

**Gregory S. Mahler**

# Constitutionalism



## and Palestinian Constitutional Development

**PASSIA**

Palestinian Academic Society for the Study of International Affairs

**Gregory S. Mahler**

**Constitutionalism  
and Palestinian  
Constitutional Development**

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**for the Study of International Affairs**



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## **INTRODUCTION**

This project is concerned most broadly with an investigation of the twin concepts of constitutionalism and constitutional development. More specifically, it is concerned with the development of constitutionalism and constitutional political culture in the Middle East. Most particularly, it is concerned with the recent progress of constitutional development in Palestine.

After an initial broad discussion of the nature of constitutionalism and ideology (Chapter I), this study turns its attention to a brief examination of constitutions in ten Middle Eastern nations today, and discusses similarities and differences between and among these documents (Chapter II).

The final part of this research (Chapter III) examines Palestinian political culture and recent efforts on the part of Palestinians to develop a democratic and constitutional political culture.

The study concludes (Chapter IV) that there are many reasons to be optimistic about the future of constitutional government in Palestine.







# Chapter I

## THE NATURE OF CONSTITUTIONALISM<sup>1</sup>

### 1.1 Constitutions as Political Structures

The state and the nation are among the most frequently examined subjects that are studied by those interested in politics and political behavior. This is not to say that all comparative political research takes place examining only these topics - certainly a good deal of research has focused upon individuals, or policy, or developing and developed societies, and so on - but the state is a common subject of study. The description of states is generally agreed upon; with some exceptions, borders are clearly known, and students of politics are accustomed to examining states and nations as their primary focus when they try to understand how politics works in the contemporary world.

Many characteristics of the state can be taken as the focus of comparative study, including *structural* characteristics (such as constitutions, legislatures, political parties, judiciaries, bureaucracies, executives, or interest groups), and *behavioral* characteristics (such as ideology, political participation, political education and political recruitment, among others). This study will focus upon the structures that generally describe the political system, that describe the boundaries, the primary political institutions, and the definitions of the component structures found within the overall political system. These structures are called constitutions.

It may be useful to think of constitutions as "power maps"<sup>2</sup> for political systems. That is, it is often the constitution of a nation that describes for us the political "lay of the land", showing the connections between one institution and an-

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<sup>1</sup> Portions of this chapter first appeared in Gregory Mahler, *Comparative Politics: An Institutional and Cross-National Approach*; reprinted by permission of Prentice Hall, Inc., Upper Saddle River, NJ.

<sup>2</sup> Ivo Duchacek, *Power Maps: Comparative Politics of Constitutions* (Santa Barbara, CA: Clio Press, 1973).

other, and that describes the manner in which power is distributed among the many actors in the political environment. We look to the constitution for an explanation of *who* has the power to do *what*, what the *limitations* on power are in a given state, and what the *relationships* are between and among the many political actors we find in the given state. The idea of a constitution as a fundamental expression of the power relationships in a political regime dates back to the time of the Greek and Roman republics; constitutions were the focus for comparison in Aristotle's major studies of political systems, a point to which we shall return later in this work.

## **1.2 Written and Unwritten Constitutions**

Studies of governments often base their analysis upon the structure or form of those written documents that we call constitutions. Yet, in order that we may communicate properly and effectively, we must be sure that we are using the same language when we discuss constitutions and constitutional systems of government: a government with a *written constitution* is not automatically the same thing as a political system that we could describe as *constitutional government*. This is a very important distinction, one that is often ignored by those unfamiliar with studies of these structures. A written constitution is essentially a basic expression of the ideas and organization of a government, formally presented in one document which is called a constitution, a charter, a covenant, or some variation on the concept. Some constitutions are quite short - the US constitution for example - while others are much longer, such as the constitution of India, the (now non-existent) constitution of the former Soviet Union, or the constitution of Switzerland, to take only three examples of longer constitutions.<sup>3</sup> Some written constitutions are contai-

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<sup>3</sup> "The Swiss Constitution of 1848 as amended in 1874 and in subsequent years is a written document like that of the USA, although it is double in size to that of the American Constitution." See Vishnoo Bhagwan and Vidya Bhushan, *World Constitutions* (New Delhi: Sterling Publishers, 1984), p. 321.

ned in one document, such as the Swiss Constitution, while others are found in several documents, such as the Canadian Constitution, which includes a *Constitution Act*, acts of the national legislature in Ottawa, and actions of the ten provincial legislatures, as well as several other historical documents.

On the other hand, the term *constitutional government* can best be described as *limited government*. That is, there are limitations on the government's powers, certain things that the government may not do, whether it wants to or not; there are certain parameters beyond which the government may not go. The First Amendment to the US Constitution is a clear example of this principle: It states in part that "Congress shall make *no law* ... abridging the freedom of speech ...". (italics added). This is an *explicit* limitation upon the powers of government to act in a specific field of interest, and while the Supreme Court of the United States has not always taken this limitation absolutely literally (it has ruled in some cases that the government has the right - under very specific conditions - to limit speech; all citizens are not guaranteed the right to say *anything* that they may want under *any* circumstances), it has recognized this limitation on the government's powers as a general rule.

The fact of the matter is that we can find governments without written constitutions that can properly be called "constitutional" regimes: there is no single written document describing and cataloging information about governmental structures and institutions and behavior, yet there are firm limitations on the government's powers. Conversely, we can find governments that do have written constitutions but that do not properly fit within the behavioral parameters we have set for a regime to be called a constitutional government. Several examples may help to make this clear.

Britain does not possess a document called "The Royal Constitution", or some such name, that might serve as the basic and central document for the political structures of the British political system. British political history points to a num-



ber of different documents that are part of the body of what is referred to as the British "constitution" and British constitutional law. These documents include the Magna Carta (dating to 1215), the Bill of Rights (1689), the Act of Settlement (1701), and certain special acts of the British Parliament, as well as numerous *traditions* that have developed in Britain. Traditions are very important: there is no law creating the position of prime minister, saying that the prime minister is powerful, saying that the prime minister must resign in case (s)he loses a vote of non-confidence, and so on. All of these characteristics and central principles of "the British constitution" were developed by tradition, not by legislation.

On the other hand, scholars agree that Britain *does* possess a constitutional government. There are limits beyond which the British government may not go. British citizens, and constitutional scholars, recognize a "guarantee" to freedom of speech, freedom of the press, freedom of assembly, freedom of religion, and so on, and all of these freedoms limit the powers of the government. Thus, while we may say that Britain has a *constitutional government*, we must also note that Britain does *not* have a single, written document that can be called a written constitution.

The same thing can be said for constitutionalism in Israel. Although there was no single document called a constitution when the state of Israel came into existence in 1949, for a variety of reasons that were important at the time, Israel did decide in principle to have a written constitution. Israel decided early on in its modern history to write a constitution over time, and has been writing a constitution one chapter at a time over the last forty-eight years. Today Israel's constitution is almost complete, and it will be pulled together into a single package and promulgated as a unified constitution in the near future; however, Israelis have been living without a formal, written constitution and an entrenched bill of rights until this time.<sup>4</sup>

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<sup>4</sup> This is discussed in a very good book by Daphna Sharfman, *Living Without a Constitution: Civil Rights in Israel* (Armonk, N.Y.: M. E. Sharpe, 1993).

Although the Soviet Union had until its recent demise a relatively new (1977) constitution that was highly detailed and specific<sup>5</sup>, many argued that the Soviet regime could not be called a constitutional government. Why? There were, until the very final days of the regime (and it could be argued that even at that time this was a doubtful proposition), no effective limitations on Soviet governmental power. Rights were conditional. For example, Article 39 of the Soviet Constitution stated that "the exercise of rights and liberties of citizens must not injure the interests of society and the state"<sup>6</sup>; Article 47 stated that "USSR citizens, in accordance with the goals of communist construction, are guaranteed freedom of scientific, technical, and artistic creation..."<sup>7</sup>; Article 51 stated that "in accordance with the goals of communist construction, USSR citizens have the right to unite in public organizations..."<sup>8</sup>. These few examples, which were typical of the document as a whole, show that expressions of rights clearly did exist; however, they were always conditional: it was the government that decided what "the goals of communist construction" were. Thus, if the government did not like what citizens were doing, it could say that the behavior was not consistent with "the goals of communist construction", and therefore the citizens did not have a constitutional guarantee to engage in that behavior.

This type of constitution, one evidencing conditional constitutional guarantees, was characteristic of many of the East European political systems in the post-World War II period. The constitutions of Poland, East Germany, Czechoslovakia, Hungary and Albania, among many others, had these expressions of constitutional guarantees of rights that were not really guarantees when the constitution was read with some care.

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<sup>5</sup> See Robert Sharlet, *The New Soviet Constitution of 1977* (Brunswick, Ohio: King's Court Communications, 1978).

<sup>6</sup> *Ibid.*, p. 89.

<sup>7</sup> *Ibid.*, p. 92.

<sup>8</sup> *Ibid.*, p. 93.

There is one other, more subtle, distinction between these types of regimes that should be made explicit here. One type of constitution *gives* rights, and the other *recognizes* rights. This is not merely a semantic difference, and is really terribly important. The Soviet Constitution, in stating that *the government gave* citizens certain rights, implied that the government also had the power to *take away* these rights. If rights come from the state, the logical conclusion to draw is that the state can certainly take them away. On the other hand, using the other model of constitutional rights, in the (unwritten) British Constitution or the (written) US Constitution, rights are not *given*; they are *recognized*, by limiting what the government can do.

The Constitution of the United States does not state that "citizens are given the right to free speech", although some people assume that it does. What is *actually* written in the Constitution is that "Congress shall make no law... abridging freedom of speech, or of the press...". A careful reading of the Constitution shows an understanding that these rights and freedoms existed before the state recognized them and incorporated them in the written constitution; since they *already* existed and belonged to the people, the Constitution recognized this fact by forbidding the Congress to limit them. This is quite different from that which was the case in the USSR.

It should be pointed out, however, that even the existence of a written constitution, in a constitutional culture of limited governmental power ('constitutional government') in which the public in general support that constitution does not absolutely guarantee either limited governmental power or unlimited individual rights. Freedom of speech is not absolute in either the US or Britain, to take two examples; in both systems there is substantial judicial precedent documenting instances in which the government can, in fact, restrict individuals' speech.<sup>9</sup>

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<sup>9</sup> This is a very important issue, and one that has received a great deal of attention in many societies. A recent article in the United Kingdom discussing this can be found in Salmon Rushdie, "Rushdie on Censorship", *Editor and*

Beyond this, even if we are examining a nation-state with a clear history of constitutional protection of individual rights and a commitment to protecting those rights, short-term or crisis forces may occasionally result in those rights being ignored, abrogated, or limited in some significant respect: Japanese-Americans who lived in the American state of California in the time period shortly after Japan attacked Pearl Harbor during the Second World War were very clearly denied what the Supreme Court has called substantial "due process", lost their homes and most of their possessions, and were sent to "relocation camps" in the Western United States for the duration of World War II, despite the fact that the US Constitution - *their* Constitution - guaranteed them trial by jury, the right to face their accusers, and a variety of other rights that were ignored in the virtual panic of the moment. The US Supreme Court ruled at that time that this action on the part of the US government was permissible because of the emergency situation posed by the war.<sup>10</sup> Only recently, in fact, has the US government officially admitted that this was wrong, apologized for this action, and made partial restitution to the Japanese-Americans who were adversely affected by this action.

When we discuss constitutional governments, then we are really not talking about whether there exists a single, specific document called a constitution; rather, we are interested in questions about a kind of political behavior, political culture, political tradition, or political history. The British Constitution is really a collection of documents and traditions, bound together in an abstract way. The US Constitution is a single document, with substantial subsequent judicial interpretation and

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*Publisher* 126:13 (27 March 1993), p.6. A similar question in the American context is discussed in "Protecting 'Free' Speech", *The Christian Science Monitor* 85:88 (2 April 1993), p. 20.

<sup>10</sup> For a discussion of this episode of American history, see Roger Daniels, *Prisoners Without Trial: Japanese Americans in World War II* (New York: Hill and Wang, 1993); David Takami, *Executive Order 9066: Fifty Years Before and Fifty Years After* (Seattle, Wash.: Wing Luke Asian Museum, 1992); or Roger Daniels, Sandra Taylor, and Harry Kitano, eds., *Japanese Americans: From Relocation to Redress* (Seattle: University of Washington Press, 1991).



expansion. The forms may vary, but the behavioral results are the same: limits are imposed upon what the governments may do.<sup>11</sup>

### **1.3 What Do Constitutions Do?**

"Constitutions are codes of rules which aspire to regulate the allocation of functions, powers, and duties among the various agencies and officers of government, and define the relationship between these and the public."<sup>12</sup>

Do constitutions make a difference to the political systems of which they are a part? We have just argued that simply having *written* constitution may not guarantee the behavior of a regime; does having *any* constitution - written or unwritten - matter? Today, more and more political scientists are putting *less* emphasis on a constitution as a significant structure in a political system. They argue that too often constitutions - whether written or unwritten - are not true reflections of the manner in which political systems operate, are frequently either completely or partially ignored, and therefore the constitutions are of little use or value.<sup>13</sup>

Furthermore, in many instances constitutions omit discussions of political structures of the regime that are crucial to the operation of that regime. For example, political parties are nowhere mentioned in the (written) US Constitution, yet it is difficult to conceive of the government operating in the US without political parties. To take another example, the (written) Canadian Constitution and the (unwritten) British Consti-

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<sup>11</sup> Two good examples of recent comparative studies of constitutions are: Marian McKenna, ed., *The Canadian and American Constitutions in Comparative Perspective* (Calgary, Alberta: University of Calgary Press, 1993); and Preston King and Andrea Bosco, eds., *A Constitution for Europe: A Comparative Study of Federal Constitutions and Plans for the United States of Europe* (London: Lothian Foundation Press, 1991).

<sup>12</sup> S. E. Finer, ed., *Five Constitutions* (Sussex: Harvester Press, 1979), p. 15.

<sup>13</sup> *Ibid.*

tution fail to mention the prime minister as a significant actor in the political system at all<sup>14</sup>, yet there is no doubt that this is the single most important office in the Canadian and British political arenas. As we noted above, the constitutions of many nations do not indicate the presence of a prime minister at all, or the practice of party discipline, or votes of confidence, as central principles of the political regime. The (written) constitution of the former Soviet Union guaranteed certain rights, but practice indicated that these guarantees were hollow indeed. Given all of this, if constitutions offer such inadequate descriptions of political systems, why is it that constitutions seem to be universally accepted as necessary to a political system? If a political structure is so pervasive, it must perform a very important function for the political system in which it is found.

Students of constitution say that several functions can be attributed to those political structures that we call constitutions, whether they are written or unwritten, whether they are followed or not, wherever they may be found, although not *all* of these functions exist in *all* political systems. These functions, scholars say, are important to the political systems in which the constitutions are found. First, they serve as an expression of ideology and philosophy, a subject to which we shall return later in this document. Very often this kind of expression is found in a preamble to the constitution in question. For example, the preamble to Canada's Constitution Act of 1867 indicated that Canada would have a constitution "similar in principle" to that of Britain. This "similar in principle" clause was seen by scholars of the Canadian Constitution as having the effect of incorporating - all by itself - all of the hundreds of years of British constitutional tradition into the Canadian political realm, and accordingly was re-

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<sup>14</sup> The position of Prime Minister is mentioned in the *Prime Minister's Residence Act* - establishing an official residence for the prime minister - and the *Prime Minister's Salary Act* - authorizing the prime minister to receive a higher salary than other cabinet members - but the precise method of selection, powers, and similar important descriptions of the position are not included in constitutional documents.

garded as being quite significant.<sup>15</sup> When students of Canadian constitutional law would look for the basis of a Canadian's right to trial by jury, to free speech, to *habeas corpus*, to a right to assemble, and so on, he or she would be referred to the "similar in principle" clause.

Second, constitutions serve as an expression of the basic laws of the regime. These laws play a central role in the regime and are often so special that they can be modified or replaced only through extraordinary amendment procedures. Sometimes they cannot be amended at all because they are seen as so central, for example, the clause in the German constitution guaranteeing human rights, or the clause in the Japanese constitution renouncing the right of Japan to declare war on any other nation. Whereas an ordinary law can usually be passed with a "simple majority" approval of the legislature - a majority of those present and voting at the time - basic laws of the regime expressed in the constitution usually require special majorities of the legislature (two-thirds or three-quarters, for example) for approval, as well as often requiring the approval of a referendum of the public or ratification by state governments (in federal systems). These special laws usually focus upon the rights of citizens; for instance, rights concerning language, speech, religion, assembly, the press, property, and so on.

Third, constitutions provide organizational frameworks for governments. Although they may not actually contain diagrams to explain how the various parts of the government interact with or relate to each other, these relationships are often explained in the text of the document. It is common for constitutions to contain several sections, and to devote a section each to the legislative branch of government, the executive branch of government, the judicial branch of government, and so on. Constitutions will discuss power relationships among the actors in the political system, covering the legislative process, the role of the executive in policy for-

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<sup>15</sup> Richard Van Loon and Michael Whittington, *The Canadian Political System* (Toronto: McGraw-Hill Ryerson, 1976), pp. 169-170.

mation, and checks and balances among the actors. They may include impeachment of the executive and dissolution of the legislature, and perhaps discussion of succession as well.

Fourth, constitutions usually say something about the levels of government of the political system. They discuss how many levels of government there will be, and whether nations will be federal, confederal, or unitary. They often will describe what powers fall within the jurisdiction of the national government and what powers do not belong to the national government. They discuss how the levels of government may resolve conflicts in jurisdictions, for instance if both a central and an intermediate level of government want to legislate in the area of education policy, and their legislative goals are not the same. Often this kind of conflict is anticipated in constitutions, and the constitutions will provide specific discussion of how to resolve this type of dispute.

Finally, constitutions usually have an amendment clause. No matter how careful and insightful the authors of a constitution try to be, they usually recognize that they cannot foretell the future with a sufficiently high degree of accuracy. Accordingly, constitutions invariably need to be amended or altered at some point down the road. A constitution must contain directions for its own modifications; failure to do so might mean that when change becomes necessary the political actors will be unable to agree on precisely *how* the change should take place, with the result being anything from inaction to civil war, and the entire system could collapse for want of a mechanism of change.

Constitutions, then, whether written or unwritten, play an important role in the regimes in which they are found. Some constitutions will be more important in one of the functions described above than in others. For example, the constitution of the Islamic Republic of Iran may be more important as an expression of ideology (and theology) than as a real



organizational diagram of the government.<sup>16</sup> Similarly, the Constitution of the US is more important as an expression of governmental organization and as a guideline for the power relationships of the regime than as an expression of the philosophy of the regime; the latter is usually said to be better expressed in the *Declaration of Independence* and the *Federalist Papers* than in the Constitution.

#### **1.4 Constitutionalism, Unitary Government and Federal Government**

One of the most common functions of constitutions indicated above is describing the organizational structures of the governments in which they are found. In this respect, we can identify several major organizational options available, including unitary, confederal, and federal political systems. It is important for us to understand the distinctions among these three organizational forms so as to more fully appreciate some of the differences between and among governmental systems.

A *unitary system* of government is one that has only one level of government above the local level. In Great Britain, for example, although there are city and county governments, true *sovereignty* - the real power to make political decisions - resides with Parliament, and Parliament has the right to control whatever powers the cities or counties might exercise. Parliament has the power to grant the cities and counties more influence, or to take away policy jurisdiction they may already control. Similarly, in Jordan all power is centralized in Amman, and although Jordan is divided into administrative districts, there is no doubt that power in the political system, the true ability to make political decisions, lies in Amman, and not in the administrative capitals.

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<sup>16</sup> See Samih Farsoun and Mehرداد Mashayekhi, eds., *Iran: Political Culture in the Islamic Republic* (New York: Routledge, 1992).

The chief advantage of this unitary type of system lies in its simplicity - there is only one responsible government with which to deal. If citizens have a question or a problem, they know where to direct their concerns. Unitary governments, however, have proven to be less effective for large nations than for small nations, and they do not allow for ethnic and regional groups to exercise the degree of autonomy for themselves that they might like to exercise. Britain's unitary government has been the subject of tension in the past because some citizens in Wales, Scotland and Northern Ireland have argued that it does not give regional and ethnic groups as much power as they might like. France, Italy, Syria, Sri Lanka, Myanmar, and Japan are other contemporary examples of unitary nations.

A *confederal system* - sometimes called a confederation - is a union of sovereign states that retain their sovereignty and powers, but that agree to coordinate their activities in certain respects. For example, a group of sovereign states may agree to coordinate their trade barriers, or their fishing activities in certain waters, or their oil production. The degree to which the units coordinate their behavior can vary greatly, as can the range of areas in which this coordination takes place. A group of nations may agree to coordinate their policies in five issue areas, or in fifty issue areas. They may agree to coordinate their policies in each of these issues partially, or completely. In short, there is substantial variation in this regard. There are no true confederal states in the world today; some have argued that the closest approximation to such an organization would be an international organization such as the European Union (EU), although we will make the argument below that the EU has really crossed the line from *confederal* to *federal* structure.

The major advantage of confederations is their loose structure, which leaves a tremendous degree of flexibility and autonomy to member units. This structure allows the units to retain their individual characteristics and, to varying degrees, their own sovereignty to chart the policy directions they

would most like to pursue, while they agree to coordinate policies in certain specific areas.

This same characteristic can be seen to be the main drawback of confederations as well: the inability to reconcile the varied interests of various member units. Since sovereignty is expressly reserved to the national units, not the "super-national unit", if one of the member units decides that it will *not* cooperate in a given policy area, the other units do not have the ability to force it to go along with the group decision. A confederation's citizens tend to identify most strongly with the member units, not the "national" unit, and priorities tend to be sectional, not broad. Often, action is taken only when *all* member units agree, which may mean that often no action is taken at all because unanimity is notoriously hard to achieve among large political units. Notable experiments in confederation that failed - the USA (1781-1787), Germany (1815-1866) and Switzerland (1815-1874) - were all reorganized as federations after it became clear that the confederal system would not further necessary common objectives because there simply was not sufficient power at the center to hold the union together and to coordinate the necessary public policy and government policy.<sup>17</sup>

The European Union - often referred to today simply as "Europe" - began as an organization regulating tariffs among a relatively small number of European nations, clearly within the definition of a "confederation" presented here. It has grown so much in power over the last several decades, however, that it has become a real political entity in the region. EU nations elect not only their own national legislators, but also members of the European Parliament (MEPs) who represent their regions and nations in the European Parliament. The European parliament today has the ability to pass legislation regulating a wide range of economic and busi-

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<sup>17</sup> Thomas D. McGee, *Notes on Federal Governments: Past and Present* (Montreal: Dawson Brothers, 1865).

ness issues in Europe<sup>18</sup>, and has the ability to force member units (i.e. France, the United Kingdom, Holland, or Spain) to change their *domestic* policy to meet the rules of the EU. Thus, the EU today really is *more* than a *confederal* government, and really can be described as almost a *federal* government.

In a *federal system* there are two levels of government above the local level, each enjoying sovereignty in certain specific areas. For example, the central government may have the sole authority to coin money, raise an army, or declare war, and at the same time the intermediate level of government (such as states, provinces, cantons, or *länder*) may have sole authority to regulate education, criminal law, or civil law. Citizens deal with both levels of government. The key difference between a federal government, a confederal government, and a group of unitary governments has to do with where sovereignty (actual political power, the ability to make decisions) lies. As indicated in Table I, the primary difference between a group of unitary nations and a confederal system is the coordination of policy in the members of the confederation; all sovereignty is maintained at the national level. The primary difference between a confederal system and a federal system lies in the enforced division of sovereignty between the central ("national") government and the intermediate governments; both the nation and the intermediate units have some sovereignty, and they - and the constitutional system within which they operate - coordinate policy-making within parameters established by the constitution. Federal governments have been shown to have numerous advantages over other types of governments.<sup>19</sup>

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<sup>18</sup> The literature on the European Parliament (EP) is rapidly increasing in size. A good recent article on the EP and its political role can be found in Dick Leonard's "Parliament Prepares for Power", *International Management* 46:9 (November 1991): p.76. An interesting parallel question on the role of British Members of the European Parliament can be found in Neasa MacErlean, "Non-Honoured in Their Own Country", *Accountancy* 108 (August 1991), p. 68.

<sup>19</sup> A very good recent study is that by Daniel Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987). See also Michael Burgess and Alain-G. Gagnon, *Comparative Federalism and Federation: Competing Traditions and Future Directions* (London: Harvester-Wheatsheaf, 1993), Mark Tushnet,

Federalism allows for both the expression of regional goals and a coordinated expression of national goals. One of the advantages of a federal system for member states is that the national level of government can absorb, through economic redistribution among member units, some of the costs of new technology or programs that would have to be absorbed completely by member units in a unitary or confederal system of government.<sup>20</sup> This may not always be popular with all units in the federation: the "have" units may resent having to lower their standards of living to contribute to the standards of living of the "have-not" units. For example, some Canadian provinces (especially Alberta, British Columbia, and Ontario) have considerably more resources than others (especially Prince Edward Island, Nova Scotia, and Newfoundland), and they "pay in" to the federal budget far more in taxes than they receive in federal benefits.

**Table I-1**  
**Unitary, Confederal and Federal Systems: Some Comparisons**

<b>Style</b>	<b>Unitary</b>	<b>Confederal</b>	<b>Federal</b>
Units involved	Independent National Governments	Independent National Governments	One National Government and a Number of Intermediate Level Governments
Location of Sovereignty	All Sovereignty in National Governments	All Sovereignty in National Governments	Some Sovereignty in National Government and some Sovereignty in Intermediate Governments
Coordination of Policy	No Coordination of Policy	Some Coordination of Policy	Legally Enforced Coordination of Policy

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ed., *Comparative Constitutional Federalism: Europe and America* (New York: Greenwood Press, 1990), or Harry Scheiber, ed., *North America and Comparative Federalism* (Berkeley: University of California Press, 1992).

<sup>20</sup> Frank Trager, "On Federalism", in Thomas Frank, *Why Federations Fail* (New York: New York University Press, 1968), pp. x-xi.

The concept of federalism can be seen to have its roots early in political history - as far back as the historic Greek city-states, in fact. These early federations, for the most part, were not very stable or long-lived.<sup>21</sup> Modern federalism is usually dated from the American Constitutional Convention in the city of Philadelphia in 1787.<sup>22</sup>

The number of federal states in the contemporary world is not great. Of the approximately 178<sup>23</sup> nation-states today, only 21 claim to be federal.<sup>24</sup> These 21 nations, however, cover more than half of the land surface of the globe, and include almost half of the world's population.<sup>25</sup> Federalism has proven to be a significant element "in situations in which sheer size, involving the separation and divergence of communities, has been the dominating feature."<sup>26</sup>

Some authors argue that there is a direct correlation between large size and the advisability of federalism, and they quote Thomas Jefferson in support of their argument: "Our country is too large to have all its affairs directed by a single government."<sup>27</sup>

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<sup>21</sup> See S. Rufus Davis, *The Federal Principle* (Los Angeles: University of California Press, 1978), p.11, and William Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), p. 5.

<sup>22</sup> See Sobei Mogi, *The Problem of Federalism* (London: Allen and Unwin, 1931).

