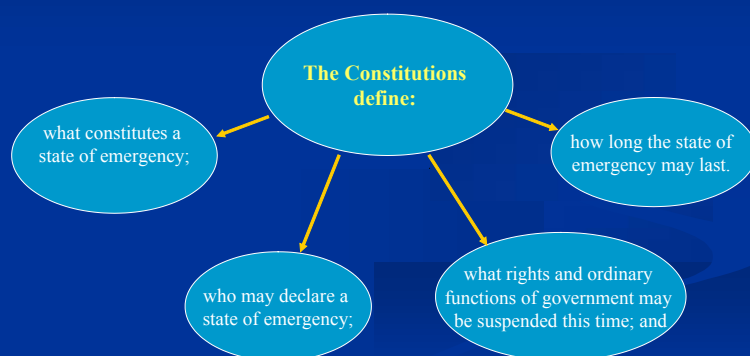
[Language(s)] shall be the official language[s].

Option 2: Mandate Official Language(s), but Protect All Languages

[Language(s)] shall be the official language[s]. The equality of all languages is guaranteed, and citizens have the right to educate their children in their mother tongue.

A State of Emergency

Post-conflict constitutions commonly include provisions relating to states of emergency



Defining a state of Emergency

Some constitutions define what constitutes a state of emergency, such as during state of war, an immediate threat to the independence and unity of the country, or in the event of a severe natural disaster. Others leave defining and declaring states of emergency to the discretion of one or more branches of government.

Sample Language: Defining a state of Emergency

Option 1: Explicit Definition

Declaration of a state of emergency may only be made if [the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency]; and the declaration is necessary to restore peace and order.

Option 2: Allow Government to Define

When it appears that an imminent peril resulting in grave results to public order or in the case of events presenting themselves, by their nature and their gravity, the character of the public calamity or natural disaster, the [President/Prime Minister/majority of members in the Assembly] of [state] may declare a state of emergency.

Authority to Declare a State of Emergency

A constitution may include provisions regarding who has the authority to declare a state of emergency. Some post-conflict countries vest this power solely in the executive branch. Others require broader consensus such as the affirmative vote of two-thirds majority of the Assembly, with a contingency plan in case the legislature is unable to meet.

Sample Language: Authority to Declare

Option 1: Executive May Declare

The [President/Prime Minister] may declare a state of emergency.

Option 2: Legislature May Declare

A state of emergency may be declared by an affirmative vote by [majority/two-thirds] of the members of Assembly. If the Assembly cannot be convened during the state of emergency, the [President] of [state], with the proposal of the [Council of Ministers], has the right to issue acts that have the force of the law, which have to be approved by the Assembly in its first meeting.

Restrictions During a State of Emergency

The constitution may also define the types and scope of restrictions during a state of emergency. One such restriction is to prohibit all amendments. Another option is to limit allowable restrictions to those that do not pertain to fundamental rights such as the right to life, prohibition of torture, cruel or degrading treatment or punishment, or the legal definitions of penal offenses and punishments.

Constitutions may also include a provision that prohibits the dissolution or suspension of any state organs or their powers under the constitution during a state of emergency.

Sample Language: Restrictions

No Constitutional Amendments:

No revision of the Constitution may be undertaken during a state of emergency.

No Constitutional Amendments Regarding Fundamental Rights:

In case of a state of emergency or war, the human rights and freedoms as defined by the Constitution and other laws are subject to limitation only by law.

Such a law may not affect the right to life, the freedom of thought, conscience, and religion, as well as the right not to be subjected to torture or inhuman and cruel treatment.

No Dissolution of Government

The Assembly may not be dissolved during a state of emergency.

Duration of the State of Emergency

Drafters may choose to specify maximum duration of a state of emergency and ways, if any, that such time may be extended.

Sample Language: Duration

[Council of Ministers/President/Prime Minister] may decide for a state of emergency in one part or in the whole state territory, which lasts for as long as the danger continues, but not longer than [30/60/90] days.

The extension of the term of the state of emergency may be done only with the consent of [the Assembly], for each [30] days, for a period of time not longer than [90] days.