<sup>23</sup> There are many different firm statements of the number of nation-states in the world today. One indicator is simply the number of members of the United Nations, which was 178 in 1993. See Mark Hoffman, ed., *The World Almanac and Book of Facts, 1993* (New York: Pharos Books, 1993).

<sup>24</sup> Duchacek, *Power Maps*, p. 111.

<sup>25</sup> Riker, *Federalism*, p. 1.

<sup>26</sup> Arthur R.M.Lower, "Theories of Canadian Federalism - Yesterday and Today", in A.R.M. Lower, ed., *Evolving Canadian Federalism* (Durham, N.C.: Duke University Press, 1958), p. 3.

<sup>27</sup> Ivo Duchacek, *Comparative Federalism: The Territorial Dimension of Politics* (New York: Holt, Rinehart, and Winston, 1970), p. 198.

Of the six largest nations in the world, only China is unitary, and even China has some characteristics of federal government.<sup>28</sup> (The five other largest nations are Russia, Canada, the United States, Brazil, and Australia.)

There are many small federations as well, including Mexico, Venezuela, and Argentina in Latin America, Nigeria in Africa, Switzerland in Europe, and India in Asia. Many of these nations opted for federalism not because of their large land area, but because of regional, ethnic, or linguistic characteristics of component groups that made a federal type of organization necessary. In general, federalism allows countries involved to maximize economic growth and political strength, while at the same time, allowing for the expression of regional characteristics.<sup>29</sup>

Switzerland, for example, chose the federal system because it was best suited to the needs of that country's three language groups, German, French, and Italian. The Swiss Constitution, in fact, recognizes three official languages. Of the 21 Swiss cantons, there are 18 unilingual cantons, three bilingual cantons, and one trilingual canton. The Swiss Constitution guarantees each citizen the right to communicate with the central government in any one of the three official languages.<sup>30</sup>

The federal system has also been adapted in Germany. Rather than establishing clear divisions between areas of jurisdiction of the Bund (the central parliament) and the Länder (the intermediate units of government), the German Constitution allows for a broad area of concurrent jurisdiction. The members of the upper house of the national legislature, the Bundesrat, are chosen by the Länder governments; it has an

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<sup>28</sup> Ibid.

<sup>29</sup> Ronald Watts, *New Federations: Experiments in the Commonwealth* (Oxford: Clarendon Press, 1966).

<sup>30</sup> See Ursula K. Hicks, *Federalism: Failure and Success* (New York: Oxford University Press, 1978), pp. 144-171.

absolute veto over matters affecting the Länder (for example, laws that need to be enforced by the state government such as health policy or speed limits), but only a "suspensory" veto over matters of "national" concern (for example, foreign aid legislation).<sup>31</sup>

There does not appear to be a universally accepted theory of federalism, nor, for that matter, a clear definition of precisely what behavioral attributes are characteristic of federal government. Ivo Duchacek has suggested that:

the term itself is unclear and controversial. It is often used to describe a *process* of combining territorial communities that had previously not been directly joined... In addition, federalism is also a term used to describe the result or the tools of the federalizing process - a constitutional federal system and its institutions.<sup>32</sup>

The most common characterization of a federal government is that it is organized on two levels above the local level, one national and a number of intermediate-member units. Both levels of government rule over the same constituents, and both levels of government have the power to make certain decisions independently of the other.<sup>33</sup> William Riker has suggested a useful framework within which the many federal governments of the world may be measured. He has suggested that federations can be measured along a "centralized-decentralized" dimension. This dimension may be defined by the following minimum and maximum, as illustrated in Figure I-1.

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<sup>31</sup> Ibid.

<sup>32</sup> Duchacek, *Comparative Federalism*, p. 189.

<sup>33</sup> Ibid., p. 191; see also Edward McWhinney, *Comparative Federalism* (Toronto: University of Toronto Press, 1962). A very good collection of articles on this subject matter can be found in the volume by Herman Bakvis and William Chandler, *Federalism and the Role of the State* (Toronto: University of Toronto Press, 1987).



*Minimum.*

The ruler(s) of the federation can make decisions in *only one* narrowly restricted category of action without obtaining the approval of the rulers of the constituent units...

*Maximum.*

The ruler(s) of the federation can make decisions without consulting the rulers of the member governments in *all but one* narrowly restricted category of action.<sup>34</sup>

The closer to the "minimum" end of the scale a federal government is, the more it can be described as a "peripheral federation". The closer to the "maximum" end of the scale a federal government is, the more it can be described as a "centralized federation".

**Figure I-1**  
**A Scale of Federalism**

Centralized	Decentralized
(maximum)	(minimum)
Intermediate Governments 1% Jurisdiction Central Government 99% Jurisdiction	Intermediate Governments 99% Jurisdiction Central Government 1% Jurisdiction

Although most modern federations have proven to be more stable and long-lived than their Hellenic ancestors, not all experiment with federation since the late eighteenth century have been successes. The more decentralized or peripheral a federation is, the weaker the center is as compared to the member units, the greater the centrifugal forces acting on a political system, and the greater the likelihood that the federation will not endure. Cases such as the United Arab Republic (1958-1961), the Federation of the West Indies, the Federation of Malaysia, and the Federation of Rhodesia and

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<sup>34</sup> Riker, *Federalism*, p. 6.

Nyasaland<sup>35</sup> are all illustrations of "premature federations" - unifications that took place before sufficient national integration and national development were attained - and are examples of unifications that did not last.

Federalism is significant as a political variable because the federal balance in a polity often influences the efficiency with which public policy is made.<sup>36</sup> To take one example, it is often difficult for the Canadian federal (national) government to set national policy because many substantial policy issues - such as health policy, education policy, much resource policy, etc. - fall within the policy jurisdiction of the provinces. Accordingly, if the federal government wants to enact a new health policy, or a new job training program, it must convene a meeting of the prime minister and the ten provincial premiers, or the federal health minister and the ten provincial health ministers, or the federal labor minister and the ten provincial labor ministers (or comparable officials, depending upon the policy area involved), to "negotiate" a policy that will be acceptable to their respective governments. The provincial representatives will then return to their respective capitals and introduce the policy legislation in their provincial legislatures.<sup>37</sup>

## **1.5 The Separation of Powers**

The notion that centralized power is dangerous - that power must be a check on power - reached maturity in the eighteenth century, and its first full-scale application was to be

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<sup>35</sup> See Amitai Etzioni, *Political Unification* (New York: Holt, Rinehart, and Winston, 1965), pp.97-183, or William Livingston, ed., *Federalism in the Commonwealth* (London: Cassell, 1963).

<sup>36</sup> A good study of this problem is by Gregory Mahler, *New Dimensions of Canadian Federalism: Canada in a Comparative Perspective* (Rutherford, N.J.: Fairleigh Dickinson University Press, 1987).

<sup>37</sup> A very good study of this method of policy-making is that by Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1977). Simeon discusses pensions, financial reform, and constitutional amendment as three case studies.

found in the American Constitutional Convention in Philadelphia in 1787. There, delegates to the federal convention continuously cited "the celebrated Montesquieu", Thomas Hobbes, John Locke and others<sup>38</sup> in support of the idea that political power, in order to be safe, had to be divided. The legislature needed to have a check on the power of the executive, the executive on the power of the legislature, and so on. Many of John Locke's ideas were adopted and can be found in *The Federalist* (especially *Number 47*) among other places, and expressed the philosophy that the executive force had to be kept separate from the legislative force.<sup>39</sup>

Constitutions express the power relationships among the many actors in political regimes. The US Constitution is explicit about the degree to which the president can take control of the work of the legislature (literally, he cannot introduce legislation or control the legislative calendar, he must work with legislators who have the power to perform these functions), and the degree to which the Congress can take control of the work of the president (literally, it cannot vote him out of office before the expiration of his four-year term of office<sup>40</sup>). The situation, however, is one that *can* rapidly

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<sup>38</sup> See especially Paul Spurlin, *Montesquieu in America: 1760-1801* (Baton Rouge: Louisiana State University Press, 1940), John Loy, *Montesquieu* (New York: Twayne, 1968); Arthur Prescott, *Drafting the Federal Constitution* (Baton Rouge: Louisiana State University Press, 1941); and Clinton Rossiter, *1787: The Grand Convention* (New York: Macmillan, 1966).

<sup>39</sup> See John Locke, *Second Treaties on Civil Government* (especially chapter 13, "Of the Subordination of the Powers of the Commonwealth", pp. 87-94), in Ernest Barker, *Social Contract: Essays by Locke, Hume & Rousseau* (New York: Oxford University Press, 1970).

<sup>40</sup> This is different, of course, from the constitutionally-mandated power of impeachment that Congress has. The House of Representatives has the power to impeach, or indict, the President for "high crimes and misdemeanors". Should it do this, the Senate would serve as a jury for the trial of the President. Only one American president has ever been impeached, Andrew Johnson who was tried by the Senate and acquitted (by one vote) in May of 1868. Since that time it has been axiomatic in American politics that the impeachment weapon is not a political weapon, but a criminal tool, and it has come close to being used on only one other occasion, in 1973 when it was clear that Richard Nixon would be impeached by the House of Representatives for his actions in obstructing justice in the series of events that came to be known as "Watergate".

devolve into a stalemate: the president can veto legislative work of the Congress, and Congress can refuse to pass legislative requests of the president, so the system of power being a check on power can result in nothing getting accomplished, but neither branch can *force* the other to do anything.

In other regimes, the lines are much less clearly drawn. For example, in France the president can, under certain circumstances, simply issue decrees that have the force of legislation. In the British "Westminster" model of government, a variation of which is used by most countries in the world, the chief executive (the prime minister, premier, chancellor, or some other title) is actually a member of the legislature, attends meetings of the legislature on a daily basis, and *at the same time* directs the executive branch of the government and the legislative branch of government.

Hindsight tells us that the explicit lines drawn by the American Founding Fathers to separate the executive and legislative branches of government were not absolutely necessary to ensure democratic government. There are other power relationships that are used in other political systems that have proven to be just as democratic and just as stable. As we have just noted, the British parliamentary model of government has, in many respects, existed for *longer* than the American presidential model of government, and has (in Britain, at least) been associated with stable, peaceful government. We can in fact, identify presidential governments with clear delineations of power that have been very stable (the US), stable with periods of instability (Mexico or the Philippines), and unstable (Liberia), and we can similarly identify parliamentary governments with unclear delineations of power that have been very stable (Britain), stable with periods of instability (Grenada, India), and unstable (Uganda).

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Once it was obvious that he would, in fact, be impeached and have to stand trial in the Senate, Nixon resigned the presidency.

In fact, it should be noted that while the idea that centralized power was inherently dangerous was popular at the time of the foundation of the American republic, in fact today many countries (some of them European) have had fairly successful experiences with centralized power structures. Thus, the notion that centralized power must be a bad thing is not, in and of itself, one that is universally shared today.

## **1.6 The Importance of Constitutions**

Constitutions can be examined on two levels. On one hand, we can look at a constitution on a piece level, and examine it section by section to see what structures and behaviors it prescribes for a given political system. Further, we can speculate as to the implications of these structures and behaviors for political life in that system. On the other hand, we can look at a constitution from the level of the political system and ask the same question: What does the constitution do?

One very well-known political analyst, David Easton, described in a theoretical way the manner in which political systems operate. His approach to political behavior became known as "input-output analysis".<sup>41</sup> Demands and supports are fed into the political system as *inputs*. They are "processed" by the political system itself; that is, the system is a giant conversion mechanism that is able to take demands and supports from the environment, digest them, and issue "authoritative allocations of values" in the forms of decisions and actions: *outputs*. These outputs filter through the environment as "feedback" and are subsequently reintroduced as new inputs, either demands or supports, and the cycle continues. The digesting and the processing phase of the system, what Easton labels "the political system", is what government is all about: responding to demands and sup-

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<sup>41</sup> See David Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965), esp. p. 32.

ports, making decisions, providing information, establishing legitimacy, and so on.

Instead of simply looking at a constitution from the perspective of what it says about the separation of powers, about the federal or unitary nature of the political system, about checks and balances, basic laws, amendments, and philosophy, we could ask a system-level question of how the constitution helps the political system to survive. What are the consequences of the structures that we refer to as constitutions?

Duchacek has performed just such an analysis, and his work offers some answers to the question "What does the constitution do?" The answer that his classic study suggests is that a constitution helps a political system in the function of "system maintenance", or survival of the political system, by helping the political system to respond to the various demands and supports that are directed to it in the form of inputs. The constitution and the corresponding constitutional framework of powers help to process demands and supports and help to convert them into outputs, which subsequently are reintroduced as inputs. According to the framework suggested by Duchacek, constitutions play a crucial role in the system maintenance function suggested by Easton. Demands and supports are processed more smoothly because of (1) commitment to responsiveness; (2) specific institutions for rule-making, enforcement, and adjudicating, and (3) commitment to goals, all of which are found in a constitution.<sup>42</sup>

## **1.7 Ideologies**

One of the functions that was ascribed to constitutions earlier was to serve as an expression of ideology and philosophy for a regime. The term "ideology" is one that is often highly emotionally charged, and "ideologue" is often used

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<sup>42</sup> Duchacek, *Power Maps*, p. 236.

as a description for an individual no longer approaching a situation from a rational perspective. Originally, the term "ideologue" referred to a student of how ideas are formed, and "ideology" was "a study of the process of forming ideas, a 'science of ideas'."<sup>43</sup> The purpose behind the introduction of the concept of ideology was

"to provide the new secular educators with a systematic educational theory. The unashamed view of the ideologues... was that the minds of the young should be bent to new, more healthy purposes."<sup>44</sup>

Actually, the term "ideology" has a number of meanings and connotations:

1. One meaning is that of "deception", "distortion", or "falseness". It conveys the notion of *subjectivism* as opposed to objectivity.
2. Ideology also conveys the notion of a *dream*, an impossible or unrealizable quest.
3. Ideology also means what may be called the *consciousness* of a society at any given moment, the values and beliefs and attitudes that hold it together.
4. Ideologies often correspond to *social criticism*, confronting existing beliefs and attempting through argument and persuasion to challenge and change them.
5. Ideology also provides a *set of concepts* through which people view the world and learn about it.
6. Ideologies can be a call for *committed action*.
7. Ideologies often become, under certain circumstances, a powerful *instrument of manipulation*.<sup>45</sup>

Ideologies, then, in a more expressly political context, involve a set of ideas that relate to the social/political world and that provide a general guideline for some action. One scholar has tersely indicated that "an ideology represents a prac-

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<sup>43</sup> Leon Baradat, *Political Ideologies: Their Origins and Impact* (Englewood Cliffs, N.J.: Prentice Hall, 1988), p. 6.

<sup>44</sup> Howard Williams, *Concepts of Ideology* (New York: St. Martin's Press, 1987), p. xi.

<sup>45</sup> Roy C. Macridis, *Contemporary Political Ideologies* (Cambridge: Winthrop, 1980), p. 3-4.

tical attitude to the world"<sup>46</sup>; another has suggested that "ideologies are actually attempts to develop political accommodations to the economic and social conditions created by the Industrial Revolution."<sup>47</sup> Ideologies can serve many functions, as was indicated earlier. They can unite groups, serve as rallying cries, help to articulate philosophies, or serve as tools of political manipulation. In each of these areas, however, we can see the same two critical components: a relation to political ideas and a relation to political behavior.<sup>48</sup> Ideologies are often integral components of constitutions.

Ideologies give the regime its *raison d'être*, its sense of purpose, and serve as a philosophical point of reference for political behavior in the political system. Michael Curtis has suggested that all ideologies are amalgams of

"facts, values, and mythology that provide some understanding of history and the supreme significance of or necessary leadership by a particular individual, group, class, or nation."<sup>49</sup>

Many different ideologies have existed in the modern political world. Some have come and gone in a brief period of time; others have long been in existence. Some ideologies have had a great deal of influence on major world events; others have not. What we could call "classical liberalism" was a very significant ideology at about the time of the American Revolution, and it continues to be significant today. Certainly Marxism is an example of an ideology that

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<sup>46</sup> Williams, *Concepts of Ideology*, p. 122.

<sup>47</sup> Baradat, *Political Ideologies*, p. 20.

<sup>48</sup> Several very good new studies of comparative political ideology are: Roger Eatwell & Anthony Wright, eds., *Contemporary Political Ideologies* (New York: St. Martin's Press, 1993); Ian Adams, *Political Ideology Today* (New York: Manchester University Press, 1993); and Peter Collins, *Ideology After the Fall of Communism* (New York: Boyars and Bowerdean, 1993).

<sup>49</sup> Michael Curtis, *Comparative Government and Politics* (New York: Harper and Row, 1978), p. 41.



has had a very broad and profound influence in society, and an influence that has lasted for many years. Other "isms", including socialism, fascism, conservatism, nationalism, and so on, have become part of our vocabulary over the years, as well.

Ideologies are often related to individually held attitudes toward political change, which are usually conceived as fitting along a "left-right" spectrum, as illustrated in Figure I-2. The "left-right" metaphor dates back to 1798, at which time the French council of 500 was arranged in a semicircular hall of representatives according to their self-determined place in the political spectrum.<sup>50</sup> Those generally supporting the monarch's policies sat on his right, while those who proposed changes in his policies sat on his left; hence, "leftists" favored change and "rightists" preferred the status quo. These same general labels are used today. It should be kept in mind that the positions in Figure I-2 and the descriptions that follow relate to *classical* political values: those who consider themselves conservatives in a particular political system today do not hold the same values as would a classical conservative in the 1790s.

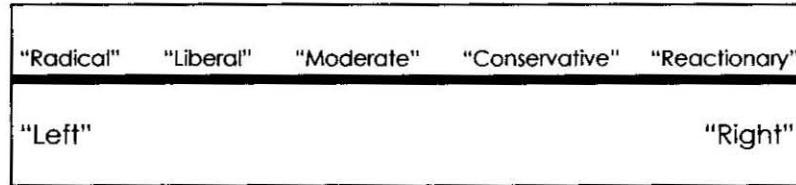
The "radical" position is often associated with violence, although that need not be the case.<sup>51</sup> Generally, the radical position is extremely dissatisfied with the way society (and politics) is organized and operating and is very impatient to undertake fundamental changes in society and government. Radicals favor drastic and immediate change. Of course, not all radicals are alike, and we could certainly distinguish among more or less "radical" radicals, depending upon the intensity of their beliefs, the strategies they might wish to employ (include more or less violence), the immediacy with which they want changes undertaken, and so on.

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<sup>50</sup> *Ibid.*, p. 158.

<sup>51</sup> This discussion of the left-right spectrum and the five general attitudes to be found related to the spectrum is based upon much more extensive discussion in Baradat, *Political Ideologies*, pp. 27-40.

**Figure I-2**  
**The Liberal-Conservative Spectrum**



The classical liberal position is obviously more content with society as it exists than is the radical, but the liberal still believes that reform is possible, and indeed necessary, in society. Among the many differences between liberals and radicals are their views toward the law.

Since radicals are basically opposed to the political system that governs them, they are apt to see the law as one way in which those who control the society maintain their control. Hence, radicals find it hard to respect the law. Liberals, on the other hand, generally respect the concept of the law, and although they may want to change certain specifics of the law, they usually will not violate it. Instead they try to change the law through legal procedures.<sup>52</sup>

Liberalism includes a belief in human potential, a belief in the ability of individuals to change social institutions for the better, a belief in human rationality, and a fundamental belief in human equality.

The moderate position is one that is basically satisfied with the way society is operating, and one that insists that any changes that might be made in society, social rules, and social values, should be made slowly, gradually, and in a way that will not be disruptive.

<sup>52</sup> *Ibid.*, p. 30.

The classical conservative position can be described as being most satisfied with the way society is operating at the time, most satisfied with the *status quo*. The major difference between conservatives and liberals is that "conservatives support the status quo not so much because they like it but because they believe that it is the best that can be achieved at the moment."<sup>53</sup>

Classical conservatives do not share the optimism of liberals that individuals have the capacity to improve society. They are more skeptical of human nature and believe that human nature may be selfish. They place more emphasis on respecting institutions and traditions because they are not sure that they (or others) are capable of devising a better system. They believe in elitism.

Finally, the classical reactionary position corresponds to that of the radical, only on the right end of the spectrum. The reactionary position proposes radical change backwards - that is, "retrogressive change", favoring "a policy that would return the society to a previous condition or even a former value system."<sup>54</sup>

It is important to note before we leave our discussion of the left-right spectrum that it is *very much* a relative scale. Someone who is a "radical-liberal" may view a "moderate-liberal" as an "ultra-conservative". Description may be to a large degree a matter of perspective. What is a radical policy today may be a moderate policy tomorrow; what is perceived as being "radical" in one society may not be perceived as being "radical" in another.

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<sup>53</sup> Ibid., p. 35.

<sup>54</sup> Ibid., p. 39.

## 1.8 Constitutions and Ideologies

Aristotle provided us with terms that are still used today to discuss constitutional structures for both *good* government and *bad* government. The Aristotelian forms of good government are the *polity* (rule by many in the general interest), the *aristocracy* (rule by a few in the general interest), and *kingship* (rule by one in the general interest). The divisions of bad government are *tyranny* (self-interested rule by one), the *oligarchy* (self-interested rule by a few), and the *democracy* (self-interested rule by many). It is indeed ironic that Aristotle's use of the word "democracy" was so different from that used by people today.

Aristotle provided what has come to be regarded as the "classical" division of systems of government and constitutions, based upon two dimensions: the number of rulers in a system, and in whose interest the rulers rule. This framework is summarized in Table 1-2. If a constitution, written or not, is perceived as a framework establishing the skeleton of a political system, the manner in which it is constructed, and the means by which it will operate, then an ideology should be perceived as the *goals* of that framework. To what end does the regime exist? What is its reason for being? What does it offer, distinct from other regimes, to justify its existence? These are all questions that are addressed by ideologies. *What* the regime wants to do, in a very general philosophical sense, is included in an ideology; *how* the regime will operate to achieve these ends is addressed through the constitutional structure of the regime.

**Table I-2**  
**The Aristotelian Classification of Political Regime**

<b>The Number of Rulers in the Regime</b>	<b>Governments that Rule in the General Interest ("Good" Governments)</b>	<b>Governments that Rule in a Self-Interest ("Bad" Governments)</b>
One	Kingship	Tyranny
A Few	Aristocracy	Oligarchy
Many	Polity	Democracy

While a knowledge of the constitutional structure of a regime and its ideology does not tell us everything that is important to know about that system, it tells us a great deal. It gives us an indication of the type of public policy that we can expect to see in that setting, and how that public policy is likely to be enacted. It also indicates the range and amount of political behavior that we are likely to encounter there. It also indicates the *relationships* of political power that we are likely to encounter in that political system: who has political power? How much political power do the rulers have? How are the rulers chosen? What are the relations between the rulers and the ruled? These questions, and others, are answered by a study of a political system's constitution and ideology.

## **1.9 Constitutionalism and Democracy**

What have we learned here about the nature of constitutions and constitutionalism, generally, and about the relationship between constitutionalism and democracy more specifically? We have seen that constitutions can play very important roles in their respective political systems, in articulating philosophies of limited government, in describing the

basic laws of the regime, the organizational framework of the government, and how the governmental structures can be changed, among a wide range of other very important functions they can perform. Constitutions describe the separation of powers in regimes, and offer hints about the ideological foundations of the governments in question. In short, constitutions can be important "power maps" for their respective political systems.

We noted, however, that no matter how important the status of the constitution of a nation may be - and whether it is a written or an unwritten constitution makes no difference in this regard - the behavior of political leaders and the political culture is crucial for the political system, as is the nature of the (written or unwritten) constitution. As we observed in regard to the treatment of Japanese-American citizens during the Second World War, even a well-developed, secure, historically accepted, and institutionalized constitution with a very well received assortment of guarantees of individual rights cannot, in fact, always guarantee that a government's behavior will respect the *spirit* of the constitution. Thus, although our focus here is on constitutions, and what is included in constitutions, we want to clearly acknowledge that the willingness of political actors to honor the *spirit* of the constitution may be every bit as important as the *letters* of the words included in the constitution.

Democratic constitutionalism, then, can be said to reflect not only a written commitment in the constitution of a country, but also an attitudinal and behavioral commitment on the part of the leaders of a country and of the people of a country to honor the distribution of powers described in a constitution, as well as the concepts of limited government powers and human rights included in a constitution, and to have the political system operate in a manner that truly reflects the will of the people and that corresponds to both the letter and the spirit of the law detailed in the (written or unwritten) constitution. This is a difficult task, and one that has not always been successfully met even in historically stable democracies. It is reasonable to assume that it will be a

more difficult task to meet in new nations, as well as nations without legacies of stable democratic governments with well-entrenched constitutions. We now turn our attention to an examination of constitutions and constitutionalism in the Middle East, an area in which democratic constitutionalism has had a marginal existence in recent years.



## Chapter II CONSTITUTIONALISM IN THE MIDDLE EAST

### 2.1 Constitutionalism and Middle East Political Traditions

Political scientists have long written about the idea of a *political culture*<sup>1</sup>, and about the systematic variation between and among regions and peoples of the world in terms of the basic political beliefs, attitudes, and values they hold.<sup>2</sup> As a general rule, political culture "is not a theory; it refers to a set of variables that may be used in the construction of theories"<sup>3</sup>, including beliefs, symbols, values, basic orientations to politics, and fundamental approaches to politics. Political culture includes variables related to the political system, to the political process, and to public policy, including values

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<sup>1</sup> Among the classic works on this subject would be included the following: Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Development in Five Nations* (Newbury Park, California: Sage Publications, 1989); Lucian Pye and Sidney Verba, eds., *Political Culture and Political Development* (Princeton: Princeton University Press, 1965); Larry Diamond, ed., *Political Culture and Democracy in Developing Countries* (Boulder, Co.: L.Rienner Publishers, 1993); Steven Welch, *The Concept of Political Culture* (New York: St.Martin's Press, 1993); and William Bluhm, *Ideologies and Attitudes: Modern Political Culture* (Englewood Cliffs, N.J.: Prentice Hall, 1974). Two more applied studies are Takeshi Ishida, *Japanese Political Culture: Change and Continuity* (New Brunswick: Transaction Books, 1983), and Myron Aronoff, ed., *Cross-Currents in Israeli Culture and Politics* (New Brunswick, N.J.: Transaction Books, 1984).

<sup>2</sup> See Milton Rokeach, *Beliefs, Attitudes and Values: A Theory of Organization and Change* (San Francisco: Jossey-Bass, 1968), and Milton Rokeach, *Understanding Human Values: Individual and Societal* (New York: The Free Press, 1979).

<sup>3</sup> Gabriel Almond, "The Intellectual History of the Civic Culture Concept", in Gabriel Almond and Sidney Verba, *The Civic Culture Revisited* (Boston: Little, Brown, 1980), p. 26.



related to national identity, regime legitimacy, and institutional legitimacy.<sup>4</sup>

Unfortunately, there are no comprehensive empirical studies of Middle Eastern political culture, or thorough empirical studies of political culture in the Arab nations. While there are a few studies of political attitudes related to specific questions in various Middle Eastern settings, the type of general studies of political culture that one finds in Western systems (or, closer to the focus of this study, dealing with Israeli politics) simply do not exist for the Arab states. Studies that do exist decry "ideological instability", and the "heterogeneous and transitory character of ideologies"<sup>5</sup> in the region, and suggest that not only do individuals have multiple political identities - "over the past 30 years the identities mentioned have included those of family, tribe, ethnic group (Arab, Kurd, Armenian, etc.), religion, citizenship, and political party, movement, and ideology" - but that the identities "tend to respond to political events and trends of particular times".<sup>6</sup> One different kind of discussion of political culture in the Middle East is that contributed by Libya's Mu'ammār Qaddafi, who has offered a discussion of a Middle Eastern populism that appeared in his two volume work *The Green Book*.<sup>7</sup>

In the context of the Middle East, one of the reasons often given for a lack of stable democratic government has been that "Arab society" or "Arab culture" is not sympathetic to, or easily adapted to, the demands of democratic govern-

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<sup>4</sup> See my discussion of political culture in Gregory Mahler, *Comparative Politics: An Institutional and Cross-National Approach* (2nd ed.) (Englewood Cliffs, N.J.: Prentice Hall), 15.

<sup>5</sup> James A. Bill and Robert Springborg, *Politics in the Middle East* (3rd Edition) (New York: HarperCollins, 1990): 32-33.

<sup>6</sup> Bill and Springborg, *Politics in the Middle East*, 35.

<sup>7</sup> Mu'ammār al-Qaddafi, *The Green Book*, Part 1, *The Solution of the Problem of Democracy* (London: Martin Brian and O'Keefe, 1976); and Part 2, *The Solution of the Economic Problem* (London: Martin Brian and O'Keefe, 1977).

ment. An example of the kind of statement that could easily be dismissed as an almost racist anti-Arab bias is included in the following passage by George Lenczowski in his book *The Political Awakening in the Middle East*:

To speak of liberal democracy in the Arab world may appear to some as either grotesque or irrelevant... by the pessimistic argument of those who, claiming deeper knowledge of psychology, consider Arab mentality as incapable of accepting and practicing the basic premises of democracy - namely empathy, tolerance of dissent, obedience to the will of majority, protection of the rights of minority, respect for impersonal institutions and procedures, independent judicial process, and self-imposed restraint of those who wield power.<sup>8</sup>

Many educated readers today may find the level of generalization in the above quote to be a generalization about a group that simply cannot, in fact, be supported by individual-level data. In fact, however, in 1992, after issuing the *Basic Law of Government*, the *Consultative Council Law*, and the *Law of the Provinces*, Saudi Arabia's King Fahd said something that is not completely incompatible with the preceding quote:

The democratic system that is predominant in the world is not a suitable system for the people of our region. Our peoples' make-up and unique qualities are different from those of the rest of the world. We cannot import the methods used by people in other countries and apply them to our people. We have our Islamic beliefs that constitute a complete and fully integrated system. Free elections are not within this Islamic system, which is based on consultation (*shura*) and the openness between the ruler and his subjects before whom he is fully responsible...<sup>9</sup>

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<sup>8</sup> George Lenczowski, *The Political Awakening in the Middle East* (Englewood Cliffs, N.J.: Prentice Hall, 1970): 100.

<sup>9</sup> Robert L. Maddex, *Constitutions of the World* (Washington, D.C.: Congressional Quarterly, 1995) p.243. See also Fuad Ajami, *The Arab Predicament: Arab Political Thought and Practice Since 1967* (New York: Cambridge University Press, 1981), or Hanna, Sami A. "The Egyptian Mind and the Idea of Democracy", *International Journal of Middle East Studies* 1:3 (July 1970): 238-47.

While there is no doubt that the perspective of King Fahd does not represent the perspective of the vast majority of the Arab world, or even the majority of the citizens of Saudi Arabia, statements like his go a long way to encourage the generalizations referred to earlier.

There has been a good deal of scholarly work done dealing with the idea of an "Arabic political culture", traditionalism and constitutionalism, although this work is not based on empirical research. Whether "Arab political thought" is the same thing as "Islamic thought", of course, is a separate question. The question of whether an Islamic code should be replaced by another basic, secular, theory of government and social relationships is not new. Indeed, discussion dealing with these issues dates back to Napoleon's visiting Egypt in 1798, and shortly before World War I "Arab reformers, especially in Egypt and the Fertile Crescent, began to urge the adoption of new concepts and institutions."<sup>10</sup> This is still a subject intensely debated today.

It was Western politics that introduced ideas of constitutionalism to the Middle East in modern times, when some political leaders - and critics of political leaders- were concerned about the need to limit authoritarian government and guarantee a certain level of political participation for the public. Opponents to change argued that the Koran offered all that was necessary in the way of description of ideology and fundamental relationships in society.<sup>11</sup>

In several different systems, reform movements were able to capture power, sometimes within the rules of the legal system, sometimes through revolution, but they were not always able to capture the hearts and minds of their popula-

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<sup>10</sup> Majid Khadduri, *Political Trends in the Arab World: The Role of Ideas and Ideals in Politics* (Baltimore: Johns Hopkins University Press, 1970): ix.

<sup>11</sup> See Anouar Abdel-Malek, ed., *Contemporary Arab Political Thought* (Michael Pallis, trans.) (London: Zed Books, 1983): 39-54.

tions. "Arguments in favor of constitutionalism carried conviction among the younger members of the Westernized official class. These arguments were also, no doubt, advanced by some out of ambition rather than conviction."<sup>12</sup> In his book *The Arab Predicament: Arab Political Thought and Practice Since 1867*, Fouad Ajami writes that

The half-hearted attempts at democratization reported, in the aftermath of the Iranian revolution, in Kuwait, Saudi Arabia, and Iraq, were part of a frantic attempt to quarantine the Iranian upheaval, to deny the relevance of Iran to the Arab situation. But these measures could only be cosmetic, for at stake was nothing less than the culture's style of authority. The institutions and the habits of mind needed to allow the citizenry to become more than sheer spectators were nowhere to be seen in the Arab-Muslim order.<sup>13</sup>

They sought to develop new institutions that would approximate those found in Europe, but faced the problem that their respective populations did not support these new institutions. In other words, the fact of transplanting a political structure into a system was not a guarantee that the new system would survive; the new constitutions needed a way to mobilize popular support. The idea of liberal democratic change, what some have referred to as "the democratic-populist path of development"<sup>14</sup>, stresses values that many have suggested are not part of the "traditional" Middle East: open participation in politics, political parties, parliaments, and open elections. While these systems may be common in Europe, North America, and other areas of the world, they are not common in the Middle East; indeed, "in recent years, only Israel, Turkey, and Lebanon belonged in

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<sup>12</sup> Elie Kedourie, *Democracy and Arab Political Culture* (London: Frank Cass, 1994): 13.

<sup>13</sup> Fouad Ajami, *The Arab Predicament: Arab Political Thought and Practice Since 1967* (Cambridge: Cambridge University Press, 1981): 182.

<sup>14</sup> Bill and Springborg, *Politics in the Middle East*: 24-25.

this category"<sup>15</sup>, and, indeed, the collapse of stable government in Lebanon beginning in 1975 effectively removed Lebanon from this group.

The preface to Elie Kedourie's volume *Democracy and Arab Political Culture* notes that

"indeed, except for democratic Israel, the Middle East seems to be the only region in the world untouched by the democratic revolution sweeping the globe. Throughout the Middle East, despotisms of various hues hold sway. Where limited forms of democracy have been introduced, in Jordan and Algeria, the result has been electoral support for fundamentalist forces, whose commitment to democracy is either questionable or nonexistent."<sup>16</sup>

Many of the political regimes in the Middle East have been openly hostile to discussion of constitutionalism, democracy, and constitutional reform or revision.

One student of the foundations of democracy in the Middle East has suggested that democracy does not thrive in the modern Middle East "because the economic and social basis which it requires is as yet non-existent."<sup>17</sup> He argues that Arab states dominate all aspects of life and society in the modern Middle East, and "respect for the individual citizen in the Arab polity is non-existent."<sup>18</sup>

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<sup>15</sup> Bill and Springborg, *Politics in the Middle East*, 25.

<sup>16</sup> Barbara Weinberg, "Preface", in Kedourie, *Democracy and Arab Political Culture*: xi.

<sup>17</sup> Charles Issawi, "Economic and Social Foundations of Democracy in the Middle East", *International Affairs* 32 (January, 1956): 28.

<sup>18</sup> See Manuel Hassassian, "The Democratization Process in the PLO: Ideology, Structure and Strategy", in Edy Kaufman, Shukri Abed and Robert Rothstein, *Democracy, Peace, and the Israeli-Palestinian Conflict* (Boulder, CO: Lynne Rienner, 1993), p. 260.

In several Middle Eastern nations, when democratic constitutions were established with the assistance of colonial powers, once foreign influence began to weaken the stability of the constitution weakened as well.<sup>19</sup> Four years after independence Iraq (in 1936) came under military control; the same thing happened in Syria four years after its independence (in 1949) and in Egypt, later (in 1952, although according to some sources the idea of a military seizure of power was considered as early as 1940<sup>20</sup>).

The interesting question is: in order to have a stable democratic system, how important is it that fundamental democratic attitudes be held by a substantial majority of the population, and what is the "critical mass" that is needed to support a "liberal" constitutional regime for it to survive? Traditional "liberal" concepts such as (a) individualism, a belief in the importance of the individual, individual rights, individual liberty, and individual thought, (b) parliamentarism, a belief in an elective chamber exercising control over government, (c) equal opportunity, the idea that how high one can rise in society should be based upon ability, and not affected by wealth or family ties, (d) reformism, the idea that men (and women) are rational and are capable of making useful changes to the political and social environment, and (e) anti-clericalism, belief in a separation of church and state, opposition to excessive religious interference in politics (this is *not* the same as atheism), are necessary if a liberal-constitutional regime is to survive. If a substantial proportion of the society does not share these fundamental beliefs, it is hard to imagine that a democratic constitutional system can endure, whether the minority supporting the democratic regime is the political elite, opposing an anti-democratic mass majority, or whether the minority supporting the democratic regime comes from the politi-

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<sup>19</sup> Khadduri, *Political Trends in the Arab World*, p. 37.

<sup>20</sup> See Anwar al-Sadat, *Revolt on the Nile* (London, 1957), chapters 3-4.

cal masses, with the political elite and other political masses opposing these democratic ideals.

In some systems, democratic institutions were established by a political elite with the idea that they were compatible with Islamic principles of government. Although they believed that the traditional authorities and power relationships could be modified bases to fit the new democratic and constitutional theories, this was not necessarily the case, and conflict between the new (democratic) and the old (Islamic) systems began to surface. Kedouri begins his *Democracy and Arab Political Culture* by noting that a 1991 public opinion poll in Cairo found

"that 56% of the respondents favored the introduction of Western-style democracy, while 52.3% demanded the application of the *Sharia* which would involve a ban on alcohol and gambling, and the introduction of Islamic punishments!"<sup>21</sup>

Scholars have noted that Islam "requires the creation of a social order that operates by Islamic precepts", and involves "no separation between religion and politics."<sup>22</sup> Ajami notes that Islam "becomes a revolt against modernity that reflects the incapacity of Islam and Muslims to connect with others."<sup>23</sup>

Once the liberals succeeded in establishing modern institutions, they ignored the role of religious groups and in consequence gained the opposition of vested - interest groups... At bottom, an inherent incompatibility between two political philosophies was at fault.

For centuries, Islam provided a political system which commanded the allegiance and respect of its believers.

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<sup>21</sup> Kedourie, *Democracy and Arab Political Culture*: 1

<sup>22</sup> Bill and Springborg, *Politics in the Middle East*, 49.

<sup>23</sup> Ajami, *The Arab Predicament*, 16.

It prescribed that authority belonged to God... Obviously, the people represented a passive element in principle, for their basic duties were to obey God's law and his mortal representatives on earth. A theory of the state, placing ultimate responsibility in God or His representatives or in both, is certainly not inherently democratic in principle.<sup>24</sup>

The question of the role of Islam in political development, and the relationship between Islam and democracy is a crucial one in the Middle East, and the extent to which Islam contributes to the decline of liberalism and democratization is highly contentious. Kedourie points out that

"there is nothing in the political traditions of the Arab world - by which he means the political traditions of Islam - which might make familiar, or indeed intelligible, the organizing ideas of constitutional and representative government."<sup>25</sup>

Like other religions, "Islam is at the same time theological and sociological. It is comprised of both religious doctrine and patterns of social, including political, relationships."<sup>26</sup> The causal relationship is in doubt: does Islam cause the traditional-authoritarian values which work against liberal-democratic values, or do traditional-authoritarian values lead to the popularity of Islam, and also work against liberal-democratic values. What Max Weber called "rational-legal authority" is weak in the Middle East, and the fact that for much of the population there is such a close relationship between religious belief and political ideology is signifi-

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<sup>24</sup> Khadduri, *Political Trends in the Middle East*, 41; for further discussion of the relationship between Islam and democratic government, see the sources in Note 29, below.

<sup>25</sup> Kedourie, *Democracy and Arab Political Culture*: 5.

<sup>26</sup> Bill and Springborg, *Politics in the Middle East* 46; see also Suad Joseph and Barbara L.K. Pillsbury, eds., *Muslim-Christian Conflicts: Economic, Political, and Social Origins* (Boulder: Westview Press, 1979).



cant,<sup>27</sup> Research is currently being done in this area, and will be further discussed in the final section of this work.

Nationalism in many cases worked against democratic constitutionalism, too. Many of the states of this region were created following the dissolution of the Ottoman Empire, and immediately came under the control of colonial powers, Britain or France. "All of these countries have confronted the interlocking tasks of nation- and state-building."<sup>28</sup> In many of these cases, democratic and constitutional institutions were associated with colonial powers, and the constitutional democratic institutions were thrown out at the same time as the colonial powers. Reformism was associated with the colonial power, too, and individuals who were loathe to associate themselves with the colonial power were equally hesitant to advocate or support democratic and constitutional institutions. Although Islamic doctrine "is, strictly speaking, incompatible with nationalism, which refers to a specific people in a particular place"<sup>29</sup>, it has combined with nationalism to serve as an anti-Western, anti-democratic force.

Thus it is possible to conceive of situations in which movements supporting democracy and constitutionalism can find conflict in an environment in which religious and conservative and nationalistic elements view them as forces undermining social and political values. Although there are few public opinion survey research studies which deal with these general attitudes of Arab political culture, we can turn our attention in this direction to try to understand why stable democracies are not more successful in the Middle East than they have been.

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<sup>27</sup> Bill and Springborg, *Politics in the Middle East*, 38-39.

<sup>28</sup> Bill and Springborg, *Politics in the Middle East*, 40.

<sup>29</sup> Bill and Springborg, *Politics in the Middle East*, 48.

## 2.2 Some Middle Eastern Case Studies

This section of this study is not intended to be comprehensive. Rather, our goal here is to present a number of brief case studies to illustrate the current state of constitutions in the Middle East. It is important to note that the focus of this section is on *political institutions described in constitutions*. In each case, only the broadest outline of each country's constitution is provided, with descriptions being provided of the major constitutional structures of the regime: the executive, the legislature, the judiciary, as well as discussion of fundamental human rights and the constitutional amendment process.

While the discussion of the first section of this book focused upon the *values and attitudes* of a country, its *political culture*, and its *norms of behavior*, specifically found in whether the country has what we called a *constitutional government*, a government of limited powers, we simply cannot examine in a detailed way these same issues in this section of this volume, for a variety of reasons. First, the empirical data base simply does not exist to describe the political cultures, political values, and political attitudes of all political elites in all of the countries in this region. Second, there is a significant difference between this kind of "soft" variable and the "harder" data of institutional structures. We can measure with some confidence the institutions that exist, and with slightly less confidence the power relationships between and among these institutions. We can have significantly less confidence in attitudinal data, where it is available. Third, finally, the analysis of the *values and attitudes*, the *political culture*, and the *norms of behavior* manifested in the ten countries discussed here would simply require a far greater level of expertise in the domestic politics and political culture of each country than is possessed by any single scholar. It would be an excellent subject for a volume assembled by a number of authors, but really goes beyond the scope of the present volume, the primary focus of which is the Palestinian constitutional experience.

What we seek to gain in this section is a general understanding of the major political institutions of the nations of the region. While this may be seen as a second choice to an understanding of the *values and attitudes*, the *political culture*, and the *norms of behavior* of the nations discussed here, our goal is a general familiarity with the setting within which political behavior takes place. Thus we are not presenting here detailed examinations of whether the behavior of political elites in given countries corresponds, in fact, in both theory and practice to what is described in the constitution. In fact, we know that there are instances in which the constitution may say "the president shall consult", and in fact the president does *not* consult at all, but rather makes decisions in an autocratic style. However unfortunate this type of situation may be, it is beyond the focus of this study.

Following brief discussions of the current constitutional status of these ten Middle Eastern nations - Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Saudi Arabia, and Syria - some general comments will be offered relating to generalizations that can be made about this specific group of nations, and about the future of constitutionalism in the Middle East.

## **Egypt**

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Egypt is one of the world's oldest nations, although it has had a number of constitutional regimes.<sup>30</sup> In modern times, it has had constitutions in 1923, 1956, 1958 (provisional), 1964

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<sup>30</sup> A very good essay on Egypt's experiences with constitutional government between 1923 and 1952 can be found in Kedourie, *Democracy and Arab Political Culture*, Chapter 5; on Egyptian politics, generally, see the following: Nazih N.M. Ayubi, *Bureaucracy and Politics in Contemporary Egypt* (St. Anthony's Middle East Monographs, No. 10; Oxford: Ithaca Press for Middle East Centre, St. Antony's College, Oxford University, 1980); Raymond A. Hinnebusch, "Egypt under Sadat: Elites, Power Structure and Political Change in a Post-Populist State" *Social Problems* 28:4 (April 1981): 442-64; or Israel Altman, "The Arab Republic of Egypt" pp. 325-91 in Colin Legum (ed.), *Middle East Contemporary Survey: IV, 1979-80* (New York: Holmes and Meier, 1981).

(provisional), and 1971, although the 1971 constitution was significantly amended in 1980. The constitution establishes a "French model" presidential style parliamentary republic, with a president, a prime minister and cabinet, a unicameral legislature, a judicial structure, and a constitutional court.

Egypt's 1971 constitution was based on Gamal Nasser's 1956 constitution, but was a more liberalized version, including a specification of a multi-party system. Other major changes in the 1971 constitution included identifying Arabic as the official language, recognizing Islam as the source of legislation, and entrenching the role of an independent press. As well, Islam is specifically recognized as the official religion of the state<sup>31</sup>, although in terms of the relationship between religion and government "the Egyptian constitution falls somewhere between the secular constitution of Turkey and the theocratic constitution of Iran."<sup>32</sup> The goals of world peace, Arab unity, the constant development of life in the nation, and human freedom, are also specifically included in the preamble to the constitution. The constitution entrenches a number of rights for all Egyptians, ranging from protection of motherhood to the right to work to a prohibition of discrimination on the basis of race, ethnic origin, language, religion, or creed.

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<sup>31</sup> On this very interesting issue, see the following: Ibrahim Abu-Lughod, "Retreat from the Secular Path? Islamic Dilemmas of Arab Politics", *Review of Politics*, 28 (1966): 447-76; Leonard Binder, "Religion and Politics in Israel and Egypt", *Middle East Journal* 33:2 (Spring 1979): 145-63; Louis J. Cantori, "Religion and Politics in Egypt", pp. 77-90, in Michael Curtis (ed.), *Religion and Politics in the Middle East* (Boulder: Westview Press, 1981); R.Hair Dekmejian, "The Anatomy of Islamic Revival: Legitimacy Crisis, Ethnic Conflict, and the Search for Islamic Alternatives", pp. 31-42 in Michael Curtis (ed.), *Religion and Politics in the Middle East* (1981); Stephen R. Humphreys, "Islam and Political Values in Saudi Arabia, Egypt and Syria", *Middle East Journal* 33:1 (Winter 1979): 1-19; Bernard Lewis, "The Return of Islam", Chapter 1, in Michael Curtis (ed.), *Religion and Politics in the Middle East*; Guenter Lewy, "Nasserism and Islam: A Revolution in Search of Ideology," pp. 259-81, in Donald Eugene Smith (ed.), *Religion and Political Modernization* (New Haven: Yale University Press, 1974); and Gabriel Warburg, "Islam and Politics in Egypt: 1952-80," *Middle Eastern Studies* [London], 18:2, April 1982, 131-57.

<sup>32</sup> Maddex, *Constitutions*, p. 72.

The political powers of government are divided in the constitution among the president who serves as head of state, the prime minister who is head of government, the legislature, the courts, and the constitutional court. Egypt has a "French model" parliamentary system, with a powerful head of state (as distinct from the weak head of state found in the "British model" parliamentary system) who has a wide range of constitutional powers. The presidency has grown in power over time, as a result of its being held by several charismatic leaders including Gamal Abdul Nasser, Anwar al-Sadat, and Husni Mubarak, and today "the Egyptian presidency is a more potent depository of executive power than the United States presidency, the French presidency, or the British prime ministry."<sup>33</sup>

The president - elected for a six-year term of office and eligible for reelection without limit - appoints other political actors, issues decrees, signs legislation, presides over the army, receives foreign diplomats, presides over substantive policy, and negotiates treaties, among other actions that he performs. According to many sources, "The presidency, more than any other institution, is the locus of power in the society. The Arabic term for presidency - al riasah - implies a much more powerful office than does its English equivalent."<sup>34</sup> In fact,

"the combination of executive and appointive power makes the president the government's chief bureaucrat. Through his prime minister and other ministers, the president controls a vast bureaucracy and army that together exceed several million individuals. Should he choose to take an active role, the president can intervene at any level of the bureaucratic apparatus to achieve his goals and objectives."<sup>35</sup>

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<sup>33</sup> Eugene K. Keefe, "Egypt" in *Countries of the World* (Bureau Development, Inc., 1991): CD-ROM format.

<sup>34</sup> Keefe, "Egypt", CD-ROM format.

<sup>35</sup> Keefe, "Egypt", CD-ROM format.

The vice presidency should be mentioned here, too, because the vice-president has taken on an especially important role in recent years since the last two presidents have attained their offices by virtue of having been vice-president at the time of the death of their predecessors.

The prime minister is in charge of overseeing the work of the government and managing the president's program in the legislature. The prime minister and cabinet are much more "bureaucratic officers" in the Egyptian/French model than they are in the British model, where they actually make decisions of policy. In the Egyptian constitution, these important decisions are the jurisdiction of the president, and while the president sets the general policy of the Egyptian government, it is the cabinet that is responsible for the implementation of that policy. Egypt today has a two-tiered system of cabinet organization, including an upper level "supercabinet" with the major cabinet ministries, and a lower level "general" cabinet. Cabinets have grown over the years from 16 members in 1952 under Nasser to a high of over 40 members at one point in time.

The constitution describes a unicameral legislature, once called the national assembly but now called the *Majlis al-Sha'ab*, the People's Assembly. The constitution specifically describes the number of representatives, how they are to be distributed among occupational groups in the population, and how they are to be elected. It describes how bills become laws, and what the relationship is between the legislature and the president in the legislative process.

The constitution clearly also establishes some degree of ministerial responsibility to the Majlis through the mechanism of legislative questioning of the ministers on the floor of the assembly. However, this ability of the legislature to question the members of the cabinet does not mean that the legislature is in a dominant role in the relationship; this is especially true when the prime minister has the strong support of the president.

Another section of the constitution describes the courts and the law.<sup>36</sup> Chapter 4, dealing with the judicial authority, discusses judicial structures and the behavior of judges; it notes that judges are independent of the political process, and specifically points out that political authorities may not interfere in judicial affairs. (The constitution does state, however, that there will be a state security court which will have jurisdiction over administrative and disciplinary issues). There is also specific discussion of religious courts.<sup>37</sup> Additionally, the constitution describes a "supreme constitutional court" which has the power to "undertake judicial control" of the constitutionality of the laws and regulations. The constitution also includes discussion of a body called the *Shoura Council*, which must be consulted on proposed constitutional amendments, long term social plans, treaties, and many other matters of general policy. Finally, the constitution includes an entrenched amending clause, indicating that the president or at least one-third of the members of the legislature can request an amendment; amendments must be ratified by the people in a plebiscite.

## **Iran**

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After over 2,000 years as a monarchy, the government of the Shah of Iran<sup>38</sup> became an Islamic republic in 1979 under

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<sup>36</sup> See Farhat J. Ziadeh, *Lawyers: The Rule of Law and Liberalism in Modern Egypt*. Stanford: Hoover Institution Publications, 1968.

<sup>37</sup> See Jasper Y. Brinton, *The Mixed Courts of Egypt* (New Haven: Yale University Press, 1968); and Nadav Safran, "The Abolition of the Sharia Courts in Egypt," *Muslim World* 48 (January 1958): 20-28, 125-35.

<sup>38</sup> On the overthrow of the Shah's regime, see: Ferydoun Hoveyda, *The Fall of the Shah* (London: Weidenfeld and Nicolson, 1979); Michael M.J. Fischer, *Iran: From Religious Dispute to Revolution* (Cambridge: Harvard University Press, 1980); Mohammed Heikal, *The Return of the Ayatollah* (London: A. Deutsch, 1981); Nikki R. Keddie, *Iran: Religion, Politics and Society* (London: Frank Cass, 1980); Nikki R. Keddie, *Religion and Politics in Iran: Shi'ism from Political Quietism to Revolution* (New Haven: Yale University Press, 1983); Amin Saikal, *The Rise and Fall of the Shah* (Princeton: University Press, 1980).



the leadership of the Ayatollah Khomeini. Apparently, Khomeini had been thinking about an Islamic government for some time:

The inspiration for the new government came from Ayatollah Sayyid Ruhollah Musavi Khomeini, who first began formulating his concept of an Islamic government in the early 1970s, while in exile in the Shia Islam learning and pilgrimage center of An Najaf in Iraq. Khomeini's principal objective was that government should be entrusted to Islamic clergy who had been appropriately trained in Islamic theology and jurisprudence. He referred to this ideal government as a *velayat-e faqih*, or the guardianship of the religious jurist.<sup>39</sup>

There was some question about the legitimacy of the Khomeini regime at the time: following the toppling of the Shah's regime, under the leadership of Khomeini, Khomeini charged the provisional government with drawing up a draft constitution. In March of 1979 a national referendum was held to determine the kind of political system to be established, but Khomeini rejected demands by various political groups that voters be given a wide choice of alternative forms of government, and the only form of government to appear on the ballot was an Islamic republic, with voting not by secret ballot. The Khomeini leadership reported a majority of over 98% in favor of an Islamic republic, at which time Khomeini proclaimed the establishment of the Islamic Republic of Iran on April 1, 1979.

In August of 1979 a 73-member *Assembly of Experts* worked on a draft constitution. This Assembly was dominated by clerics, and favored a constitutional system dominated by Shia clergy. Although opposition to a religious-dominated constitution was clear at the time, Khomeini persisted, and eventually the Khomeini constitution was adopted in December

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<sup>39</sup> Eric Hooglund, "Iran: Government and Politics", in *Countries of the World* (Bureau Development, 1987): Chapter 4-a, CD-Rom format.



of 1979.<sup>40</sup> The contemporary constitutional structure of Iran is a theocratic Islamic republic<sup>41</sup> with a religious leader or leadership council, a president and a cabinet, a unicameral legislature, and an Islamic court system including a *Council of Guardians*.<sup>42</sup>

In a lengthy preamble, the constitution of Iran describes the fundamental concepts that were responsible for the overthrow of the Shah in 1979 and that inspired the creation of the 1979 constitution. It is a highly ideological document, including headings such as "The Dawn of the Movement", "Islamic Government", "The Wrath of the People", "The Price the Nation Paid", "Woman in the Constitution", and "An Ideological Army".

The constitution is a document explicitly oriented to Islam, specifying that "all civil, penal, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria." The 4th chapter of the constitution refers to the rights of the people, and lists a number of rights that all people of Iran enjoy, including rights based on gender, rights to dignity, life, property, residence, and occupation, freedom of belief, and freedom of expression; all rights apply except when they are determi-

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<sup>40</sup> Shaul Bakhash, "Iran, Constitution", in *Countries of the World* (Bureau Development, 1991): CD-ROM format.

<sup>41</sup> On the interaction of religion and politics in Iran, see *inter alia* the following: Shahrough Akhavi, *Religion and Politics in Contemporary Iran: Clergy-State Relations in the Pahlavi Period* (Albany: State University of New York Press, 1980); Juan R.I. Cole and Nikki R. Keddie (eds.), *Shi'ism and Social Protest* (New Haven: Yale University Press, 1986); Marshall G.S. Hodgson, *The Venture of Islam* (Chicago: University of Chicago Press, 1974); Shahrough Akhavi, "Clerical Politics in Iran since 1979", pp.57-73, in Nikki R. Keddie and Eric Hooglund (eds.), *The Iranian Revolution and the Islamic Republic* (Syracuse: Syracuse University Press, 1986); and Cheryl Benard and Zalmay Khalilzad, *The Government of God: Iran's Islamic Republic* (New York: Columbia University Press, 1984).

<sup>42</sup> "Constitution of the Islamic Republic of Iran", *Middle East Journal*, 34, No.2, Spring 1980, 184-204.

ned to be detrimental to the fundamental principles of Islam.<sup>43</sup>

Structurally, the constitution establishes a unitary state with constitutional power divided among an executive, a legislature and a judiciary, with all three branches of government under the leadership of religious figures.

The constitution creates a *Leader* or a *Leadership Council* which is the ultimate executive authority of the constitution:

The preamble to the Constitution vests supreme authority in the *faqih*. According to Article 5, the *faqih* is the just and pious jurist who is recognized by the majority of the people at any period as best qualified to lead the nation. In both the preamble and Article 107 of the Constitution, Khomeini is recognized as the first *faqih*. Articles 108 to 112 specify the qualifications and duties of the *faqih*.<sup>44</sup>

Although the Ayatollah Khomeini was the original leader, the idea of a Leadership Council was to allow for more flexibility in a post-Khomeini era. The powers of the leadership include supervising policies, calling for referendums, commanding the armed forces, overseeing the media, approving candidates for president (and dismissing the president), and numerous other powers often exercised by political executives.

The *president* is directly elected by the voters for a four-year term of office, but must be approved by (and can be dismissed by) the leader before taking power. The president has many of the "normal" powers of chief executives, including authority for signing legislation and treaties, overseeing the administration of government, and chairing the cabinet. In the 1979 constitution there was also a prime minister who

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<sup>43</sup> Maddex, *Constitutions*, p. 125.

<sup>44</sup> Eric Hooglund, "Iran: Government and Politics", in *Countries of the World* (Bureau Development, 1987): Chapter 4-a, CD-ROM format.

chaired the cabinet, but in 1989 this was amended to give the prime minister's powers to the president, and to do away with the position of prime minister, to avoid the conflicts that had been developing between the president and the prime minister. The constitution states that the president is "the holder of the highest official power next to the office of faqih." The powers of the president are described in detail in sections 113-132 of the constitution.

The legislative power is exercised by *the Islamic Consultative Assembly*, referred to as the *Majlis*, it is described in Articles 62 through 90 of the 1979 constitution. There are at least 270 legislators, who are directly elected by the public for four-year terms, and who represent specific geographic districts. Five of the legislative seats are reserved for non-Moslem religious minorities (one each for Jews, Assyrian Christians, and Zoroastrians, and two for Armenian Christians).<sup>45</sup> The constitution describes the basic structures of the *Majlis*, and the procedures by which legislative proposals may become laws.

The judicial structure is multi-faceted. Prior to the 1989 constitutional amendments, the highest judicial structure was a five-member *Supreme Judicial Council*. Today, instead of a Supreme Judicial Council, the religious leader selects a *head of the judicial branch* who supervises the administration of justice. There is still a *Supreme Court* which oversees the uniform application of the laws of Iran. It should be noted, however, that under the 1989 amendments the chief judge of the Supreme Court and the prosecutor general must be *mujtahids*, Islamic religious experts, before attaining office. In fact, it has been observed that

The entire judicial system of the country has been desecularized. The attorney general, like the chief justice, must be a *mujtahid* and is appointed to office for a five-year term by the faqih (Article 162). The judges of all the courts must be knowledgeable in Shia jurisprudence;

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<sup>45</sup> Hoogland, "Iran: Government and Politics", CD-ROM format.

they must meet other qualifications determined by rules established by the High Council of Justice. Since there were insufficient numbers of qualified senior clergy to fill the judicial positions in the country, some former civil court judges who demonstrated their expertise in Islamic law and were willing to undergo religious training were permitted to retain their posts. In practice, however, the Islamization of the judiciary forced half of the former civil court judges out of their positions. To emphasize the independence of judges from the government, Article 170 stipulates that they are "duty bound to refrain from executing governmental decisions that are contrary to Islamic laws."<sup>46</sup>

The highest judicial body is called the *Council of Guardians*, which has the task of reviewing all legislation to make sure it is in conformity with Islamic law.

"According to Article 91, the Council of Guardians consists of twelve members; six of them must be "just and pious" clergymen who are chosen by the faqih or the Leadership Council. The other six must be Muslim lawyers who are first selected by the High Council of Justice, then approved by a majority vote of the Majlis. The members of the Council of Guardians serve six-year terms, with half the members being changed every three years."<sup>47</sup>

The powers and duties of the Council of Guardians are described in Articles 94 through 99 of the constitution.

According to the constitution, the leader must consult with the nation's exigency council, and then issue an edict to the president. Following that, the members of the *Council of Guardians* and the heads of the three branches of government must approve, too. Amendments must be approved by an absolute majority of the population in a referendum, although some characteristics of the political system - such

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<sup>46</sup> Hoogland, "Iran: Government and Politics", CD-ROM format .

<sup>47</sup> Hoogland, "Iran: Government and Politics", CD-ROM format.

as the fact that Iran is an Islamic political system, and (ostensibly) a democracy - cannot be amended.

## **Iraq**

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Iraq today is a single-party dictatorship, under a *Revolutionary Command Council*, whose leader is called the *President of the Republic*, with a prime minister and cabinet, a unicameral legislature, and a judiciary. Modern Iraq has had new constitutions in 1968 and 1970, both provisional.<sup>48</sup> The current provisional constitution<sup>49</sup> dates from 1970, and was signed by the then-president of the Revolutionary Command Council, Ahmed Hassan al-Bakr. The constitution entrenches the role of the Ba'ath Socialist Party: the constitution "is rooted in the philosophy of the Ba'ath Socialist Party, a pan-Arab organization seeking the integration of all Arab states into a single unitary state... Iraq is ruled by Saddam Hussein, ostensibly on behalf of the Ba'ath Socialist Party."<sup>50</sup> The Ba'ath Party seized power in a coup d'etat in Iraq in July of 1968, based upon Ba'ath Party principles of Arab unity, freedom, and socialism.<sup>51</sup>

This constitution is still officially "provisional", or "transitional". This description means that the current method of rule by decree, which has been in effect since 1968, will continue until the goal of a socialist, democratic republic with Islam as the state religion has been officially attained. The end of

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<sup>48</sup> On modern Iraq's history, see Phebe Marr, *The Modern History of Iraq* (Boulder, CO: Westview Press, 1985).

<sup>49</sup> A very good essay on Iraq's experiences with constitutional government between 1921 and 1938 can be found in Kedourie, *Democracy and Arab Political Culture*, Chapter 2.

<sup>50</sup> Maddex, *Constitutions*, p. 128.

<sup>51</sup> This is discussed in detail in Majid Khadduri, *Socialist Iraq: A Study in Iraqi Politics Since 1968* (Washington: Middle East Institute, 1978).

hammad is the messenger of God.' The political importance of the ulama, or religious scholars, was second only to the House of Saud. Closely aligned with the Saudi royalty, the ulama acted as a profoundly conservative force in enforcing traditional social and political values."<sup>106</sup>

The 1992 Basic Law of Government, a royal decree, states that "the state shall protect human rights according to the *shari'a*," and this includes protection of citizens in case of illness, disability, old age, and support for a welfare system. The protection of basic rights includes a restriction against illegal search and seizure, and a prohibition against the government's restricting individuals' actions except according to law.

The constitutional system includes a unitary state with all power residing in *the monarch* and those he chooses to appoint to positions of power. The monarch holds the title of Custodian of the Two Holy Mosque and King of Saudi Arabia, rules as an absolute monarch and is a member of the Saud family.

The kingdom in early 1984 was not absolute monarchy, but neither was it constitutional. In many ways it was still much like the patriarchal realm founded by Abd al Aziz in 1932. Actually, the kingdom is the domain of the House of Saud. Even the official title of the country denotes that the Saudi royal family (some 3,000 to 4,000 princes) is predominant in the realm. The king is the ruler; there is no formal constitution. Faisal, son of the founder and third ruler of the Saudi dynasty, is quoted as having referred to the Quran as the country's constitution and the sharia as the law of the land. In practice, the king, who also acts as prime minister, is assisted by the deputy and second deputy prime ministers and the entire Council of Ministers, but the king is the ultimate authority.<sup>107</sup>

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<sup>106</sup> Rudolf, "Saudi Arabia: Government and Politics," CD-ROM format.

<sup>107</sup> Eugene K. Keefe, "Saudi Arabia: Legal Basis," in *Countries of the World* (Bureau Development, Inc., 1991), CD-ROM format.

...which the King's advisors operate. The King regularly holds a meeting, a *majlis*, with his subjects in the Diwan.

Saudi Arabia had a consultative council debating back to 1926 which was replaced in March of 1992 by the King with a reorganized council called the *Majlis al-Shura*. The 1992 *Consultative Council Law* established a *Majlis al-Shura* of 60 appointed members whose job it is to provide some general articulation of public opinion, although it is very clear that Saudi Arabia has no democratically elected legislature that spends a great deal of time legislating.<sup>108</sup> The official reason that there is no true legislature in Saudi Arabia, and no elected legislative structure, is that "legislation is considered unnecessary because God is the supreme and only legislator."<sup>109</sup> Members of the *Majlis* are appointed by the King for four-year terms; there are 60 members of the *Majlis*, which meets twice a week during its term.

The government has a planning mechanism that dates back to the year 1958, although the current Central Planning Organization was created in 1965, changing its name to the Ministry of Planning in 1975. The Ministry of Finance and National Economy still controls a good deal of the planning process through its regulation of funding, however.<sup>110</sup>

<sup>108</sup> See Laraine Newhouse Carter, "Saudi Arabia: Government," in *Countries of the World* (Bureau Development, Inc., 1991), CD-ROM format.

<sup>109</sup> Maddex, *Constitutions*, 244.

<sup>110</sup> Darren, R. Eglin, "Saudi Arabia: Role of Government," in *Countries of the World* (Bureau Development, Inc., 1991), CD-ROM format.

The *Basic Law of Government* also describes a structure for courts, indicating that "courts shall apply the provisions of *shari'a* according to the Holy Book and the tradition and to the laws issued by the king that do not conflict with [them]."<sup>111</sup> Thus, the Saudi judicial system is based on Islamic principles.<sup>112</sup> "In 1970, Faisal created the Ministry of Justice, thus ending centuries of Arabian tradition by which the judicial system had been administered, autonomously from the secular government, by muffis (Islamic jurists)."<sup>113</sup> Saudi Arabia has a fully developed system of general courts, with an appellate court and a high Islamic law court. It should be noted that although Art. 46 declares that the judiciary is an independent authority, jurists on occasion bow to the influence of the royal family, and the government occasionally bypasses the courts altogether and disposes of legal problems administratively in summary proceedings closed to the public.

Because the Saudi constitution is so much a function of what the monarch says it is, there is no rigid process of constitutional amendment in Saudi Arabia. It can be presumed that any time the monarch wants to amend the constitution he will simply issue another royal fiat, as he has done in the past, and that will become part of the Saudi constitution.

## Syria

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The Syrian Arab Republic is a presidential-style parliamentary republic, with a prime minister, a president, a cabinet, a unicameral legislature, and a judiciary, including a constitution-

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<sup>111</sup> Maddex, *Constitutions*, p. 244.

<sup>112</sup> See James E. Dougherty, "Religion and Law," pages 281-313 in Alvin J. Cottrell (ed.), *The Persian Gulf States: A General Survey* (Baltimore: Johns Hopkins University Press, 1980); and Herbert J. Liebesny, "Judicial Systems in the Near and Middle East: Evolutionary Development and Islamic Revival", *Middle East Journal* 37-2 (Spring, 1983): 202-17.

<sup>113</sup> Eglin, "Saudi Arabia: Role of Government," CD-ROM format.



nal court. The government is unitary, and power is divided among the president (who has some legislative powers), the prime minister, the legislature, and the courts. As leader of the Syrian Ba'ath Party, President Hafiz al-Assad in fact controls the Syrian government<sup>114</sup>, with strong support of the Syrian military, with whose assistance Assad first came to power in November 1970 in a bloodless military coup d'etat.<sup>115</sup>

Syria has had a substantial number of constitutions in this century<sup>116</sup>, including constitutions in 1920 (brief), 1930 (suspended after two months and restored in 1943; suspended again in 1949), 1950 (suspended in 1951 and restored in 1954 and 1961), 1953, 1958 (provisional), 1961 (provisional), 1964 (provisional; suspended in 1966), 1969 (provisional), and 1973. Most of these documents have reflected an interest of France, a recent colonial power there.<sup>117</sup> The 1973 constitution became effective by decree of president Hafiz al-Assad in March of 1973. The 1973 constitution recognized the importance of Islam,<sup>118</sup> and was drafted by a committee of individuals who "were guided by the mandate of Hafiz al-Assad, who wanted a document that would build 'one Arab state for one Arab nation'. Under the leadership of the Ba'ath

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<sup>114</sup> Moshe Ma'oz and Avner Yaniv (eds.), *Syria under Assad* (New York: St.Martin's Press, 1986).

<sup>115</sup> Gabriel Ben-Dor, *Political Participation under Military Regimes* (Beverly Hills: Sage, 1976); George Haddad, *Revolutions and Military Rule in the Middle East: The Arab States, II, Part I. Iraq, Syria, Lebanon, and Jordan* (New York: Robert Speller and Sons, 1971).

<sup>116</sup> For a very good essay on Syria's experiences with constitutional government between 1928 and 1949 see Kedourie, *Democracy and Arab Political Culture*, Chapter 3; see also Peter B.Heller, "The Permanent Syrian Constitution of March 13, 1973", *Middle East Journal* 28:1 (Winter, 1974): 53-66.

<sup>117</sup> Robert Scott Mason, "Syria: Government and Politics," in *Countries of the World* (Bureau Development, Inc.: 1991) CD-ROM format.

<sup>118</sup> Umar F.Abd-Allah, *The Islamic Struggle in Syria* (Berkeley: Mizan Press, 1983).

Party, it was the first Arab constitution to make socialist nationalist thought its guiding principle."<sup>119</sup>

The preamble to the Syrian constitution highlights five major principles: first, the Syrian Arab revolution is part of the total Arab revolution; second, dangers that threaten one Arab country threaten the entire Arab nation; third, creating a socialist regime includes fighting both Zionism and imperialism; fourth, a "people's democracy" is an ideal form of government; and fifth, finally, that the Arab revolutionary movement is part of world liberation movement.<sup>120</sup> Much of the preamble of the constitution endeavors to tie the Syrian revolution, and Syrian politics, into worldwide political movements.

The constitution includes a substantial discussion of guaranteed *fundamental rights*, found in Chapter 4: "Freedom, Public Rights, and Obligations." In this section the constitution accepts that it is the responsibility of the state to guarantee freedom to citizens, and lists a number of rights and freedoms guaranteed by the constitution, including equality before the law, equal opportunity, participating in political, economic, social, and cultural life, and legal protections for those accused of having committed crimes. Other guarantees include privacy of communications, freedom of movements religious freedom, freedom of speech, the press, and assembly, although this latter group of guarantees is somewhat qualified by the security needs of the state.

The constitution includes substantial discussion of economic policy, as well. It states that "economic complementarity in the Arab homeland" must be considered in the planning process, and states that there are three kinds of property: property of the people, collective and private property.<sup>121</sup>

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<sup>119</sup> Maddex, *Constitutions*, 274.

<sup>120</sup> See Michael C. Hudson, *Arab Politics: The Search for Legitimacy* (New Haven: Yale University Press, 1977); Tareq Y. Ismael, *The Arab Left* (Syracuse: Syracuse University Press, 1976).

<sup>121</sup> Mason, "Syria: Government and Politics," CD-ROM format.

The *president* is elected for a seven-year term by universal suffrage. Candidates for the presidency must be made "by the people's council at the suggestion of the regional leadership of the Ba'ath Arab Socialist Party." Assad was the sole nominee for the presidency in 1991, winning 99.98% of the vote. The president's powers include being commander-in-chief of the armed forces, exercising executive power, developing public policy and supervising the council of ministers, nominating ministers and deputy ministers (including the prime minister), calling cabinet meetings, issuing laws passed by the legislature, as well as decrees and orders on his own, declaring war and concluding peace, granting pardons, and a wide range of additional activities, as well. When the legislature is not in session, the president is authorized to assume legislative powers, although these must be approved by the legislature in its next session. The president also has the right to submit questions to a national referendum:

Presidential authority extends also to the broadly phrased "right to submit to popular referendum important matters relating to the higher interests of the country." However, the question of what constitutes "higher interests" is left undefined. The results of such a referendum are "binding and executory with effect from the date of their promulgation" by the president.<sup>122</sup>

The constitution also describes a *prime minister* and a *cabinet* who are charged with being the highest administrative body of the state. The cabinet is to supervise the enforcement of the laws and regulations of the state, and is clearly an administrative body, serving to oversee and manage the policies of the president.

Syria has a unicameral legislature: the *Majlis al-Sha'ab*, the people's council. Its members are elected for four year terms of office by direct and secret voting. There are to be at least 250 members of the Majlis, with at least one-half of the mem-

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<sup>122</sup> Mason, "Syria: Government and Politics," CD-ROM format.

bers being "peasants and workers." Article 70 of the constitution indicates that the council has the power to question members of the cabinet, nominate the president on the advice of the Ba'ath Party,<sup>123</sup> pass laws, discuss cabinet policy, discuss the budget, and vote on confidence in the government, among other powers.

The president has a role in the legislative process, too. The president has the right to dissolve the People's Council, and may also exercise legislative power when the council is in recess, provided that all legislative acts by him are submitted to the legislature for approval at its first subsequent session.

"The Constitution also empowers the president to preempt legislative power even while the People's Council is in session 'in case of absolute need relating to national security.' It states, however, that all presidential decrees must be presented to the legislature for its endorsement. The council may, by a two-thirds vote, amend or rescind presidential decrees, provided that the two-thirds majority constitutes no fewer than the absolute majority of the council membership. The council's power to amend or nullify a presidential decree is only nominal, inasmuch as the council's action, whether for amendment or abrogation, is not to have a 'retroactive effect'."<sup>124</sup>

The constitution directly addresses the institutions related to the judiciary. It says that the judiciary is to be independent, with its independence to be guaranteed by the President of the republic. Among his other duties, the president of the republic presides over the *Supreme Judicial Council*, which appoints judges for courts. Syria has a developed framework of secular courts, religious courts, and specialized courts. In addition to Islamic courts, Syria also has courts for Christians, Jews, and other non-Moslems. Beyond these lower-level courts, the constitution also describes a constitutional court,

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<sup>123</sup> On the importance of the Ba'ath Party see Robert W. Olson, *The Ba'ath and Syria 1947-1982: The Evolution of Ideology, Party and State* (Princeton: Princeton Press, 1982).

<sup>124</sup> Mason, "Syria: Government and Politics", CD-ROM format.

made up of five members appointed by the president. The constitutional court has the power to decide on the constitutionality of laws, if requested by either the president or by one quarter of the members of the legislature. The court cannot challenge laws approved by popular referendum.

The Syrian constitution can be amended by two different routes. Amendments can be proposed either by the president or by one-third of the members of the legislature. After being studied by a legislative committee, amendments must be approved by three-quarters of the members of the legislature and ratified by the president.

### **2.3 Middle Eastern Constitutions: Some Observations**

The preceding pages have offered brief descriptions of the constitutional structures of ten different Middle Eastern nations. Although many of the political institutions themselves vary, with some nations being parliamentary republics, some presidential republics, some monarchies, and some much more authoritarian regimes, both religious and secular, it is still possible for us to make some general observations about similarities and differences between and among political institutions that can be found in the region.

It clearly *was* possible to transplant democratic constitutional structures to the Middle East, as the ten case studies demonstrate. While not all of the cases examined here have what would be called democratic political institutions, or even quasi-democratic political institutions (for example, Libya, Iraq, Kuwait, whatever else might be said about them, do not have political institutions based upon democratic values), many Middle Eastern states *are* experimenting with democratic structures to varying extents. What is less clear, of course, is the degree to which democratic *attitudes*, democratic *values*, and a democratic *political culture* can be transplanted as easily as the formal constitutional institutions of many of the nations involved. This has meant, to take two

examples in the cases of Lebanon and Egypt, a continual struggle to promote democratic values in a democratic polity. Some of the Middle Eastern political systems have been much more successful at this than others, for example Egypt's record of stability, peaceful elections, and official tolerance of diverse opinions is much better than that of Syria.

We examined several common institutional threads in the many political systems. Much of the discussion related to the formal governmental structures of the regimes and the relations between and among institutions in the countries involved. Some systems have absolute monarchs, others have strong "constitutional" heads of state, while yet others more closely fit into the "Westminster model" of government. Some nations apparently favor an active system of judicial review, while in others parliamentary supremacy is the rule: the courts do not have the power to second-guess or modify the actions of the legislature. Some countries have highly active legislatures, some have moderately active legislatures, others have "showcase" legislatures, and still others have no elected legislatures at all. Some have a wide range of electoral office with relatively free and open elections, others have no elections or political parties at all, and other systems fall somewhere in between the extremes. In brief, we saw a full range of options when it came to formal political institutions in the ten Middle Eastern nations briefly examined here.

Two specific issues of interest that were mentioned in several instances involved the extent to which the system constitutionally entrenched specific human rights, and the degree to which there was interaction between a specific religion and the state. As we have already noted on more than one occasion, we recognize that the presence of a written commitment to honor specific human rights does not necessarily mean that the government *actually* will do so (and in fact we know that in many instances governments have *not* done so), but a constitutional acknowledgment of the value of human rights is significant, even absent the appropriate behavior.

Many of the political systems that we have described have entrenched human rights, including rights to free speech, free press, freedom of assembly, freedom of occupation, freedom of education, and a wide variety of other rights and freedoms. Some even included an entrenched guarantee of religious freedom. The key variable to be kept in mind involves the subtle nature of rights that we discussed in the first section of this manuscript: in some systems rights are *granted*, while in others they are *recognized*; some are absolute and others are conditional. For example, the Syrian constitution guarantees freedom to citizens, and lists a number of rights guaranteed by the constitution, including equality before the law, equal opportunity, legal protections, as well as other guarantees such as privacy of communications, freedom of movement, religious freedom, freedom of speech, the press, and assembly. The important factor to note in the Syrian context, however, is that many of these guarantees are qualified by "the security needs of the state", and it is the state that decides what "security needs" means. This, of course, means that in fact there *may be no* guarantees for the rights of individuals trying to stand up against the state, there *may be* no real limitations on the power of the state, and thus the government *may not be* constitutional in nature as we have defined the term.

So, while it is useful to recognize specific rights and freedoms in a constitution, we need to re-emphasize here that it is the government's *behavior* that is crucial, not only words that are written in a given constitution. Unfortunately, as noted earlier, we are not in a position here to adequately study the behavior of each of our ten regimes in the detail needed to ascertain whether these entrenched rights and freedoms really are respected or no. This would be an extremely useful subject for future research, but is beyond the scope of this work.

A second issue of interest mentioned above that was highlighted in many of the constitutions that we examined had to do with the relationship between the state and an established religion. In all cases but one (that of Israel and Juda-



ism), the established religion was Islam, and the question involved the extent to which the state should incorporate the precepts of the Islamic religion in the secular laws of the regime. Most of the Middle Eastern states recognize that they are Islamic states; some incorporate the relationship in the formal name of the state (e.g. The Islamic Republic of Iran). Some of the states in question (e.g. Kuwait) are officially secular, although their behavior and values clearly recognize the importance of Islamic values to the society. Other states, Lebanon most particularly, have tried to "control for" the effects of religion by making sure that all religious groups have a fixed share of political power. (The State of Israel is officially, constitutionally, a Jewish state, although it guarantees freedom of religion to all of its citizens, and has several constitutional provisions to protect the autonomy of the different religious groups).

It was shown that one of the common threads of conflict running through all of the Middle Eastern governments briefly described here involves the relationship between religion and the state. We have cited several arguments here suggesting that Islam, generally, and Islamic fundamentalism especially, are incompatible with democratic government. (It should be pointed out that the Orthodox Jews in Israel share the intolerance of conservative Moslems with views different from their own. The difference is that they make up only about 15% of the Israeli electorate and have not had an opportunity to influence policy, or force their views on others, in the Israeli polity). One of the important tensions that must be resolved is that between religion and the state.

It is not possible for us to include for each of the ten constitutions briefly examined a list of which are the most effective constitutional structures, which are the least effective, and where changes should be made to make the governments more stable, more "constitutional", and more democratic. It would be nice if we could do so. However, as we noted above, this would require far more in the way of analytic material than we can provide here, and far more familiarity with the constitutional nuances of the several regimes than



could be provided by any modest group of scholars. The point of this section, as we noted at the outset, was not to provide a comprehensive discussion of constitutional evolution and all constitutional details for each of the ten nations involved. Rather, we sought to provide mini-portraits of a number of Middle Eastern nations so that we could have an example of the *kinds of issues* that appear to be relevant and significant in the Middle East today, so that we would have a better basis for understanding what issues should be included in a Palestinian constitution, and how they should be included.

While some readers might long for a more detailed discussion of Middle Eastern constitutions here - in the style of our discussion of the first section of this work - including discussion of the political structures included in each constitution, an analysis of what functions each constitution performs for its respective political setting, a discussion of varieties of unitary and federal models that might fit in the region, a discussion of details of the separation of powers in each regime, this level of discussion is simply beyond both the scope and the topic of this volume. Here we seek to address the specific issues relating to *Palestinian* constitutionalism, and more detailed discussion of Middle Eastern trends in general must be left for further analysis by other scholars.

## **2.4 The Future of Constitutionalism in the Middle East**

Despite the institutions described above, the fact is that stable constitutional and democratic government has not had a stellar record in the modern Middle East. Some scholars have suggested that the problems of constitutional and representative government in the Middle East have been caused by the incompatibility of Middle Eastern political culture - however that is defined - and Middle Eastern political traditions with the demands of democratic participation, although in-depth empirical studies of "political culture" in the Middle East have yet to be completed. In discussing the

"wave of democracy that started in Europe, swept through Latin American and parts of Asia, crested in Eastern Europe and ran on to parts of Africa as well", Theodor Hanf and Bernard Sabella added that this wave of democracy "skirted around the Arab Middle East", although they noted that Lebanon was an exception to this general observation. They noted in their analysis that the reason for this lack of success of democracy in the Middle East was problematic, although often "the causes lie in the cultural and religious traditions of this region, which ostensibly show little affinity for democracy."<sup>125</sup>

One recent study has suggested, in fact, that where progress has been made in the Arab world in the degree of democratization in society, there has in fact been a "retrogression" in this characteristic. The author suggests<sup>126</sup> that whether the "retrogression" comes through a "reversal model", or a "zig-zag model," the fact is that electoral democracy has not consistently made progress in this part of the world. Elie Kedourie has concluded that

The record, then, of constitutional and representative government in the Arab world is thus disappointing, not to say dismal. The manner in which it was introduced, by foreign fiat or direction, and the peculiar conditions in which it had to function in each country meant that it could not be government by discussion and compromise, in which the supremacy of law was unchallenged. Rather it meant government in which the reality was ballot-rigging, gerrymandering, administrative arbitrariness, and large-scale corruption, and where elections and parliaments were, and were known to be, a make-believe and a deception.<sup>127</sup>

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<sup>125</sup> Theodor Hanf and Bernard Sabella, *A Date With Democracy: Palestinians on Society and Politics* (Freiburg: Arnold-Bergstraesser Institute, 1996): 5.

<sup>126</sup> Larbi Sadiki, *Progress & Retrogression in Arab Democratization* (East Jerusalem: PASSIA, 1992): 9, 12.

<sup>127</sup> Kedourie, *Democracy and Arab Political Culture*, 86-87.

We also need to keep in mind that it is not at all clear just exactly what terms like "Middle Eastern", "Arab world", and "Islamic society" mean. If we interpret the "Middle East" to include Israel, then it is not synonymous with Arabic culture or Islam. "Islamic society" certainly exists everywhere from Malaysia through Mecca to Mauritania, and Islam is the fastest growing religion in the USA today. How then can we generalize about "Islamic society"? Similarly, the "Arab world" is not homogeneous, sometimes being seen as including such disparate components, with highly differentiated cultures and traditions as Turkey, Pakistan or Morocco. Indeed, there is not consistent interpretation among the political states of the Middle East as to just exactly what Islam requires (or permits): some countries of the Arab Middle East do not permit insurance to be sold because it is implicitly resisting (or not indicating an acceptance of) fate, and therefore goes against the Koran; others permit insurance to be sold. Some countries do not permit alcohol to be sold, while others do. Some restrict - legally or only unofficially - the roles that women can play in society, while others do not. In short, if we base an argument upon a homogeneous "Arab world", a unified "Middle East", or a consistent interpretation of Islam, we may be building our argument upon an weak foundation.

One of the most frequently-cited sources of conflict with democratic and constitutional values comes from Islamic fundamentalism. The conflict involves the very nature of the two systems: democracy on one hand, and a religious fundamentalism on the other:

Islamic fundamentalism, as it has come to be generally called, has to be hostile to constitutional and representative government... In modern society, constitutional and representative government is predicated on a society in which differences of outlook and belief are taken for granted, along with the potential disagreements and conflicts which it is precisely the function of representative government to mediate and reconcile. Hence, the irresistible logic of representative government entails the secularity of the state. Fundamentalism can have no truck with the variety of beliefs and opinions which characterize modern society. Muslim society, however, not

being isolated from modern currents of thoughts, will, sooner or later, to some extent or another, exhibit the same variety of belief and opinion. Fundamentalism desires, on the contrary, uniformity of belief and works to enforce the truth at whatever cost to oneself and to others which may prove necessary.<sup>128</sup>

Why has what has been called "Western constitutional democracy" had a difficult time in the Middle East? Several reasons have been suggested here. First, we suggested earlier that simply transplanting a set of institutions (e.g. elections, the "Westminster Model" of parliamentary government) and patterns of behavior (e.g. supporting a diversity of opinion and believing in a peaceful resolution of conflicts) from one setting (e.g. Western Europe) to another (e.g. the Middle East) is no guarantee that the transplant will succeed. We have shown that democratic and constitutional principles were not native to the Middle East, which had a history of traditional power relationships that can be characterized as "authoritarian" or "autocratic", with monarchic government more the rule than democratic government.

While it clearly *was* possible to transplant democratic constitutional structures to the Middle East, the transplant did not, in and of itself, alter the traditional values and attitudes of the public. This has meant a continual struggle to promote democratic values, to generate support for the kind of pluralism and heterogeneity that is common - and the tolerance for which is required - in a democratic polity. Some of the Middle East political systems have been much more successful at this than others, for example Egypt's record of stability, peaceful elections, and official tolerance of diverse opinions is much better than that of Syria.

Second, as we noted above, it has been shown that one of the threads of conflict running through all of the Middle Eastern governments described here involves the relationship between religion and the state. One of the important ten-

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<sup>128</sup> Kedourie, *Democracy and Arab Political Culture*, 95-96.

sions that must be resolved is that between religion and the state.

The next section of this study brings our analysis to the most specific level of analysis: the case of Palestinian nation-building at the present time. We will, in this more focused section, examine several specific questions. First, we will examine Palestinian political culture, generally. In what ways is it similar to, or different from, political cultures elsewhere in the Arab world? Second, we will examine the interaction of Islam and democratic ideals in contemporary Palestine, and examine the attitudes of Palestinians toward Islamic values and toward democratic values. Third, we will look at recent political behavior in Palestine to evaluate the degree to which it illustrates democratic norms and a commitment to constitutionalism. Fourth, we will examine the progress of Palestinian constitutionalism, and discuss the institutions developed in Palestine for future government. Finally, we will speculate as to the general direction in which Palestinian government is moving, and the prospects for stable, democratic, and constitutional government in the future.



## **Chapter III**

# **DEMOCRACY AND PALESTINIAN CONSTITUTIONAL DEVELOPMENT**

This part of this manuscript will focus our attention to the Palestinian situation as the last decade of the twentieth century draws to a close. As was indicated at the end of the last section of this work, here we shall seek to complete five specific tasks. First, we will focus our attention on various studies of Palestinian political culture, to see how Palestinian political culture has been characterized in recent scholarship and how it has been measured in recent public opinion polls. Second, we will devote particular attention to recent studies of the interaction between Islam and democracy in contemporary Palestine, and examine data relating to the attitudes of Palestinians toward Islamic values and toward democratic values. Third, we will look at recent political behavior in Palestine, focusing specifically upon the January 1996 elections for the *Ra'ees* position and for the Palestinian Legislative Council, to evaluate the degree to which it demonstrates democratic norms and a commitment to constitutionalism. Fourth, we will examine the progress of constitutional development in Palestine in recent years, specifically examining "Draft Four" and "Draft Five" of the Basic Law that have been prepared, and discuss the institutions developing at this time in Palestine for future government. Finally, we will speculate as to the general direction in which Palestinian government is moving, and the prospects for stable, democratic, and constitutional government in the future.

### **3.1 Palestinian Political Culture**

We noted earlier that political scientists have long written about the idea of a *political culture*<sup>1</sup>, and about the syste-

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<sup>1</sup> Among the classic works on this subject would be included the following: Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Development in Five Nations* (Newbury Park, CA: Sage Publications, 1989);

matic variation between political cultures and political behavior in different societies. A recent study of contemporary Arab democratization suggested that words such as "*damaqrata*, democratization, *dimuqratiyya*, democracy, *atta addudiyya*, pluralism, and *shar'iyya*, legitimacy, are all themes and concepts pervasive in the present political discourse in the Arab world."<sup>2</sup> In fact, there are a number of characteristics of contemporary Palestinian society that scholars have suggested as being related to democratization, that in fact have influenced the degree of democratization in Palestine in recent times. These factors include education, political pluralization, a communitarian society, distrust of authority, and a multi-layered legal regime.<sup>3</sup>

Is "Palestinian" political culture different from that of "the Arab world"? We must keep in mind, as we noted in the last section of this work, that this is a subject about which it is very difficult to generalize. Some recent empirical evidence is available, that will be discussed here, that shows that the Palestinian people strongly support the general concept of democracy, as well as democratic principles more specifically defined. (Here, "Palestinian" is used to refer to inhabitants of the West Bank, East Jerusalem and the Gaza Strip. We recognize that there are many inhabitants of other areas - including other Middle Eastern nations, and some European

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Lucian Pye and Sidney Verba, eds., *Political Culture and Political Development* (Princeton: Princeton University Press, 1965); Larry Diamond, ed., *Political Culture and Democracy in Developing Countries* (Boulder, Co.: L.Rienner Publishers, 1993); Steven Welch, *The Concept of Political Culture* (New York: St. Martin's Press, 1993); and William Bluhm, *Ideologies and Attitudes: Modern Political Culture* (Englewood Cliffs, N.J.: Prentice Hall, 1974). Two more applied studies are Takeshi Ishida, *Japanese Political Culture: Change and Continuity* (New Brunswick: Transaction Books, 1983), and Myron Aronoff, ed., *Cross-Currents in Israeli Culture and Politics* (New Brunswick, N.J.: Transaction Books, 1984).

<sup>2</sup> Larbi Sadiki, *Progress & Retrogression in Arab Democracy* (East Jerusalem: PASSIA, 1992): 4.

<sup>3</sup> Adrien K. Wing, *Democracy, Constitutionalism and the Future State of Palestine* (East Jerusalem: PASSIA, 1994), 5-21.

and North American nations as well - who consider themselves to be Palestinians, but they are not included in the empirical data described here). While we cannot say with certainty how citizens of other Arab or Middle Eastern nations would respond to these questions, we are now in a position to describe attitudes of residents of the Gaza Strip, Jerusalem and the West Bank with some confidence.<sup>4</sup>

However we define "Palestinian political culture" or "Arab political culture", we must once again recognize that many of the values and attitudes included in these broad terms are very subjective. "Democracy" is a concept that was born in what today is Western Europe, and as we have already pointed out, many have suggested that because it is not "native" to this part of the world, it may not mean exactly the same thing in the Middle East as it means in Western Europe. That is, it might be that an action that would receive a score of eight on a ten-point scale of democracy in the Middle East might only receive a score of four in Western Europe or North America - in the Middle Eastern culture it is a far more "democratic" behavior in relation to other behaviors than it would be in the other setting. While this point could be argued at length, what it suggests is that we must be extremely cautious when drawing conclusions about comparative democratic behavior. The mere *existence* of an elected legislature in the Middle East - even one with few powers and low visibility - may have the functional equivalence of an active and highly institutionalized legislature in a Western European nation. Thus when we use phrases like "the will of the people", "popular representation", and the like, we must be very sensitive to context. It may be that legislatures in the Middle East are less effective than they are (in some absolute sense) in Western nations,

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<sup>4</sup> Several different recent polls are used here. The data referred to as "Hanf and Sabella" come from a survey undertaken in June 1995. Several different polls were undertaken by the Jerusalem Media and Communication Center (JMCC) over the last several years, and data from 1995/1996 are used here. The Center for Palestine Research and Studies (CPRS) in Nablus, has also completed a number of public opinion studies in recent years; their data, appropriately labeled, is used here, too.



but when combined with non-governmental organizations, interest groups, and a more personalistic style of politics generally some form of institutional equivalence may be attained. This is an interesting and important subject, but like many other interesting and important subjects raised in the second part of this study, it is beyond the scope of our attention here. What we seek to do in this section is to see how *Palestinian* democracy is functioning and what, in fact, the term "democracy" may be taken to mean in the Palestinian context today.

Khalil Shikaki has suggested that the peace process has had an effect - not always a positive one - upon democratization in Palestine because it "has given strong impetus to the state-building process and in so doing has greatly strengthened Palestinians' sense of identity and independence after decades of life under occupation and in exile."<sup>5</sup> Unfortunately, he notes, sometimes "the requirements of democracy may contradict those of national reconstruction." This has been the case in Palestine where, he observes, the Palestinian Authority (PA) "adopted un-democratic policies aimed at protecting the peace process and the process of national reconstruction". In areas of civil institutions and of general government administration Shikaki suggests that the PA behaved in clearly "undemocratic" or "anti-democratic" ways in recent years. Specifically, "respect for civil liberties and democratic practice has been seriously undermined by the PA's strengthening of central control."<sup>6</sup>

Although in one study a majority of the Palestinians felt "uncertain and fearful" about the future<sup>7</sup> for a variety of rea-

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<sup>5</sup> Khalil Shikaki, "The Peace Process, National Reconstruction and the Transition to Democracy in Palestine", *Journal of Palestine Studies* 25:2 (Winter, 1996): 8.

<sup>6</sup> Shikaki, "Transition to Democracy", 10.

<sup>7</sup> Theodor Hanf and Bernard Sabella, *A Date With Democracy* (Freiburg: Arnold Bergstraesser Institut, 1996): 27.

sons, another study indicated that they were optimistic about the future, with over 70% indicating that they were either "very optimistic" (21.7%) or "optimistic" (51.8%);<sup>8</sup> they showed a clear intent to work as best they could to make the future better. Economic issues (48%) and political issues (31%) were named as areas of their lives needing changes, reforms, or improvements.<sup>9</sup> An overwhelming majority (95%) believed that "in the present situation every Palestinian needs strong political opinions and clear alternatives" in life, although ironically almost half of the respondents also agreed with the apparently contradictory statement that "if you keep out of politics, you have peace and quiet and a clear conscience."<sup>10</sup>

When asked directly if they believe in democracy, a high percentage of the respondents of one study indicated in the affirmative. Over 79% of the entire sample responded "yes" to the question "Would you say you believe in democracy?" although there was a significant difference in the responses of identified "Islamists" to the question (71.7% believing in democracy) and the responses of identified "Secularists" to the question (90% believing in democracy), a point to which we shall return later.<sup>11</sup> Popular responses to the question "What is democracy" included such characteristics as "rule of the people" (15.5%), "elections" (9.9%), "human rights and minority protection" (13.5%), "equality before the law" (10.9%), "freedom of expression" (16.1%), and "individual freedom" (7.1%), among other possibilities.<sup>12</sup>

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<sup>8</sup> Jerusalem Media and Communication Center (hereafter JMCC), Public Opinion Poll No.6: Palestinian Attitudes to Democracy (East Jerusalem: JMCC, May 1995), q.2.

<sup>9</sup> Hanf and Sabella, *A Date With Democracy*, 65

<sup>10</sup> Hanf and Sabella, *A Date With Democracy*, 66.

<sup>11</sup> JMCC, Poll No. 6, q. 3.

<sup>12</sup> JMCC, Poll No. 6, q. 3-1.

In a separate study, the general conclusion reached was that

"Palestinians overwhelmingly support a democratic political system and show readiness to participate in the political process. They support freedom of the press, the rights of the opposition, and the right of women to political participation.<sup>13</sup>

At the same time, however, "they also show a large degree of public opinion vulnerability to manipulation by political authorities, perhaps an effect of the kind of political socialization prevalent in neighboring authoritarian Arab countries." So, at the same time that respondents answered a survey in "democratic" terms supporting a list of rights to be protected, they *also* agree that leaders should be obeyed because they are more knowledgeable of the public interest "because it may be more important to focus on economic development than democracy, and because the president of the state should have wide-ranging authority."<sup>14</sup>

Palestinians were generally skeptical about whether their government should have the right to intervene in what are generally regarded as individual civil rights. Only a small minority responded that the government has the right to intervene "all the time" in freedom of expression (11.7%), of assembly (17.5%), freedom of religion (12%), individual rights (10%), and opposition (15%); a higher percentage (24%) felt that the government should have the right to intervene "all the time" in freedom of party formation. A relatively low<sup>15</sup> number believed that the government *never* had the right to intervene in the right of freedom of assembly (26.2%), of opposition

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<sup>13</sup> Shikaki, "Transition to Democracy", 12.

<sup>14</sup> Shikaki, "Transition to Democracy", 14.

<sup>15</sup> "Relatively low" here suggests that one might expect that a strong commitment to democratic values would motivate one to oppose *all* government intervention in individual and group rights in society.

(29.2%), of party formation (32.1%), of expression (39.7%), individual rights (53.8%) and freedom of religion (70.1%). There was essentially no difference in response rates between Islamists and Secularists in their belief that the government has no right to intervene at any time in the area of freedom of religion (Islamists: 70.6%; Secularists: 70.7%).<sup>16</sup>

The respondents to one survey generally supported democratic norms, including agreeing overwhelmingly with the statement that the use of violence or the threat of violence by the elected authority is never justified (73.5% agreed), and that the use of violence or the threat of violence by the opposition is never justified (78.5% agreed). However, they *also* expressed some other views that could certainly be interpreted as having anti-democratic potential. Almost four out of five (75.5%) respondents agreed that "there are some situations in which the Palestinian Authority is justified in breaking the constitution to protect national interests", almost half (48.4%) agreed that "there is too much attention to rights and little for law and order", and over 30 percent (36.2%) believed that "the legislative authority should be above the law."<sup>17</sup> Only 13.2% of the respondents indicated a belief that minority rights (left undefined) in the political system were an "absolute right"<sup>18</sup>.

Palestinians showed enthusiastic support for their political leaders. Over four respondents out of five expressed the view that their leaders would "succeed in promoting the best interests of our society."<sup>19</sup> As very general attitudes Hanf/Sabella found that:

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<sup>16</sup> JMCC, Poll No. 6, q. 6.

<sup>17</sup> JMCC, Poll No. 6, q. 7.

<sup>18</sup> JMCC, Poll No. 6, q. 9.

<sup>19</sup> Hanf and Sabella, *A Date With Democracy*, 69.

- the idea of a one-party state was acceptable to half of the respondents (with that option becoming less acceptable as the respondent's level of education rose);
- the idea of independent courts was approved of by almost three-quarters of the respondents (although a significant minority "would tolerate government action to ensure that decisions of the courts do not give rise to any political or social damage"); and
- freedom of the press is overwhelmingly supported.<sup>20</sup>

### **3.2 Islam and Democratic Values in Palestine**

According to the Hanf/Sabella study, "one has to conclude that the inhabitants of the territories of Palestine go to great lengths to give credence to their region's exalted and exacting [religious] attribute. Religious authorities in the West can but dream of the figures" found in this study. 90% of the Palestinians included in the Hanf/Sabella study believed that Islam "is the only true religion"; only 28% indicated that they believed that they could "be happy and enjoy life" without being religious. While 84% of the respondents indicated that the first adjective they would use to describe themselves would be "Muslim", only 8% indicated that the first adjective they would use to describe themselves would be "Palestinian". Of those saying "Muslim" first, 85% said "Palestinian" second, and 57% said "Arab" third. Of those saying "Palestinian" first, 51% said Muslim second, and 29% said "Arab" third. Thus, it is clear that the vast majority of interviewees indicated that they were Muslims first, Palestinians second and Arabs third.<sup>21</sup> This very clearly shows the significance of Islam for Palestinian political identification.

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<sup>20</sup> Hanf and Sabella, *A Date With Democracy*, 124-126.

<sup>21</sup> Hanf and Sabella, *A Date With Democracy*, 49, 54-55.

We indicated at the beginning of the second section of this study that it has been hypothesized that the Islamic nature of Arab society contributes to the region's ascribed "historical hostility" to democracy. "Islam, it is argued, emphasizes sacred as opposed to secular sources of authority, and divine as opposed to popular sovereignty". Other anti-democratic values espoused by Islam apparently include institutionalized inequality with regard to religious minorities and women, limitation of freedom of expression and belief, lack of toleration for opposition, and the like.<sup>22</sup> Are these attributed characteristics supported by empirical evidence?

Recent research shows quite clearly that there are significant differences in attitudes between (in one study) supporters of Islamic political movements, Fatah, and secular political movements, and (in another study) between Islamists on one hand and Secularists on the other. According to Hanf and Sabella, as shown below,

"the Islamists exhibit the greatest conservatism, are least prepared to trust others, and least afraid about the future. Fatah supporters are the most trusting, but most skeptical about change: they are apparently less concerned about the status quo. Secularists are least conservative, most in favor of change and most worried about the future."<sup>23</sup>

More important, Islamists are highly religious, and over 80% of them would prefer a close interaction of religion and the state; 40% responded that their group loyalty - their religious identity - was more important than their loyalty to their country. As might be expected, secularists are least religious and the least likely to put group identity ahead of national loyalty. Fatah supporters fall between the Islamists and secularists on these issues.<sup>24</sup>

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<sup>22</sup> Shikaki, "Transition to Democracy", pp. 11-12.

<sup>23</sup> Hanf and Sabella, *A Date With Democracy*, 73

<sup>24</sup> Hanf and Sabella, *A Date With Democracy*, 74

**Table III-1**  
**Attitudinal Groups in Contemporary Palestinian Society**

Characteristic	Islamists	Fatah	Secularists
• Conservatism	81%	75%	63%
• Trust	25	34	31
• Scepticism about change	14	17	10
• Fear	52	53	61
• Highly religious	84	37	8
• Group identity more important than loyalty to the country	39	21	9
• Religion should determine social and political life	89	69	51
• Israeli institutions can serve as models for a Palestinian state			
- Electioneering and politics	67	80	76
- Parliament	61	68	75
- System of Justice	31	56	46
n =	580	955	150

Source: Hanf and Sabella, *A Date With Democracy*, pp. 73-74

According to data published in the Hanf/Sabella study, these three groups also clearly have different opinions when it comes to their respective visions of the institutions and behavior that should characterize an ideal society. Respondents were given the opportunity to choose from among five general forms of government. Three of these alternatives were clearly "undemocratic" systems, one was a "consociational" democracy, and one was a "competitive majority" democracy. Although nearly 80% of all respondents thought that one of the two democratic options was "the best" option (with just over half of the "democratic" respondents preferring a competitive democracy, and just under half of the "democratic" respondents preferring a form with all democratic parties being represented), the pattern of their responses showed a clear difference between the Islamists, the

Fatah supporters, and the Secularists.<sup>25</sup> This data is presented in Table III-2. The Islamists were very clearly more willing to support what could be called "undemocratic" constitutional alternatives (41% as contrasted to 22% for Fatah supporters and 14% for what were called Secularist supporters). The Secularists were clearly more willing to support what could be called a "competitive majority democracy" system (56% as contrasted to 49% for Fatah supporters and 35% for the Islamist supporters.)

**Table III-2**  
**Attitudes Toward Governmental Alternatives in Contemporary Palestinian Society**

"Best" Alternative	All	Islamists	Fatah	Secularists
"undemocratic" alternatives	21%	41%	22%	14%
Consociational democracy	36	24	29	30
Competive majority democracy	43	35	49	56
n =	1,874	580	955	150

Source: Hanf and Sabella, *A Date With Democracy*, pp. 123

As noted above, in a study undertaken by the Jerusalem Media and Communication Center (JMCC) at about the same time as the Hanf/Sabella study, a similar pattern of responses was found, with "Islamists" considerably less likely than "Secularists" to respond that they "believe in democracy", with 90% of the Secularists indicating such a belief, and only 71.7% of the Islamists indicating such a belief. Moreover, there were some significant differences between the "Islamists" and the "Secularists" in terms of their view of what is included when one discusses the concept of democracy. These data are found in Table III-3.

<sup>25</sup> Hanf and Sabella, *A Date With Democracy*, 123



**Table III-3**  
**General Attitudes Toward Democracy in Contemporary**  
**Palestinian Society**

	All	Islamists	Secularists
Believe in democracy? Yes	79.6%	71.7%	90.0%
No	12.3	18.5	4.8
What is Democracy?			
- Rule of the people	15.5	17.6	15.4
- Elections	9.9	8.5	11.8
- Constitution	4.0	3.6	5.1
- Human rights/ minority protection	13.5	15.5	11.2
- Freedom of expression	16.1	0.9	16.8
- Individual freedom	7.1	2.1	9.1
n =	906	329	475

Source: JMCC, "Public Opinion Poll No. 6", May 1995, q. 3-1.

The Hanf/Sabella study created a composite "democracy index", and found that the Islamists in their response group were more likely to be in a group labeled "not or hardly democratic" than the Fatah supporters, with the Secularists being even less likely to be in that group than the Fatah supporters. 13% of the Islamists indicated such a response, compared to 9% of the Fatah supporters and only 3% of the Secularists. Conversely, both the Fatah supporters and the Secularists were above average on the democracy scale, while the Islamists scored below average: 97% of the Secularists responded "democratic" or "partly democratic", 91% of the Fatah supporters responded "democratic" or "partly democratic", and 87% of the Islamists responded "democratic" or "partly democratic". While a majority of all three groups supported completely democratic principles, the Islamists had the smallest majority, 57%, and only the Secularists

had a two-thirds majority. Overall, only one Palestinian in ten supported essentially undemocratic principles.

**Table III-4**  
**Overall Democratic Orientations in Contemporary**  
**Palestinian Society**

Overall Democratic Orientation	All	Islamists	Fatah	Secularists
Not or hardly democratic	10%	13%	9%	3%
Partly democratic	28	30	27	31
Democratic	62	57	64	66
n =	1,874	580	955	150

Source: Hanf and Sabella, *A Date With Democracy*, pp. 143-44

What are the implications of this research for the study of constitutionalism in Palestine? The empirical evidence supports some of the "conventional wisdom" about the relationship between Islam and democracy being essentially "hostile". In several *different* studies it is possible to see a consistent pattern of attitudes: the respondents labeled as Islamists were clearly less democratic, as the authors of the various studies operationalized the term, than were those labeled as Secularists. This suggests that if Palestinian society becomes more controlled by Islamic forces in the future it may be likely to be more hostile to democratic norms, and more receptive to what could be called anti-democratic norms.

As Adrien Wing has observed, when the final Palestinian constitution is drafted it "must confront the inevitable tension between the demands of democracy and Islam." While some Palestinian leaders have vowed that Palestine will not be an Islamic state, as one finds in Saudi Arabia or Iran, there are many Palestinians who would like to see that be the case. This conflict has caused tension "because Islam is not only a religion, but a way of life, whereas a democracy is

based on the concept of majority rule rather than on God's inspiration."<sup>26</sup> Among the many fundamental issues that need to be resolved prior to the promulgation of a new Palestinian constitution, the question of the relationship between religion and the state may be the most problematic.

### **3.3 Democracy, Constitutionalism and the January 1996 Palestinian Election**

Perhaps the best example for study for those interested in Palestinian constitutionalism, Palestinian democratization and Palestinian commitment to democracy, involved the January 1996 elections for the *Ra'ees* and the Legislative Council. The fact that there were problems with the administration of the election may have been inevitable and determined at the outset. The event was, one set of observers has noted, "organized with a speed inappropriate for the first ballot of a new political system"<sup>27</sup>, almost guaranteeing that there would be problems as part of the electoral process there. Although there were some protests dealing with the mechanics of the election, as will be further discussed below, one explanation for the lists of irregularities and problems in the electoral process was that "without putting too fine a point on it: chaos theory is probably closer to the truth than conspiracy theory" as an explanation for why some things went wrong.<sup>28</sup>

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<sup>26</sup> Wing, *Democracy*, p. 25.

<sup>27</sup> Hanf and Sabella, *A Date With Democracy*, 159.

<sup>28</sup> Hanf and Sabella, *A Date With Democracy*, 160.

## **Background**

The Palestinian election of January 1996, the first free and democratic election ever held for the Palestinian people, may have been the most carefully observed and conscientiously scrutinized election in modern times. As part of the Oslo 2 Accords, which included an agreement between the Israeli and Palestinian parties calling for the elections, it was agreed that observers, "including those representing non-governmental organizations", would also be present to monitor the elections. A substantial number of observer organizations were present in Palestine during the electoral period. In fact, according to one source<sup>29</sup> there were 613 international observers present, with the largest single group coming from the European Union, including other observer delegations from Australia, Belgium, Canada, Chile, China, Cyprus, Denmark, Egypt, Finland, France, Germany, Greece, Guyana, Holland, Hungary, Ireland, Israel, Italy, Japan, Jordan, Korea, Luxembourg, Malta, Morocco, Nigeria, Norway, Philippines, Poland, Portugal, Russia, Spain, South Africa, Sweden, Switzerland, Turkey, Yemen, the United Kingdom, and the US, as well as the Organization of African Unity, the Organization of the Islamic Conference, and the Non-Aligned Movement.

Palestinians were enthusiastic and excited about the election. In October of 1995 respondents to a public opinion survey indicated that the election of the Palestinian Council would "promote the democratic process in the Palestinian community" (68.8%), would "bring changes for the better" (74.5%), would "lead to an improvement in economic conditions" (61.4%), and would "lead to personal security" (74.3%), while only a comparatively small group of respondents answered negatively, saying that the election would "be a false election; the results are predetermined" (33.2%), that it would "provide legitimacy for an unsatisfactory agreement" (37.2%), that it would "provide the Authority with justification to oppress the Opposition" (40%), and that it would "be a

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<sup>29</sup> International Observers, *The Jerusalem Times* January 19, 1996, p. 7.

change for the worse" (17.7%).<sup>30</sup> In a study in December of 1995, researchers found that over half of the respondents believed that the upcoming elections would be fair (56.4%), and believed that they had a civic responsibility to take part in the elections (81.7% "strongly agree" and "agree somewhat").<sup>31</sup> Almost three respondents in four (73.6%) believed that their vote could make a real difference in the election.<sup>32</sup> A month later, just before the January election, an over-whelming majority of Palestinians were satisfied with the fairness of the election process, although by that time there was a clearly significant difference between backers of the Fatah and Hamas movements in their responses to this question.

**Table III-5**  
**Perceived Fairness of the Election Campaign**

<i>"In general are you satisfied about the fairness of the election process?"</i>	All	Fatah	Hamas
Yes	51.5%	70.4%	35.8%
Somewhat satisfied	25.2	15.7	23.0
No	11.3	3.9	24.3
No opinion	12.0	10.1	16.9
n =	1,199	466	148

Source: JMCC, "Public Opinion Poll No. 12: On Palestinian Elections", January 1966, q. 7.

<sup>30</sup> Center for Palestine Research and Studies, "Results of Public Opinion Poll #20", (Nablus: CPRS, October 1995): 20-21.

<sup>31</sup> JMCC, "Public Opinion Poll No. 11: On Palestinian Elections", (East Jerusalem: JMCC, December 1995), q. 5, 13.

<sup>32</sup> JMCC, Poll No. 11, q. 18.

The Palestinian Legislative Council (PLC) is empowered to assume "all the undertakings and obligations of the Palestinian Authority under the Gaza-Jericho Agreement" of May 4, 1994.<sup>33</sup> The 88 members of the PLC will also form part of the Palestine National Council (PNC), equaling 20% of the total number of members of the PNC, the Palestine Liberation Organization's (PLO's) legislature-in-exile. The primary function of the PLC in its first session will be to form a constitution to be effective during the interim period of government, as defined in the Oslo 2 Accord.<sup>34</sup>

## **The Electoral System**

Under the Palestinian National Authority (PNA) "Palestinian Election Law"<sup>35</sup>, Palestinians voted in two different, simultaneous, elections, one for the Ra'ees<sup>36</sup> of the Executive Authority, and another for members of the PLC. Under the Oslo 2 Accords<sup>37</sup>, the election was to be administered under a "democratic, free and fair electoral system", based upon the principles of "universal, free, equal, direct, and secret suffrage". All Palestinians aged 18 or older on the day of the election who were appropriately registered had the right to

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<sup>33</sup> For further discussion of the duties of the PLC, see "The Palestinian Legislative Council", *Palestine Report* 1:36 (February 2, 1996): 4-5.

<sup>34</sup> Chapter 1, Part 1, Article 3, Clause 2 of the Election Law.

<sup>35</sup> See "The Palestinian National Authority: Palestinian Election Law, Issued in Gaza on 7 December 1995", *Palestine Report* 1:33 (12 January 1996): 17-35.

<sup>36</sup> In the Oslo 2 Accords, the term "Ra'ees" was used because the Israelis did not want to accord the newly elected executive the legitimacy of the title of President, while the Palestinians wanted that legitimacy coming with that title. The Arabic term "Ra'ees" can be translated as either "Chairman" or "President". Today, the Israelis use the former when referring to Mr. Arafat and the Palestinians use the latter.

<sup>37</sup> See "Annex II: Protocol Concerning Elections", in the Interim Agreement between the Government of the State of Israel and the Palestine Liberation Organization, known as the Oslo 2 Accords.

vote, "without regard to gender, race, religion, opinion, social origin, education, or property status."

In the election for the Ra'ees of the Executive Authority, the law required that candidates had to be at least 35 years of age and registered as a voter. Candidates could be nominated by registered political parties, coalitions of parties, or any registered electors, but at least 5,000 registered electors had to support the nomination in order for the candidate's name to appear on the ballot.

In the election for the PLC, candidates had to be at least 30 years of age and registered as voters. Here, too, candidates could be nominated by registered political parties, coalitions of parties, or groups of electors, but at least 0.5% of the registered voters in a district, or 500 voters (whichever was lower) had to support the nomination in order for the candidate's name to appear on the ballot. In order for party organizations to be designated, they had to register their existence with the Palestinian Central Election Commission, and meet criteria established in the "Palestinian Election System" Annex to the Oslo 2 Accord.

In all races, a plurality system was used within districts, both in the race for the Ra'ees and in the races for the PLC. In the multiple-member districts for the PLC, the top vote-getters were elected to office; if six representatives were to be elected from a district, it was the top six vote-getters. If four representatives were to be elected, it was the top four vote-getters. In a pattern designed to be "in accord with the principles of plural democracy and recognizing the existence within Palestinian society of a large Christian community and the need for ensuring it a proper representation within the Palestinian Council", the Electoral Law provided for minimum allocation of seats to Christian Palestinians in some specific constituencies.

In the Electoral Law, the territory of the West Bank and the Gaza Strip was divided into 16 multiple-member districts for the election of PLC members. The districts were: Bethlehem,

Hebron, Jenin, Jericho, Jerusalem, Nablus, Qalqilya, Ramallah, Salfit, Tulkarm, and Tubas in the West Bank, and Gaza North (Jabalia), Gaza City, Gaza Central (Deir El Balah), Gaza South (Khan Younis), and Rafah in the Gaza Strip. For the election of the Ra'ees of the Executive Authority, the whole of the territories of the Gaza and the West Bank served as one single constituency.

The Electoral Law also established a Palestinian Central Election Commission of nine members, appointed by the President of the Palestinian Authority (PA)<sup>38</sup>, to oversee the administration of the election. Each constituency had its own District Electoral Commission, made up of five members appointed by the Central Election Commission, said members to be "chosen from among university professors and lecturers, lawyers, political scientists, sociologists, economists, public or private administrators, and teachers of reputable professional career and experience." As well, each polling district had one Polling Station Commission, responsible for registration in their district and for the conduct of the vote and the counting of the votes. The number of polling stations was established by regulations implementing the Electoral Law, according to population.

The Electoral Law also established an Election Appeals Court as the "supreme body and last instance of appeals related to the election process", made up of five judges appointed by the President of the PA.

## **The Campaign**

From the beginning of the campaign it was a foregone conclusion that Yassir Arafat would win the race for the position of Ra'ees. The only other candidate for the position was

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<sup>38</sup> The Palestinian Authority was the title used by the institutionalized administration of the former Palestine Liberation Organization. The President of the Palestine Authority was Yassir Arafat.



Samih Khalil, who indicated that she was running in the campaign to register her opposition to the Oslo Accords. Originally, a third candidate was nominated for the Ra'ees position as well, Ali Ishaq Tamimi, but he withdrew his nomination and ran instead (unsuccessfully) for the PLC.

The race for the 88 seats for the PLC was an intense one, with candidates representing over a dozen parties and movements. About 75% of the candidates were running as Independents, while the rest represented a number of other political groups, mostly the Fatah Party.

Because this was the first-ever election held in Palestine, both the International Observers and the Palestinians were very sensitive to the issue of having a properly administered election with an absolute minimum of electoral irregularities. On the positive side it was noted that the PA had generally made a good-faith effort to provide access for all international observers to relevant people and information, voter registration was generally successful and free of discrimination, and there was an overall openness to candidates, with a large number of candidates - nearly 700 - running for the 88 seats available on the Council.<sup>39</sup>

On the negative side, many irregularities were noted by the various observer delegations; at one point the head of the EU Electoral Unit said that "serious irregularities" had been noted that were "threatening the credibility" of the elections. Among the major problems of the campaign period were the following: the shortening of the campaign (from 22 to 14 days), the bias of the media against non-Fatah candidates and suppression of press freedoms in territories under the control of the PA, the squelching of competition from within Fatah against anyone not supporting Yassir Arafat, election-related arrests, detentions, and threats, the bribing

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<sup>39</sup> Peace Watch Observer Team, "Concluding Statement Concerning the Palestinian Election Campaign", (Peace Watch, Jerusalem) January 18, 1996, pp. 2-3.

of candidates to withdraw from the race by using job offers, substantial confusion concerning the electoral register, the fact that the Central Elections Commission was not appointed until nearly the middle of the campaign period, leaving the (political) PA Ministry of Interior to administer the election for the first half of the campaign, the fact that there were some last-minute changes in district boundaries, the fact that the number of seats per district was not clearly based upon population, the fact that some PA members used their official offices for campaign offices, and, finally, the fact that Israeli police and security forces were present in the Jerusalem polling stations on election day to insure order in the territory under their jurisdiction.<sup>40</sup> A lack of privacy in "at least half of the polling stations visited" by one group of observers was also of concern, since it was felt it might "bias the election unfairly towards the ruling Fatah party."<sup>41</sup>

## **The Results**

On balance, the conclusions articulated in most media were that the first ever elections of the Palestinian people were, generally speaking, a success. The leader of the EU observers said that the elections "accurately reflect the aspirations of the Palestinian voters"; others in his delegation said that the election process was "largely fair"<sup>42</sup>, but within a day many

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<sup>40</sup> See the following: Jon Immanuel, "Irregularities are Damaging PA Election Credibility-Chief Observer", *The Jerusalem Post* (January 2, 1996): 1; Ghassan Khatib, "An Open Letter to the Elections Observers", *Palestine Report* 1:31 (December 29, 1995):7; Abbas Defend Commission, *Palestine Report* 1:33 (January 12, 1996): 6-7; Peace Watch Observer Team, "Concluding Statement Concerning the Palestinian Election Campaign", (Peace Watch, Jerusalem) January 18, 1996; and "Election Law Violations", *Palestine Report* 1:35 (January 24, 1996):14-15; and Stephanie Nolen, "Israeli Military Turns Back Jerusalem Voters", *Palestine Report* 1:35 (January 24, 1996): 20.

<sup>41</sup> Peace Watch Observer Team, "Preliminary Statement Concerning Election Day Events" (Peace Watch, Jerusalem) January 21, 1996.

<sup>42</sup> Salwa Kanaana, "First Elections Called Success", *Palestine Report* 1:35 (January 24, 1996): 1; "Will of the People Expressed", *Palestine Report* 1:35 (January 24, 1996): 18.

Palestinian candidates had filed official complaints with the Central Election Commission over the election outcomes.<sup>43</sup>

A public opinion poll taken shortly after the election showed a mixed verdict of the electoral performance as far as the public was concerned. A substantial minority of the respondents (20.5%) felt that the election was "not fair", although as might have been expected there were significantly different patterns of responses between Fatah (59.3% "fair") and Hamas supporters (24.3% "fair") in this regard. About the same percentage of respondents (21.0%) indicated that the election "did not meet" their expectations. On balance, public opinion gave the election a qualified expression of support.

**Table III-6**  
**Public Attitudes Toward the 1996 Palestinian Election**

	All	Fatah	Hamas
<i>Q2: To what extent would you say the election process was free and fair?</i>			
- Fair	42.2%	59.3%	24.3%
- Somewhat fair	30.4	28.3	27.8
- Not fair	20.5	7.7	38.9
- No opinion	6.8	4.7	9.0
<i>Q4: Did the election results meet your expectations?</i>			
- Yes	39.8%	49.0%	33.7%
- Somewhat	32.4	33.7	25.0
- No	21.0	13.4	31.9
- No opinion	6.9	3.9	9.7
n =	1,255	492	144

Source: JMCC, "Public Opinion Poll No. 13: On Palestinian Elections - Its Fairness, Women and the Palestinian National Charter", February 1996.

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<sup>43</sup>"How Fair Was the Election?" *Palestine Report* 1:37 (February 9, 1996): 6-7.

Yassir Arafat, whose victory was never in question, received 88.6% of the vote of those participating in the election for the Ra'ees, ranging from a low of 85.5% to a high of 93.3% of the votes in the electoral districts. It should be noted, however, that fully 22% of the voters submitted blank ballots for the Ra'ees competition, perhaps because it was so widely perceived that no real contest was involved in this race.

The new PLC was dominated by members of the Fatah Party, the party of Arafat, winning 52 of 88 seats, as well as 14 independents affiliated with Fatah. One observation made about the results was that the election was "no step forward for women", with 42% of the voters being female, 3% of the candidates being women, and only five of the 88 members of the PLC - 5.7% - being women. Much discussion took place after the elections about the future need for an electoral quota for women, with some arguing that the current electoral system "will only serve to further marginalize women" if quotas are not introduced, while others argued that women - as all candidates - should be elected by merit alone.<sup>44</sup>

## **The Significance of the Election**

The successful completion of the first-ever Palestinian elections could have been important for three distinct reasons. First, it could have provided credibility to the leadership of the PA in its negotiations with the Israeli government. Second, it could have been important within the Palestinian community in demonstrating that a peaceful election was possible and in showing "the Palestinian people's firm commitment to democracy."<sup>45</sup> Third, even taking into consideration the irregularities in the election, it could have helped to take the Palestinian state one step further on the road to be-

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<sup>44</sup> Stephanie Nolen, "Election No Step forward for Women", *Palestine Report* 1:36 (February 2, 1996):6.

<sup>45</sup> Ghassan Khatib, "The Value of the Vote", *Palestine Report* 1:36 (February 2, 1996): 12-13.

ing a stable democracy, in a part of the world in which peaceful democratic elections are not at all common. With the exception of Israel, there are no states in the Middle East that have a history of peaceful transitions of power from one administration to another.

Unfortunately, the election was not as successful in all of these respects as it could have been. While it may have supported the Palestinian government's external legitimacy - in its relations with Israel and other Arab states - it apparently did not do as well as it could have done in its domestic relations, as the data presented above demonstrated. Perhaps this shows unrealistically high expectations, however, and perhaps the fact that there was a peaceful election *at all* should be the crucial factor here, not the irregularities involved in the election.

As a democratic procedure, the performance was less successful [than other measures of democratization in Palestine]. The unilateral selection of an electoral system by an unelected authority, the unseemly haste to hold the elections - with the inevitable irregularities - the legal violations and the lack of neutrality on the part of the electoral commission are all serious departures from the normal standards of democracy. The fact that the results still pass the test of legitimacy is proof of the maturity of an electorate, the majority of whom used the ballot box as best they could to move from undemocratic to democratic rule. By contempt for the freedom of expression, the freedom of the media, and the rule of law, the authority that exercised power throughout the election process proved that it was not a democratic authority - and, consequently, the need for elections.<sup>46</sup>

This election did not result in a complete transfer of power from one administration to another. Rather, it served to formalize the already empowered administration of Yassir Arafat and his Fatah Party. The old political order in Palestine was based on consensus and traditional authoritarian lea-

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<sup>46</sup> Hanf and Sabella, *A Date With Democracy*, 169.

dership; the new order recognizes heterogeneity and seeks to operate democratically. Many observers have suggested that Arafat belongs to the "old" generation of Middle Eastern politicians, those who value results more than process, and these observers have suggested, among other things, that many of the violations of the electoral process were a direct result of Arafat's authoritarian approach to the election. If this is true, then it is especially important to begin to socialize the younger generation of Palestinians to the values of free and fair democratic elections. Whatever its rough points, this election does appear to have been a step along that path.

### **3.4 Progress of Palestinian Constitutionalism: The Basic Law**

One scholar in the field of Palestinian constitutionalism, Dr. Manuel Hassassian, has suggested<sup>47</sup> that four identifiable phases can be associated with progress in the development of Palestinian constitutionalism over the years. The first phase, which applies to the period through the 1967 war and into 1968, was a phase that he calls "liberation and return" for the PLO. He notes the Palestinian National Charter of 1964 and the amended National Charter of 1968 during the fourth meeting of the PNC were key documents during this phase. These documents emphasized the total liberation of Palestine, and were significant in that they were the first official documents in which the responsibility for the liberation of Palestine was shifted to the Palestinians themselves; self-reliance and armed struggle were components of the 1968 National Charter.

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<sup>47</sup> Dr. Manuel Hassassian, Dean of the College of Liberal Arts, Bethlehem University, in a presentation at Hebrew University, May 15, 1996. The paragraphs that follow dealing with phases of constitutional development are based upon discussions held with him in his office at Bethlehem University. See also his published chapter "The Democratization Process in the PLO: Ideology, Structure, and Strategy", in Edy Kaufman, Shukri Abed, and Robert Rothstein, eds., *Democracy, Peace, and the Israeli-Palestinian Conflict* (Boulder: Lynne Rienner, 1993): 257-285.

The second phase corresponds to the period leading up to and including the 1973 Yom Kippur War, 1969 to 1974. During this period, Hassassian suggests, the Palestinians tried to "reconcile" their goals "with the political and demographic realities" of the time. Palestinian goals shifted from "total liberation" to "a democratic secular state", designed to include Christians, Muslims, and Jews as well, living together, although Jews desiring to live in Palestine would have to "renounce Zionism and the messianic vision of Eretz Israel." Between the 5th and the 11th PNC meetings the level of rhetoric was muted, and the emphasis on "realism" was increased.

The third phase includes the years 1974 through 1988, and includes the acceptance by the Palestinians of a *two state solution* to the Middle East process. Following the 1973 War the Palestinian leadership hoped that a comprehensive solution to the problems of the Middle East would be reached. Following the Lebanese civil war, the Camp David accords, the Egyptian-Israeli peace treaty, Sadat's visit to Jerusalem, the 1982 Israeli invasion of Lebanon, and the beginning of the Intifada in the Occupied Territories, the Palestinian leaders believed that a two-state solution was a realistic possibility. In the 12th PNC meeting a "nonmilitary option" was accepted for resolving conflicts with Israel, including a *de facto* recognition of Israel. From the 13th through the 19th PNC meetings the two-state solution evolved and was institutionalized, and PLO legislative and constitutional structures evolved in their own right. In November of 1988 at the 19th PNC meeting a Declaration of Independence was adopted, with a commitment to a democratic parliamentary system of government built upon a foundation of individual rights and freedoms.

The fourth phase started in November of 1988, when the PNC adopted a resolution calling for the creation of a constitution, following the Declaration of Independence. In November of 1993 the PLO Executive Committee established a committee to work on such a document.

The first draft of a constitution - called a Basic Law - was examined by the Executive Committee in its December 1993 meeting, and as a result of substantial discussion the Executive Committee decided to circulate the document widely within Palestinian circles, seeking response from various groups to ideas and institutions included in the document. The Legal Committee of the PNC met in Amman in December of 1993 to examine the proposed document, and agreed to continue to sponsor a series of discussions in various areas of Palestinian society about the constitution.

As a result of numerous comments received about the first draft, a second draft was prepared and was the subject of a conference at the Jerusalem Media and Communication Center in February of 1994. Subsequently a number of interest groups were contacted about the second draft, including representatives from women's groups. Following this round of discussion and proposed changes a third draft was prepared, including comments from the PNC's Legal Committee. The third draft was published in May of 1994.

Following that time there were many changes in the geopolitical setting within which a Palestinian constitution would have to operate. For example, Oslo II was negotiated and agreed upon, which required that certain language relating to the Legislative Council and elections be inserted into the new plan. As a result of these factors, a fourth draft was created and presented to the Palestinian Ministry of Justice in December of 1995 by Dr. Anis Al-Qasem, the Chair of the PNC Legal Committee. Subsequently, in the Spring of 1996, a fifth Draft was released and circulated for reaction as well.

Thus, the drafts of a Palestinian Basic Law referred to here as the Fourth Draft, Draft 4-a, and the Fifth Draft, were the result of several years of discussion, negotiation, argument, amendment, and careful drafting. A substantial number of individuals and groups have had the opportunity to participate in this process, and have exercised an influence in its development. In this section we will examine the Fourth and Fifth Drafts of the Basic Law, as well as the intermediate Draft



4-a, analyzing similarities and differences among them. At the end of our analysis we shall make some observations about the evolution of the Basic Law.

## **The Fourth Draft Basic Law**

The Fourth Draft Basic Law was composed of seven chapters, with 122 Articles.<sup>48</sup> It was, compared to many constitutions in the world, a well-developed and highly detailed document, including 28 Articles focusing upon fundamental rights and freedoms. It laid out in some detail the structural characteristics of legislative, executive and judicial branches of government, details that we will present in discussion below.

The Draft Basic Law began with a section (Articles 1-7) covering general provisions, including two very important statements: that the Palestinian people would be the source of all authority in the Basic Law, and that the government would be based on parliamentary democracy and pluralism, "with consideration by the majority for the rights and interests of the minority and respect by the minority of the decisions of the majority." Also included here were statements on the Arabic language, on the flag of Palestine, on Jerusalem being the capital of Palestine, and on amendment of the Basic Law (a two-thirds majority of the elected Council was required).

A long section on Fundamental Rights and freedoms made up the second chapter of the Fourth Draft Basic Law. The document recognized a number of international covenants governing human rights (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political

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<sup>48</sup> References herein to the Fourth Draft Basic Law come from the publication by the JMCC, *Draft Basic Law for the National Authority in the Transition Period*, (Jerusalem: JMCC, 1996). Section numbers cited in the text here correspond to Chapter and Article numbers in this publication.

Rights, etc.), and specifically recognized a number of rights in the 28 Articles of this chapter. Recognized rights included the right to life, gender rights, rights to human dignity, rights to participate in public life, the right to liberty and security of person, the right to freedom of thought and expression, the right to own private property, freedom of economic activity, social security, and the right to education (which is both free and compulsory until the secondary stage), among others.

It is important to note that several of the specifically mentioned rights were not absolute, but were conditional. For example, the freedom of formation of political parties was guaranteed, "provided that their aims and activities do not conflict with the basic principles prescribed in this Basic Law and that they conduct their activities in a peaceful manner." The listed "right to freedom of thought, conscience and expression and publication of opinion either orally, in writing, or in the form of art or through any other form of expression" was also conditional, "subject to observance of restrictions imposed by law for the respect of the rights or reputations of others, the protection of national security or of public order or of public health or morals." Freedom of the press, printing, publication, and the media, as well as the right to peaceful assembly and the right to freedom of association were similarly qualified. Even freedom of belief and worship was not absolute, and was "subject to non-violation of public order or morality."

As was noted in the first section of this work, the conditional granting of rights should have been a source of concern to some because of the inherent vulnerability of these rights. What does "subject to public order or morality" mean? Who decides what is moral? Under what circumstances could these decisions be made? This is clearly a point of concern to minority groups, that may be subject to the rules of others in society.

The third chapter of the Draft Basic Law was titled "The Rule of Law" and discussed procedures as well as substance. After expressing the fundamental view that the government

of Palestine should be based upon the rule of law, it suggested (Article 37) that all authorities and governmental organs should be subject to the law, and that all persons would be equal before the law. All citizens were guaranteed a "right of recourse to the courts" (Article 39), and the Basic Law explicitly noted that all accused "shall be presumed innocent until proved guilty in a lawful trial in which he has been afforded guarantees to defend himself. Every person charged with a serious criminal offence shall have a lawyer to defend him" (Article 40). Other articles discussed judicial procedure and offered guarantees of prompt action in criminal cases as well as guarantees of human dignity.

"Legislative Authority" was the title of the fourth chapter of the Draft Basic Law. It described the term of the elected Council (Article 47: "until the end of the transition period"), specified the size of the Council and how it is chosen (Article 48: "88 members elected in general elections in accordance with the Elections Laws"), and discussed periods when the Council would be in session, how Speakers and Deputy Speakers would be elected, the opening of the Council, and a quorum (Article 54: 50% of all members, but "all decisions... shall be taken by a simple majority of the members present"). All meetings of the Council, with certain exceptions, would be public. Council Members would be guaranteed immunity for actions undertaken during the legislative session.

The specific powers of the Council were described in Article 60, including the power to approve laws, debate government policy, approve the budget and development plans, approve general amnesty or pardons, accept the resignation of Council Members, approve the appointment of cabinet members, and withdraw confidence in the government or in cabinet ministers.

Chapter Four also guaranteed that the annual budget would be presented to the Council at least two months before the beginning of the financial year, that the Council would have the power to establish temporary committees, that vacancies in the Council would be filled through by-

elections, and that the Council would have control over its own by-laws for its legislative behavior.

As is the case in many modern constitutions, considerable thought was given to the powers of the executive branch of government, discussed in Chapter Five of the Draft Basic Law. The first few articles of this chapter discussed the means of selecting the President, his/her term of office, succession, and specific powers of the President. The President would be selected in a general election (in accordance with the Elections Law), and would serve for a five year term. No person could be President for more than two successive terms. (Although it must be noted that the term of the President would automatically expire with the expiry of the transitional period and the beginning of a fully independent government). Should the President die, resign or be incapacitated, the Speaker of the Council would take over until a new President took office, "which shall be no more than 60 days from the date of occurrence of the vacancy or the proof of permanent incapacity" (Article 71).

The president's statutory powers were few and very general. He (or she) would be the Commander-in-Chief of the Palestinian forces (Article 72), would sign legislation from the Council, would have the power to initiate or propose laws to the Council, and would have the power to grant a special pardon and commute sentences. The president did not appear to have a power to veto acts of the PLC (although as we shall see below, this was changed in the Fifth Draft). Article 73 stated that "the President *shall* sign and promulgate the laws within 30 days after their approval by the Council, and if not signed within the said period, such laws shall be deemed promulgated" (emphasis added). This would seem to indicate that the President must sign legislation, because it indicated that if he refused to do so the legislation would become law even without his signature.

The other major section of "Chapter Five: Executive Authority" focused on the Council of National Authority, the Cabinet of Ministers. The President had the right to appoint the

Prime Minister and ministers, preside over cabinet meetings, and had the power to dismiss them or accept their resignations (Article 77). The President's nominations for the Prime Minister and members of the Cabinet would have to be approved by the PLC, and no more than 20% of the members of the Cabinet could come from outside of the Council (Article 78). Votes of non-confidence in the Cabinet would have to be supported by at least ten members of the Council in order to take place, and could be passed by a simple majority. Should such a resolution pass, then the minister or the entire cabinet involved would have to present his/her/their resignation to the President.

While the Cabinet had a very general basis of power (Article 79: "the Cabinet shall generally be responsible for the government and administration of the affairs of the country"), it was specifically given other responsibilities as well (Article 86). These included the power to set general policies, to implement policies established by other Palestinian authorities, to prepare the budget for its presentation to the Council, to supervise administration, to oversee the implementation of laws, and to supervise the duties of various ministries, among others.

Chapter Five also included discussion of the security forces (Article 93), public bodies and institutions (Article 94), local government (Article 95), and finance (Articles 100-107). Rules governing taxation and the preparation of the general budget were discussed in more detail in this section.

The third of the three "classical" branches of government was discussed in "Chapter Six: The Judicial Authority". This chapter established a Supreme Court and other courts, and in a very general way discussed personnel and jurisdiction of those courts. The Supreme Court would include a High Constitutional Court (with judicial review in questions of constitutionality of regulations and laws), a Court of Cassation (to oversee criminal, civil and commercial questions), a High Court of Justice (with jurisdiction over administrative disputes) and other types of courts as provided by law. This chap-

ter also provided for an attorney general and public attorneys, appointed subject to the conditions prescribed by law (Article 116).

The final section of the Draft Basic Law described its transitory nature, and made explicit that it "shall not affect the powers and duties of the Palestine Liberation Organization and its organs, including its powers to represent the Palestinian people in foreign and international relations and relations with foreign governments and international organizations" (Article 117).

### **Drafts Four-(a) and Five of the Basic Law**

In the Spring of 1996 a new variation of a Draft Basic Law appeared in Jerusalem, coming from a group of scholars at the Bir Zeit University Law School.<sup>49</sup> The Bir Zeit draft - referred to here as Draft 4-a - received a good deal of discussion, and over the course of several months eventually was merged with parts of the Fourth Draft to produce what is called here the Fifth Draft of the Basic Law. The Draft 4-a and the Fifth Draft are very useful to study because they show an evolution in thinking about constitutional structures and political power over time.

The most significant difference between this Draft 4-a and the Fourth Draft of the Basic Law had to do with its general perspective of the nature of governmental power and its approach to human rights. Draft 4-a's "Chapter Two: Fundamental Rights and Freedoms" was *much* more detailed than that of the Fourth Draft, and articles dealing with rights and liberties were much more carefully described and precise, with any limitations on their broad nature being specifically articulated, as illustrated in Figure III-1. If we compare Article 13 of the Fourth Draft with Chapter 2, Article 8 of Draft 4-a, it

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<sup>49</sup> This will be referred to here as Draft 4-a. It was provided by the JMCC in a meeting in their offices in Jerusalem, May 25, 1996.

is clear that the latter put far greater limitations on the government's ability to restrict liberty and personal security. What is more, a number of the potential limitations of the entrenched rights listed in the Draft Four that were "subject to public order or public health or morals" were significantly altered in Draft 4-a. In the newer version of the Basic Law the rights were much more clearly articulated, and the potential limitations on the rights appeared to be considerably more restricted than they were in the Fourth Draft, as illustrated in Figure III-2; rights can be regulated

"only by law to the extent that this legislation is necessary in a democratic society based on freedom and equality and is proportionate to the legitimate aim pursued... In no case shall the essential content of a fundamental right or freedom be negated." (Chapter 2, Article 2).

Chapter Four ('Legislative Authority') and Chapter Five ('Executive Authority') from the Fourth Draft were unchanged in Draft 4-a (these chapters were the focus of the changes from Draft 4-a to Draft Five, and will be discussed below). However, Chapter Six of Draft 4-a, dealing with "Judicial Authority" was substantially expanded from its earlier form - 28 articles in length in Draft 4-a rather than 9 sections in length in the Fourth Draft. Among the most specific changes were the addition of a specific distinction between three "classes" of courts in Article 6 of Draft 4-a ("regular" courts, "religious" courts, and "specialized" courts), something not included in the Fourth Draft. The addition of an entire "class" of courts devoted completely to religious issues was significant, although little detail was provided as to the structures, jurisdiction, or powers of these courts. As well, the descriptions of the three types of regular courts, the High Court of Justice, the Court of Cassation, and the Constitutional Court, were much more fully developed in Draft 4-a, with specific discussion of their powers and jurisdictions.

The final major change in Draft 4-a included the addition of a nine-article chapter titled "State of Emergency and Suspension of Fundamental Rights and Freedoms", something completely overlooked in the Fourth Draft. This chapter per-

mitted the declaration of a state of emergency to be adopted by the Council of Ministers, but it stated that this must be approved or extended by the PLC; it could be declared "only when there is a threat to national security caused by war, invasion or general insurrection or at a time of national disaster" (Chapter 7, Article 1). Broad seizure of power was not permitted, however, as the Draft stated that

"the decree declaring a state of emergency must expressly state its purpose, the territory to which it applies, and its duration, which may not exceed 30 days. The decree will lapse five days after the date of its issue unless it has been approved in advance by a majority of at least three-fourths of all the members of the Legislative Council within that time." (Article 2)

Moreover, decrees of a state of emergency could only be extended for up to 30 days, with the same three-fourths majority that was needed to create them (Article 3).



**Figure III-1: Comparison of Fundamental Rights  
Guarantees in Drafts 4 and 4-a of the Basic Law - I**

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**Fourth Draft: Article 13:**

Every person has the right to liberty and security of person. No person shall be subjected to arbitrary arrest or detention. No person shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

**Draft 4-a: Chapter 2, Article 8:**

- (1) Every person has the right to liberty and security of person. No person shall be subject to arbitrary arrest or detention.
- (2) No person shall be deprived of his liberty except in the circumstances specified below
  - (I) the lawful detention of a person after conviction by a competent, independent, impartial court;
  - (II) the lawful arrest or detention of a person for the intentional non-compliance with an order of a court;
  - (III) the lawful detention of a person for contempt of court;
  - (IV) the lawful arrest or detention of a person for the purpose of bringing him before competent judicial authority on reasonable suspicion of having committed an offense prescribed by law, or when it is necessary to prevent him from committing an offense by fleeing after having done so;
  - (V) the lawful detention of persons for the prevention of the spreading of infectious disease;
  - (VI) the lawful detention, pursuant to mental health legislation, of a person of unsound mind who is a danger to himself or others;
  - (VII) the lawful arrest or detention of a person against whom action is being taken to remove him from an area under the jurisdiction of the Legislative Council due to illegal residence;
  - (VIII) the lawful arrest or detention of a person against whom action is being taken for extradition.
- (3) Administrative detention is prohibited.
- (4) No person shall be deprived of his liberty except by the lawful order given by a competent, independent and impartial court or public prosecutor, and carried out by officials authorized for that purpose.

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**Source:** JMCC, "Draft Basic Law for the National Authority in the Transitional Period", provided by JMCC, May 25, 1996.

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**Figure III-2**  
**Comparison of Fundamental Rights Guarantees in Drafts**  
**4 and 4-a of the Basic Law - II**

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**Fourth Draft; Article 14:**

Every person shall have the right to freedom of thought, conscience and expression and publication of his opinion either orally, in writing or in the form of art or through any other form of expression, subject to observance of restrictions imposed by law for the respect of the rights or reputations of others, the protection of national security or of public order or of public health or morals.

**Draft 4-a:**

**Chapter 2, Article 21:**

- (1) Every person has the right to freedom of thought, conscience, and belief.
- (2) Freedom to manifest religion or belief in worship, practice, teaching and exercise of religious functions is guaranteed, with due regard to Article 2 in this chapter.

**Chapter 2, Article 2:**

- (1) The exercise of the rights and freedoms entrenched in this Chapter, with the exception of the rights provided for in Articles 7, 21(1) and 34(2), shall be regulated only by law to the extent that this legislation is necessary in a democratic society based on freedom and equality and is proportionate to the legitimate aim pursued.
- (2) In no case shall the essential content of a fundamental right or freedom be negated.

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**Sources:** JMCC, "Draft Basic Law for the National Authority in the Transitional Period"; "The Draft Palestinian Basic Law for the Transitional Period", provided by JMCC, May 25, 1996.

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While the authors of Draft 4-a were willing to permit the executive (with the approval of the legislature) to expand its powers in case of an emergency, this was very explicitly not to be done at the expense of the human rights that were discussed above.

Article 5 of Chapter 7 stated that "no action taken in consequence of a state of emergency shall permit or authorize the suspension of this chapter nor of the imposition of additional restrictions on the fundamental rights and freedoms

entrenched in Articles 4, 5, 6, 7, 13, 16(3), 21(1) and 34(2)."<sup>50</sup> The PLC may not be dissolved during a state of emergency (Chapter 7, Article 8).

While there are a number of minor changes in the evolution from Draft 4-a to Draft Five, the Fifth Draft made two major modifications to the modified Fourth Draft (Draft 4-a), both found in Chapter Four ("Legislative Authority") and Chapter Five ("Executive Authority"). The general tendency of the changes was to make more explicit the distributions of several powers that were only implied in the Fourth Draft. Chapter Four, "Legislative Authority", begins in Draft Five by stating that "the elected Legislative Council shall alone exercise legislative authority", whereas in the Fourth Draft the Chapter began by stating that "the elected Council shall exercise legislative authority", and added that "the Council shall be composed of the President and the 88 Members elected in general elections in accordance with the Elections Laws." While this is not a highly significant change, it does place more emphasis upon the legislative branch as exercising authority, and it implies that the President is *not* a member of the legislative branch of government, whereas in Draft Four he clearly was.

Many of the articles in the Fourth Draft are fleshed out in the Fifth Draft, with greater detail provided to remove ambiguities from the earlier draft. This is illustrated in Figure III-3.

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<sup>50</sup> Article 4 refers to equal treatment under law and protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, disability, birth or other status. Article 5 refers to equal fundamental rights for women and men. Article 6 states that every person has the right to life, and that no person shall be executed. Article 7 addresses human dignity and prohibits torture or inhuman or degrading treatment or punishment, or being subject to medical or scientific experimentation. Article 13 refers to *ex post facto* laws. Article 16(3) states that no Palestinian may be deported, deprived of his nationality, prevented or prohibited from returning to or leaving Palestine, or surrendered to any foreign authority except in accordance with extradition agreements. Article 21(1) states that every person has the right to freedom of thought, conscience and belief. Article 34(2) states that no person shall be held in servitude.

**Figure III-3**  
**Comparison of Fundamental Rights Guarantees in Drafts**  
**4 and 5 of the Basic Law**

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**Fourth Draft: Article 51:**

At its inaugural meeting, the Council shall elect from amongst its Members, a Speaker, a Deputy Speaker and a Rapporteur, who shall compose the office of the Speaker. The Speaker, Deputy Speaker and Rapporteur must not be Members of the Executive or Ministers, and shall hold office during the life of the Council.

**Fifth Draft: Article 6:**

- (1) At its inaugural meeting, the Legislative Council shall elect from amongst its Members, a Speaker, two Deputy Speakers and a Rapporteur, who shall compose the office of the Speaker.
- (2) While presiding at a session of the Legislative Council, the Speaker or Deputy Speakers or other member presiding shall not have a deliberative vote, but shall exercise a casting vote in the case of an equality of votes.
- (3) The Speaker, Deputy Speakers and Rapporteur shall hold office during the life of the Legislative Council unless they resign, are removed from office by the Legislative Council, or become Ministers.

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**Sources:** JMCC, "Draft Basic Law for the National Authority in the Transitional Period"; "Draft Palestinian Basic Law for the Transitional Period", provided by JMCC, May 25, 1996.

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In the Fifth Draft several new clauses in Chapter 4 augment the powers of the legislature. Article 15 gives the legislature the power to approve a declaration of a state of emergency (in section 8) and to approve a call for a referendum according to law (in section 9); Article 16 states that "no budget, tax, or duty shall be operative until and unless it is approved by the Legislative Council." Article 19 provides details about how to respond to vacancies in the Legislative Council.

The Fifth Draft's Chapter 5 ("Executive Authority") makes a number of modifications in the granting of executive authority to the discussion of executive authority included in Draft Four. One interesting change involves a clause that was ad-

ded addressing the topic of a non-fatal incapacity of the President, indicating that this is a decision that must be made by a decision of the High Court of Justice, ratified by a two-thirds majority of the PLC.

One of the most significant changes to the Fifth Draft deals with presidential powers, specifically a presidential veto. We noted earlier that the Fourth Draft specifically did *not* give the president a veto over legislation; this is changed in the Fifth Draft, as reflected in Figure III-4, in which the president has a veto over legislation by the PLC, although the Council has the right to override the presidential veto by a two-thirds vote, subject to a possible ruling by the Constitutional Court that its legislation is unconstitutional.

**Figure III-4**  
**Comparison of Fundamental Rights Guarantees in Drafts**  
**4 and 5 of the Basic Law**

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**Fourth Draft: Article 73:**

- (1) The President shall sign and promulgate the laws within 30 days after their approval by the Council, and if not signed within the said period, such laws shall be deemed promulgated
- (2) The President has the power to initiate or propose laws to the Council or issue secondary legislation, including Orders and Regulations if authorised to do so by the primary law.

**Fifth Draft: Article 10:**

- (1) The President shall sign and promulgate the laws within 30 days after their approval by the Legislative Council.
- (2) If the President refuses to promulgate a law, he shall return it, with his objections, to the Legislative Council, which shall proceed to reconsider it. If after such reconsideration, two-thirds of the members of the Legislative Council agree to uphold the original draft, the President shall promulgate the law. This is without prejudice to his right to refer the issue of the constitutionality of such law to the Constitutional Court.

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**Sources:** JMCC, "Draft Basic Law for the National Authority in the Transitional Period"; "Draft Palestinian Basic Law for the Transitional Period", provided by JMCC, May 25, 1996.

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Article 11 of Chapter 5 of the Fifth Draft also calls for an annual report to the PLC on the state of the nation. Moreover, a full section (III, Articles 1-6) specifically addresses the topic of security forces and the police, a topic not addressed in great detail in the Fourth Draft.

What we see in these three most recent iterations of a draft Basic Law, then, is a clear awareness of the importance of written constitutions, and an awareness that the key institutions of a political regime need to be carefully described in the fundamental laws of the state. Draft 4-a shows a much greater sensitivity to questions of human and individual rights than did Draft Four, with specific individual rights articulated in greater detail, and with the ability of the government of the state to curtail these individual rights being much more limited than in the Fourth Draft. Draft Five shows a sensitivity that some of the legislative and executive powers entrenched in Draft Four were ambiguous, and needed to be clarified.

Although it will be clear to the reader at the time of reading this work, we should make explicit here our awareness that at the time of this writing the process of circulation, review, and modification of the Palestinian Basic Law is still going on, at perhaps an ever-increasing speed. Indeed, at its first meeting of June 1996, the PLC spent a good deal of time debating whether a Sixth Draft of the Basic Law was ready to be published and distributed to the public. An argument ensued at the PLC meeting when President Arafat insisted that it was not within the legislative purview of the Council to work on a Draft Basic Law, and that this responsibility more properly resided in the executive branch, in the Ministry of Justice. At the end of the day the President and the Speaker of the PLC appeared to agree about which branch of government did, in fact, have ultimate authority to distribute drafts of the Basic Law and oversee the collection of public reactions to the drafts. This is a process that will continue to receive a great deal of attention in the future.

### **3.5 The Future and Palestinian Constitutionalism**

What we have seen in this examination of Palestinian constitutional development is that recent Palestinian efforts to establish a stable, entrenched constitutional system based on democratic government are not new. The Palestinian people have been working for many years toward self-government and the establishment of an independent Palestinian state. This has continued through a "liberation and return" phase, a "secular democratic state" phase, a "two-state solution" phase, and into a "post-Gulf-War" phase. Whatever else may be concluded about the Palestinian drive to independence and constitutional self-government, it is neither a recent nor a short-lived phenomenon.

The empirical data that we examined here showed that the Palestinian people are deeply committed to the ideas of democracy and constitutional government, and in one study manifested skepticism about whether their government should have the right to intervene in what are generally regarded as individual civil rights. Over 79% of the entire sample responded "yes" to the question "Would you say you believe in democracy?" They generally supported democratic norms, including agreeing with the statement that the use of violence or the threat of violence by the elected authority is never justified, and also agreeing with the statement that the use of violence or the threat of violence by the opposition is never justified. They also showed enthusiastic support for their political leaders.

Data from the public opinion polls showed that there are consistent and significant differences in attitudes between "secular" and "Islamist" Palestinians, and that these differences point out a potential and very real source of tension in Palestine's political future. If Islamic values are "hostile" to democratic and constitutional values, as "conventional wisdom" suggests is generally the case, the question of the relationship between religion and the state may be one of the most problematic ones to be addressed by future Palestinian governments.

The January 1996 election showed an impressive commitment on the part of Palestinians to participatory democracy. The number of candidates, and the participation of the mass public in the election, were heartening to those working hard to encourage the development of mass democracy in Palestine. Unfortunately, reports of the multi-national observer force showed a substantial number of "irregularities" in the way the election was administered, and whether these "irregularities" should be attributed to a lack of organization and experience, or to conscious efforts on the part of political leaders to thwart the democratic process, is less important than their impact: they left many Palestinians feeling that the election had not been "real" elections, and that the government of Palestine was not truly committed to democratic and open elections. We suggested that the election was more important than simply its results, and concluded that to the extent that the administration of the election represents a view on the part of Palestinian authorities that they are not bound to follow the letter and the spirit of the laws if those laws interfere with the authorities preferred outcome of the election, there is a serious problem with democratic and constitutional norms in the Palestinian political elite.

The final section of analysis here focused on the progress of Palestinian constitutionalism, as reflected in the development of a written constitution - the transitional "Basic Law" - for a future state of Palestine. After a discussion of four historical phases of Palestinian activity creating a Basic Law, we examined the text of the Fourth Draft of the Palestinian Basic Law, released in 1995, as well as two more recent drafts of the Basic Law - what we called Draft 4-a and the Fifth Draft. Examination of these documents showed real progress in constitution-building, with increasingly sophisticated description and allocation of governmental power, although there are still several points to be resolved that should be the subject of very real concern when it comes to individual human rights.



What conclusions can we draw, then, about constitutionalism and Palestinian constitutional development? In brief, we can conclude that (1) a commitment to democracy and constitutional government is important, (2) the Palestinian people appear to be, as a whole, committed to such values, and (3) there are a number of factors in the current Palestinian political environment that pose a threat to the continued development, strengthening, and institutionalization of what we called democratic constitutionalism in Palestine.



#### **IV. Conclusions: CONSTITUTIONALISM AND PALESTINIAN CONSTITUTIONAL DEVELOPMENT**

In the preceding pages of this study we have addressed - sometimes only briefly - some extremely complex questions that are absolutely fundamental for the political systems in which they are found. We noted, however, that many definitions offered were significantly influenced by *perspective*, and that there were often no universally "correct" responses to some questions that were asked, for example: What kind of government is best?

We saw that the structures of constitutions vary greatly. They vary in whether they are written or unwritten, in their length, in their detail, in their approach to human rights, and in their description of the relationships between the individual and the state, among a number of other characteristics that we discussed. They discuss the basic structural organization of their political systems, whether the system is federal or unitary, for example, how governmental powers will be divided, what the "checks and balances" of their respective systems will be, and how the constitution can be changed in future years.

Perhaps more important, however, we noted that the *functions* of constitutions vary on a country by country basis. While a constitution may be a realistic "power map" in one system, accurately portraying the manner in which political power is organized in that system and the way power relationships truly function there, in another system the constitution's most significant role may be as an ideological tool, being designed more for external consumption than as a meaningful description of power and its limitations there. Thus we noted that while constitutions merit a careful reading, occasionally *what* we read in a constitution must not be taken as a literal description of the way the political system operates.

After our initial discussion of the nature of constitutions and constitutional government, we turned our attention to the Middle Eastern political region. We described the idea of a political culture, and the relationship between "Arab culture" and democracy was discussed. It was noted that it is clearly *not* the case that "Middle East" is the same thing as the "Arab World" or the "Islamic world", and we suggested that as we seek useful generalizations about politics and political relationships in this area we need to be sure that we are clear *about which* term we really want to use. We also asked whether in order to have a stable democratic system it is fundamental that democratic attitudes be held by a substantial majority of the population, and inquired as to the "critical mass" needed to support a "liberal" constitutional regime for it to survive.

We also specifically examined - but briefly - the relationship between Islam and democracy. We noted that "the conventional wisdom" in the literature suggests that Islam is inherently un- or anti-democratic, and that the "organizing ideas of constitutional and representative government" are essentially alien to much of Arab political culture; we observed that if this is true it has some serious implications for the future of democracy, not only in Palestine but also in the entire Islamic world (which extends well beyond the Middle East).

Constitutional structures in ten nations were specifically examined - again, briefly - to see the types of political institutions and political structures created in this part of the world. In these brief "portraits" we attempted to describe not only the major constitutional infrastructures, but we also tried to give specific attention to two other, more detailed, questions: What is the relationship between the organized majority religion and the state, and what is the role of entrenched individual rights in the constitution: to what degree does the constitution acknowledge individual rights? Again, the fact that the constitution acknowledges such rights is no guarantee that the rights will be honored, but if there is *no* mention of individual rights, or if rights are specifically condi-

tional, it can be inferred that behavior of the government will be appropriately shaped.

After an examination of ten Middle Eastern systems, we returned to the subject of the relationship between the fundamentals of "Arab culture" and constitutionalism and particularly addressed the topic of tensions between Islamic fundamentalism and democracy. We asked why what has been called "Western constitutional democracy" has had a difficult time in the Middle East, and suggested that simply transplanting a set of institutions and a pattern of behavior from one setting to another is no guarantee that the transplant will succeed. In fact, democratic constitutionalism has not had a successful history in the Middle East. Indeed, only one Middle Eastern nation has consistently manifested a commitment to democratic constitutionalism over the last five decades, and it is not a predominantly Moslem nation.

We also noted that one of the most important tensions that must be resolved in the Middle East today is that between religion and the state, and concluded that the "conventional wisdom" regarding the relationship between Islam and (a lack of) democracy appears to be supported by a preponderance of the evidence in the Middle East today. Virtually all of the nations we examined had specific clauses in their constitutions establishing a linkage between Islam and the state, and most also had constitutional clauses limiting rights and freedoms so they are consistent with Islamic values. To the extent that we can generalize here, we noted, this will serve to have a "chilling effect" on democratic constitutionalism in the Middle East in the future.

The third section of this manuscript focused on the specific topic of Palestinian constitutional development. Four tasks were undertaken in this section. First, we examined a range of political attitudes taken from several recent public opinion studies. Second, we discussed the data describing the relationship between attitudes of "Islamic" Palestinians and those of "secular" Palestinians. Third, we turned our attention

to the January 1996 election for Palestinian presidency and the PLC to see the extent to which they demonstrated a commitment to democratic constitutionalism among Palestinian political leaders. Fourth, we scrutinized the text of three recent drafts of a proposed Basic Law for Palestine.

The public opinion poll data cast light on some very important questions. It showed without any doubt at all that the Palestinian people are generally deeply committed to the ideas of democracy and constitutional government. They were also generally skeptical about whether their government should have the right to intervene in what are generally regarded as individual civil rights. We also examined some empirical studies of the relationship between Islam and democracy, and the ascribed "historical hostility" of Islamic culture to democracy. The data from the public opinion polls showed - again, without any doubt at all - that there are consistent and significant differences in attitudes between secular and Islamist Palestinians, and that these differences are *precisely* in the direction that the "conventional wisdom" discussed in the second section of the book would suggest: the secularists are more liberal, more supportive of democratic norms, and less likely to support repressive ideas and government policies. Conversely, the Islamists are much more likely to exhibit the greatest conservatism, are least prepared to trust others, and are much more likely to respond that their group loyalty - their religious identity - was more important than their loyalty to their country, and are more willing to support what could be called "undemocratic" constitutional alternatives. It was observed that this data suggests that if Palestinian society becomes more controlled by Islamic forces in the future it may be likely to be more hostile to democratic norms, and more receptive to what could be called anti-democratic norms. Among the many fundamental issues that need to be resolved prior to the promulgation of a new Palestinian constitution, the question of the relationship between religion and the state may be the most problematic.

An analysis of the January election and its results showed an impressive commitment on the part of Palestinians to try to participate in the elections, both as candidates and as voters. Data showed that Palestinians were generally satisfied with the process of the election up to the time of the election. Because the election was so closely observed by a multinational observer force, it also showed very clearly a substantial number of "irregularities" in the way the election was administered; these "irregularities" could be attributed either to a lack of organization and experience, or to conscious efforts by political leaders to thwart the democratic process, or both. In any event, the consensus of observers was that the elections were not run in a democratic manner, with as clear a commitment to the "constitutional" procedure for holding the elections, as they could have been, and there is a good deal of room for improvement in future actions of this kind. Palestinians interviewed after the election had much the same response.

This is more important than simply the results of the election, of course, because to the extent that the administration of the election represents a view on the part of Palestinian authorities' that they are not bound to follow the letter and the spirit of the laws if those laws interfere with the authorities preferred outcome of the election, there is a serious problem with democratic and constitutional norms in the Palestinian political elite.

The final substantive section of the analysis focused on the progress of Palestinian constitutionalism, as reflected in the development of a written constitution for a future state of Palestine. After a discussion of four general historical phases of Palestinian activity toward the creation of a constitution, or a Basic Law, we turned to an examination of the text of the Fourth Draft of the Palestinian Basic Law, released in 1995. In addition to an article-by-article examination of the text and of the structures for the primary institutions put forward in the document, we specifically analyzed the position of individual rights in the proposed Basic Law, and suggested

that many limitations and qualifications placed upon these rights could pose grave threats in the future.

We noted that a subsequent draft of the Basic Law, what we called Draft 4-a - by a group of scholars at Birzeit University Law School - clearly recognized these problems. Draft 4-a included substantially more protection of specifically entrenched individual rights than did the Fourth Draft, and when the government was given the power to limit individual rights, it was only under very restricted conditions. A later draft, the Fifth Draft, included more refinement in discussion of the power of the legislature and the presidency, and attempted to resolve some ambiguity in constitutional discussion of these two branches of government.

(Again, we noted that the fact that Draft 4a *indicated* in writing that it would protect individual rights more vigorously than the Fourth Draft is no *guarantee* that a Palestinian government operating on the basis of such a constitution *would necessarily* vigorously defend individual rights and limit governmental usurpation of powers. Draft 4-a simply shows an awareness of the danger of this happening, and shows an institutional commitment (at some level) to respect rights.)

What conclusions can we draw, then, about constitutionalism and Palestinian constitutional development? In brief, we can conclude that (a) a commitment to democracy and constitutional government is important, (2) the Palestinian people appear to be, as a whole, committed to such values, and (3) there are a number of factors in the current Palestinian political environment that pose a threat to the continued development, strengthening, and institutionalization of what we called democratic constitutionalism in Palestine.

Does this latter conclusion mean that democratic constitutionalism in Palestine is doomed to failure? Not at all. What this does suggest, however, is that those who *are* committed to democracy and constitutional government eventually

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becoming a way of life in Palestine must be consistently vigorous about defending it from encroachments by friends and foes alike, including the types of encroachments seen over the last year with the "electoral irregularities" we described in the third section of this work.

Behaviors that are essentially authoritarian and unconstitutional, such as unilaterally and extra-constitutionally changing the number of representatives in the legislature, forcing legally selected candidates to withdraw from the election, or even temporarily ignoring constitutional limitations on the number of non-legislators who can serve in the cabinet, do not demonstrate a commitment to the spirit and the letter of the constitution, and do not help to educate the public as to the importance of such values.

The future government of Palestine has an excellent potential for democratic and constitutional government. Its citizens are overwhelmingly committed to the *ideas* of democracy and constitutionalism. Many, if not most, of its citizens are *well educated* in terms of knowing what democratic and constitutional government expects of them. And, apparently, if the number of candidates for office for January's election for the Legislative Council is any indication, the people of Palestine are *prepared* to participate in the democratic process.

If the political environment affecting Palestinian government can remain stable - and it must be recognized that this includes many factors beyond the control of Palestinians, as well as many factors they *can* influence - there is every reason to hope that future generations of Palestinians will enjoy the kind of stable, peaceful, and democratic political practices that have proven to be so elusive in most of the contemporary Middle East to date.



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## THE 1980 CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT

After the Amendments Ratified in the May 22, 1980 Referendum

The Amendment Issue of the Constitutions of the Arab Republic of Egypt

*The Head of the State ....*

*Taking into account the results of the referendum on the amendment of the Constitution of the Arab Republic of Egypt conducted on May 22, 1980; the public consensus to amend the Constitution; and cognizant of Article 189 of the Constitution;*

*hereby issues the amendment of the Constitution of the Arab Republic of Egypt according to what has been agreed upon at the referendum, to be put into effect as of the date the results of the referendum were announced.*

Mohammed Anwar El Sadat (Cairo-Ragab 7, 1400 Hijra-May 22, 1980 A.C.)

### CONSTITUTIONAL PROCLAMATION

*We, the people of Egypt, who have been toiling on this great land since the dawn of history and the beginning of civilisation:*

*We, the people working in Egypt's villages, cities, lands, centres of education and industry and in any field of work which contributes to create life on its soil or which plays a part in the honour of defending this land;*

*We, the people who believe in our immortal and spiritual heritage, and who are confident in our profound faith, and cherish the honour of man and of humanity;*

*We, the people, who in addition to shouldering the trust of history, carry the responsibility of great present and future objectives whose seeds are embedded in the long and arduous struggle, and which hosted the flags of freedom, socialism and unity along the path of the great march of the Arab nation;*

*We, the Egyptian people, in the name of God and by His assistance, pledge indefinitely and unconditionally to exert every effort to realise:*

**FIRST: Peace to our world:** being determined that peace should be based on justice, and that the political and social progress of all peoples can only be realised through the freedom of these peoples and their independent will, and that any civilisation is not worthy its name unless it is free from exploitation whatever its form.

**SECOND: Union:** the hope of our Arab nation, being convinced that Arab unity is a call of history and of the future, and a demand of destiny; and that it cannot materialise except through an Arab nation, capable of warding off any threat, whatever the source or the pretexts for such a threat.

**THIRD: The constant development of life in our nation:** being convinced that the true challenge confronting nations is the realization of progress and that such progress does not occur automatically, or through slogans; but that the driving force behind it is the release of the potentials of creativity and inspiration in our people, who have asserted at all times their contribution to civilisation and to humanity through work alone.

Our people have passed through successive experiences, meantime offering rich experiences on the national and international level and being guided by them, which ultimately took shape in the July 23 Revolution of 1952. This resolution was brought about by the alliance of the working forces of our militant people, who were able, through profound and refined consciousness, to retain their original character but at the same time move forward in a bid to realise full integration between science and faith, between political and social freedom, between national independence and social affiliation; and to participate in the worldwide struggle for the liberation of man, on the political, economic, cultural and ideological levels, and in the struggle against the forces of regression, domination and exploitation.

**FOURTH: Freedom for the humanity of the Egyptian man:** realising that man's humanity and dignity are the lights which guide and direct the course of the great development of mankind for the realisation of its supreme ideal. Man's dignity is a natural reflection of the nation's dignity, now that the individual is the cornerstone in the edifice of the homeland, the land that derives its strength and prestige from the value of man and his education. The sovereignty of law is not only a guarantee for the freedom of the individual alone, but is also at the same time the sole basis for the legality of authority. The alliance of the active popular powers is not a mean for social strife leading toward historical development. In this modern age, it is a safety valve, protecting the unity of working powers in the country and eliminating, through democracy, any contradictions.

We, the people of Egypt, out of determination, confidence and faith in all national and international responsibilities, and in acknowledgement of God's right and His heavenly messages, and in the right of the country and nation, as well as of the principle and responsibility of mankind, and in the name of the Almighty and His assistance, declare on the 11 September 1971 that we accept, and grant, to ourselves this Constitution, affirming our determination to defend and protect it, and assuring our respect for it in letter and spirit.

## CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT

### PART ONE: THE STATE

Art. 1: The Arab Republic of Egypt is a democratic, socialist State based on the alliance of the working forces of the people. The Egyptian people are part of the Arab nation and work for the realisation of its comprehensive unity.

Art. 2: Islam is the religion of the State and Arabic its official language. Islamic jurisprudence is the principle source of legislation.

Art. 3: Sovereignty is for the people alone and they are the source of authority. The people shall exercise and protect this sovereignty, and safeguard national unity in the manner specified in the Constitution.

Art. 4: The economic foundation of the Arab Republic of Egypt is a socialist democratic system based on sufficiency and justice in a manner preventing exploitation, conducive to liquidation of income differences, protecting legitimate earnings, and guaranteeing the equity of the distribution of public duties and responsibilities.

Art. 5: The political system of the Arab Republic of Egypt is a multi-party one, within the framework of the basic elements and principles of the Egyptian society as stipulated in the Constitution (Political parties are regulated by law).

Art. 6: The Egyptian nationality is defined by the law.

## **PART TWO: BASIC CONSTITUTIONS OF THE SOCIETY**

### **CHAPTER 1: Social and Moral Constituents**

Art. 7: Social solidarity is the basis of the society

Art. 8: The State shall guarantee equality of opportunity to all citizens.

Art. 9: The family is the basis of the society founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family - with what it embodies of values and traditions - while affirming and developing this character in the relations within the Egyptian society.

Art. 10: The State shall guarantee the protection of motherhood and childhood, take care of children and youth and provide the suitable conditions for the development of their talents.

Art. 11: The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.

Art. 12: The society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, historical heritage of the people, scientific facts, socialist conduct and public morality within the limits of the law. The State is committed to abiding by these principles and promoting them.

Art. 13: Work is a right, a duty and an honour ensured by the State. Workers who excel in their field of work shall receive the appreciation of the State and the society. No work shall be imposed on the citizens, except by virtue of the law, for the performance of a public service and in return for a fair remuneration.

Art. 14: Public offices are the right of all citizens and an assignment for their occupants in the service of the people. The State guarantees their (the occupants) protection and the performance of their duties in safeguarding the interests of the people. They may not be dismissed by other than the disciplinary way, except in the cases specified by the law.

Art. 15: The war veterans, those injured in war or because of it, and the wives and children of those killed shall have priority in work opportunities according to the law.

Art. 16: The State shall guarantee cultural, social and health services, and work to ensure them for the villages in particular in any easy and regular manner in order to raise their standard.

Art. 17: The State shall guarantee social and health insurance services and all the citizens have the right to pensions in cases of incapacity, unemployment and old-age, in accordance with the law.

Art. 18: Education is a right guaranteed by the State. It is obligatory in the primary stage and the State shall work to extend obligation to other stages. The State shall supervise all branches of education and guarantee the independence of universities and scientific research centres, with a view to linking all this with the requirements of society and production.

Art. 19: Religious education shall be a principal subject in the courses of general education.

Art. 20: Education in the State educational institutions shall be free of charge in its various stages.

Art. 21: Combating illiteracy shall be a national duty for which all the people's energies should be mobilized.

Art. 22: The institution of civil titles shall be prohibited.

#### **CHAPTER II: Economic Constituents**

Art. 23: The national economy shall be organised in accordance with a comprehensive development plan which ensures raising the national income, fair distribution, raising the standard of living, eliminating unemployment, increasing work opportunities, connecting wages with production, fixing a minimum and a maximum limit for wages in a manner which guarantees lessening the disparities between incomes.

Art. 24: The people shall control all the means of production and direct their surplus in accordance with the development plan laid down by the State.

Art. 25: Every citizen shall have a share in the national revenue to be defined by the law in accordance with his work or his unexploiting ownership.

Art. 26: The workers shall have a share in the management and profits of the projects. They are committed to the development of production and the implementation of the plan in their production units, in accordance with the law. Protecting the means of production is a national duty. Workers shall be represented on the boards of directors of the public sector units by at least 50% of the number of members of these boards. The law shall guarantee for the small farmers and small craftsmen 80% of the membership on the boards of directors of the agricultural cooperatives and industrial cooperatives.

Art. 27: Beneficiaries shall participate in the management of the services projects of public interest and their supervision in accordance with the law.

Art. 28: The State shall look after the cooperative establishments in all their forms and encourage handicrafts with a view to developing production and raising income. The State shall endeavour to consolidate the agricultural cooperatives according to modern scientific bases.

Art. 29: Ownership shall be under the supervision of the people and the protection of the State. There are three kinds: public ownership, cooperative ownership and private ownership.

Art. 30: Public ownership is the ownership of the people and it is confirmed by the continuous consolidation of the public sector. The public sector shall be the vanguard of progress in all spheres and shall assume the main responsibility in the development plan.

Art. 31: Cooperative ownership is the ownership of the cooperative societies. The law guarantees its protection and self-management.

Art. 32: Private ownership shall be represented by the unexploiting capital. The law organises the performance of its social function in the service of national economy within the framework of the development plan without deviation or exploitation. It may not be in conflict, in the ways of its use, with the general welfare of the people.

Art. 33: Public ownership shall have its sanctity, and its protection and consolidation is the duty of every citizen in accordance with the law, as it is considered the mainstay of the strength of the homeland, a basis for the socialist system and a source of prosperity of the people.

Art. 34: Private ownership shall be safeguarded and may not be put under sequestration except in the cases specified in the law and with a judicial decision. It may not be expropriated except for the general good and against a fair compensation in accordance with the law. The right of inheritance is guaranteed in it.

Art. 35: Nationalisation shall not be allowed except for considerations of public interest, in accordance with a law and against a compensation.

Art. 36: General sequestration of funds shall be prohibited. Private sequestration shall not be allowed except with a judicial decision.

Art. 37: The law shall fix the maximum limit of land ownership with a view to protecting the farmer and the agricultural labourer from exploitation and asserting the authority of the alliance of the people's working powers at the level of the village.

Art. 38: The tax system shall be based on social justice.

Art. 39: Saving is a national duty protected, encouraged and organised by the State.



**PART THREE: PUBLIC FREEDOMS, RIGHTS AND DUTIES**

Art. 40: All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed.

Art. 41: Individual freedom is a natural right and shall not be touched. Except in cases of *flagrante delicto* no person may be arrested, inspected, detained or his freedom restricted or prevented from free movement except by an order necessitated by investigations and preservation of the security of the society. This order shall be given by the competent judge or the Public Prosecution in accordance with the provisions of the law. The law shall determine the period of custody.

Art. 42: Any person arrested, detained or his freedom restricted shall be treated in the manner concomitant with the preservation of his dignity. No physical or moral harm is to be inflicted upon him. He may not be detained or imprisoned except in places defined by laws organising prisons. If a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile.

Art. 43: Any medical or scientific experiment may not be undergone on any person without his free consent.

Art. 44: Homes shall have their sanctity and they may not be entered or inspected except by a causal judicial warrant prescribed by the law.

Art. 45: The law shall protect the inviolability of the private life of citizens. Correspondence, wires, telephone calls and other means of communication shall have their own sanctity and secrecy and may not be confiscated or monitored except by a causal judicial warrant and for a definite period according to the provisions of the law.

Art. 46: The State shall guarantee the freedom of belief and the freedom of practice of religious rites.

Art. 47: Freedom of opinion is guaranteed. Every individual has the right to express his opinion and to publicise it verbally or in writing or by photography or by other means within the limits of the law. Self-criticism and constructive criticism is the guarantee for the safety of the national structure.

Art. 48: Freedom of the press, printing, publication and mass media shall be guaranteed. Censorship on newspapers is forbidden as well as notifying, suspending or cancelling them by administrative methods. In a state of emergency or in time of war a limited censorship may be imposed on the newspapers, publications and mass media in matters related to public safety or purposes of national security in accordance with the law.

Art. 49: The State shall guarantee the freedom of scientific research and literary, artistic and cultural invention and provide the necessary means for its realisation.

Art. 50: No citizen may be prohibited from residing in any place and no citizen may be forced to reside in a particular place, except in the cases defined by the law.

Art. 51: No citizen may be deported from the country or prevented from returning to it.

Art. 52: Citizens shall have the right to permanent or temporary immigration. The law shall regulate this right and the measures and conditions of immigration and leaving the country.

Art. 53: The right to political asylum shall be guaranteed by the State of every foreigner persecuted for defending the peoples' interests, human rights, peace or justice. The extradition of political refugees is prohibited.

Art. 54: Citizens shall have the right to peaceable and unarmed private assembly, without the need for prior notice. Security men should not attend these private meetings. Public meetings, processions and gatherings are allowed within the limits of the law.

Art. 55: Citizens shall have the right to form societies as defined in the law. The establishment of societies whose activities are hostile to the social system, clandestine or have a military character is prohibited.

Art. 56: The creation of syndicates and unions on a democratic basis is a right guaranteed by law, and should have a moral entity. The law regulates the participation of syndicates and unions in carrying out social programmes and plans, raising the standard of efficiency, consolidating the socialist behaviour among their members, and safeguarding their funds. They are responsible for questioning their members about their behaviour in exercising their activities according to certain codes of morals, and for defending the rights and liberties of their members as defined in the law.

Art. 57: Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is liable to prescription. The State shall grant a fair compensation to the victim of such an assault.

Art. 58: The defence of the motherland is a sacred duty, and conscription is obligatory in accordance with the law.

Art. 59: Safeguarding, consolidating and preserving the socialist gains is a national duty.

Art. 60: Protecting national unity and keeping State secrets is the duty of every citizen.

Art. 61: Payment of taxes and public impositions is a duty in accordance with the law.

Art. 62: Citizens shall have the right to vote, nominate and express their opinions in referendums according to the provisions of the law. Their participation in public life is a national duty.

Art. 63: Every individual has the right to address public authorities in writing and with his own signature. Addressing public authorities should not be in the name of groups, with the exception of disciplinary organs and moral personalities.

#### **PART FOUR: SOVEREIGNTY OF THE LAW**

Art. 64: Sovereignty of the law shall be the basis of rule in the State.

Art. 65: The State shall be subject to law. Independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties.

Art. 66: Penalty shall be personal. There shall be no crime or penalty except by virtue of the law. No penalty shall be inflicted except by a judicial sentence. Penalty shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them.

Art. 67: Any defendant is innocent until he is proved guilty before a legal court, in which he is granted the right to defend himself. Every person accused of a crime must be provided with counsel for his defence.

Art. 68: The right to litigation is inalienable for all; every citizen has the right to refer to his competent judge. The State shall guarantee the accessibility of the judicature organs to litigants, and the rapidity of statuting on cases. Any provision in the law stipulating the immunity of any act or administrative decision from the control of the judicature is prohibited.

Art. 69: The right of defence in person or by mandate is guaranteed. The law shall grant the financially incapable citizens the means to resort to justice and defend their rights.

Art. 70: No penal lawsuit shall be sued except by an order from a judicature organ and in cases defined by the law.

Art. 71: Any person arrested or detained should be informed, forthwith with the reasons for his arrest or detention. He has the right to communicate, inform, and ask the help of anyone as prescribed in the law. He must be faced, as soon as possible, with the charges directed against him. Any person may lodge a complaint to the courts against any measure taken to restrict his individual freedom. The law regulates the right of complaint in a manner ensuring a ruling regarding it within a definite period, or else release is imperative.

Art. 72: Sentences shall be passed and executed in the name of the people. Likewise, refraining to execute sentences or obstructing them on the part of the concerned civil servants is considered a crime punishable by law. In the case, those whom the sentence is in favour of, have the right to sue a direct penal lawsuit before the competent court.

<b>PART FIVE: SYSTEM OF GOVERNMENT</b>
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**CHAPTER I: The Head of State**

Art. 73: The Head of State is the President of the Republic. He shall assert the sovereignty of the people, respect the Constitution and the supremacy of the law, safeguard the national unity and the socialist gains, and maintain the boundaries between authorities in a manner to ensure that each shall perform its role in the national action.

Art. 74: If any danger threatens the national unity or the safety of the motherland or obstructs the constitutional role of the State institutions, the President of the Republic shall take urgent measures to face this danger, direct a statement to the people and conduct a referendum on these measures within 60 days of its adoption.

Art. 75: The person to be elected President of the Republic must be an Egyptian born to Egyptian parents and enjoy civil and political rights. His age must not be less than 40 Gregorian years.

Art. 76: The People's Assembly shall nominate the President of the Republic. The nomination shall be referred to the people for a plebiscite. The nomination to the post of President of the Republic shall be made in the People's Assembly upon the proposal of at least one third of its member. The candidate who wins two-thirds of the votes of the Assembly members shall be referred to the people for a plebiscite. If none of the candidates obtains the said majority the nomination process shall be repeated two days after the first vote. The candidate winning the votes with an absolute majority of the Assembly members shall be referred to the citizens for a plebiscite. The candidate shall be considered President of the Republic when he obtains an absolute majority of the votes cast in the plebiscite. If the candidate does not obtain this majority, the Assembly shall nominate another candidate and the same procedure shall be followed.

Art. 77<sup>1</sup>: The term of the Presidency is six Gregorian years starting from the date of the announcement of the result of the plebiscite. The President of the Republic may be re-elected for other successive terms.

Art. 78: Procedures for the choice of a new President of the Republic shall begin 60 days before the expiration of the term of the President in office. The new President shall be selected at least one week before the expiration of the term. Should this term expire without the choice of the new President being made for any reason whatsoever, the former President shall continue to exercise his functions until his successor is elected.

Art. 79: Before exercising his powers, the President shall take the following oath before the People's Assembly: *"I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully and to safeguard the independence and territorial integrity of the motherland."*

<sup>1</sup> Amended according to people consensus to approve the results of the May 22, 1980 referendum.

*Art. 80:* The salary of the President of the Republic shall be fixed by law. Any amendment in the salary shall not come into force during the presidential term in which it is decided upon. The President of the Republic may not receive any other salary or remuneration.

*Art. 81:* During his term the President of the Republic may not exercise any free profession or undertake any commercial, financial or industrial activity. Nor may he acquire or take on lease any State property, sell to or exchange with the State any property of his whatsoever.

*Art. 82:* If on account of any temporary obstacle the President of the Republic is unable to carry out his functions, he shall delegate his powers to a Vice-President.

*Art. 83:* In case of resignation, the President shall address the letter of resignation to the People's Assembly.

*Art. 84:* In case of the vacancy of the Presidential Office or the permanent disability of the President of the Republic, the President of the People's Assembly shall temporarily assume the Presidency; and, if at that time, the People's Assembly is dissolved, the President of the Supreme Constitutional Court shall take over the Presidency, however, on condition that neither one shall nominate himself for the Presidency. The People's Assembly shall then proclaim the vacancy of the office of President. The President of the Republic shall be chosen within a maximum period of 60 days from the day of the vacancy of the Presidential Office.

*Art. 85:* Any charge against the President of high treason or of committing a criminal act shall be made upon a proposal by at least one-third of the members of the People's Assembly. No impeachment shall be issued except upon the approval of a majority of two-thirds of the Assembly members. The President shall be suspended from the exercise of his duty as from the issuance of the impeachment. The Vice-President shall take over the Presidency temporarily until the decision concerning the impeachment is taken. The President of the Republic shall be tried by a special tribunal set up by law. The law shall also organise the trial procedures and define the penalty. If he is found guilty, he shall be relieved of his post, without prejudice to other penalties.

## CHAPTER II: The Legislature

### The People's Assembly

*Art. 86:* The People's Assembly shall exercise the legislative power and approve the general policy of the State, the general plan of economic and social development and the general budget of the State. It shall exercise control over the work of the executive authority in the manner prescribed by the Constitution.

*Art. 87:* The law shall determine the constituencies into which the State shall be divided and the number of elected members of the People's Assembly must be at least 350 persons, of which one half at least must be workers and farmers elected by direct secret public balloting. The definition of the worker and

the farmer shall be made by law. The President of the Republic may appoint a number of members not exceeding ten.

*Art. 88:* The necessary conditions stipulated in the members of the People's Assembly shall be defined by law. The rules of election and referendum shall be determined by law, while the ballot shall be conducted under the supervision of members of a judiciary organ.

*Art. 89:* Employees of the State and of the public sector may nominate themselves for membership in the People's Assembly. The member of the People's Assembly shall devote himself to membership in the Assembly except in cases specified by law. His post or work shall be held over for him in accordance with the provisions of the law.

*Art. 90:* The member of the People's Assembly shall take the following oath before the Assembly before entering upon his duties: "*I swear by God Almighty, that I shall preserve the safety of the nation and the Republican regime, shall attend to the interests of the people and shall respect the Constitution and the law*".

*Art. 91:* Members of the People's Assembly shall receive a remuneration determined by the law.

*Art. 92:* The duration of the People's Assembly term in five Gregorian years from the date of its first meeting. Elections for renewal of the Assembly shall take place within the 60 days preceding the termination of the term.

*Art. 93:* The People's Assembly shall be the only authority competent to decide upon the validity of its members. A Court of Cassation shall be competent to investigate the validity of contestation presented to the Assembly, on being referred to it by the President of the Assembly. The contestation shall be referred to the Court of Cassation within 15 days as from the date on which the Assembly was informed of it, while the investigation shall be completed within 90 days from the date on which the contestation is referred to the Court of Cassation. The result of the investigation and the decision reached by the Court shall be submitted to the Assembly to decide upon the validity of the contestation within 60 days from the date of submission of the result of the investigation to the Assembly. The membership will not be deemed invalid except by a decision taken by a majority of two-thirds of the Assembly members.

*Art. 94:* If the seat of a member becomes vacant before the end of his term, a successor shall be elected or appointed to it, within 60 days from the date of the communication to the Assembly of the occurrence of the vacancy. The term of the new member shall extend until the end of the term of his predecessor.

*Art. 95:* No member of the People's Assembly shall, during his mandate, purchase or rent any State property; or lease or sell to the State or barter with it regarding any part of his property, or conclude a contract with the State in his capacity as entrepreneur, importer or contractor.

Art. 96: No membership in the People's Assembly shall be revoked except on the grounds of loss of confidence or status or of one of the conditions of membership, or the loss of the member's status as a worker or farmer upon which he was elected or the violation of the member's mandate. The membership shall be deemed invalid on the grounds of a decision taken by a majority of two-thirds of the Assembly members.

Art. 97: The People's Assembly alone may accept the resignation of its members.

Art. 98: Members of the People's Assembly shall not be censured for any opinions or thoughts expressed by them in the performance of their tasks in the Assembly or its committees.

Art. 99: No member of the People's Assembly shall be subject to a criminal prosecution without the permission of the Assembly except in cases of *flagrante delicto*. If the Assembly is not in session, the permission of the President of the Assembly must be taken. The Assembly must be notified of the measures taken in its first subsequent session.

Art. 100: The seat of the People's Assembly shall be Cairo. However, in exceptional circumstances, it may meet in another city, at the request of the President of the Republic or the majority of the Assembly members. Any meeting of the Assembly in other than its designated seat is illicit and the resolutions passed in it shall be considered invalid.

Art. 101: The President of the Republic shall convoke the People's Assembly for its ordinary annual session before the second Thursday of November. If it is not convoked, the Assembly shall meet, by force of the Constitution, on the said day. The session of the ordinary meeting shall continue for at least seven months. The President of the Republic shall declare the ordinary session closed, which may not take place until the general budget of the State is approved.

Art. 102: The President of the Republic may call the People's Assembly to an extraordinary meeting, in case of necessity, or upon a request signed by a majority of the Assembly members. The President of the Republic shall announce the dismissal of the extraordinary meeting.

Art. 103: The People's Assembly shall elect, in the first meeting of its ordinary annual session, a president and a vice-president for the term of the session. If the seat of anyone of them is vacated, the Assembly shall elect a replacement, whose term will last until the end of his predecessors term.

Art. 104: The People's Assembly shall lay down its own rules of procedure organising the manner of the fulfilment of its tasks.

Art. 105: The People's Assembly alone shall be entitled to preserve order inside it. The President of the Assembly shall be entrusted with this task.

Art. 106: The meeting of the People's Assembly shall be public. However, a meeting *in camera* may be held at the request of the President of the Republic or of the government or of its Prime Minister or at least twenty of its mem-

bers. The Assembly shall then decide whether the debate on the question submitted to it shall take place in a public meeting or in a meeting *in camera*.

Art. 107: The meeting of the Assembly shall be considered invalid if the majority of its members are not present. The resolution of the Assembly shall be adopted by an absolute majority of the attending members, in cases other than those for which a specific majority is required. Every article of the draft laws shall be put to a vote. In case of a tie vote, the question on which the debate had taken place shall be rejected.

Art. 108: The President of the Republic shall have the right, in case of necessity or in exceptional cases and on the authorisation of the People's Assembly upon the approval of a majority of two-thirds of its membership, to issue resolutions having the force of law. The authorisation must be for a limited period of time during which the subjects of the resolutions and the grounds upon which they are based, must be determined. The resolutions must be submitted to the People's Assembly in the first meeting after the end of the authorisation period. If they are not submitted or if they are submitted and not approved by the Assembly, they shall cease to have the force of law.

Art. 109: The President of the Republic and every member of the People's Assembly shall have the right to propose laws of the government. In case the ratification of the new budget does not take place before the beginning of the fiscal year, the old budget shall be acted on pending such ratification. The manner of the preparation of the budget as well as the determination of the fiscal year shall be determined by law.

Art. 110: Every draft law shall be referred to a committee of the Assembly which will study it and submit a report concerning it. Draft laws presented by members of the People's Assembly shall not be referred to this committee unless they are first referred to a special committee which will study them and give an opinion on the suitability of their consideration by the Assembly and after the Assembly decides to consider them.

Art. 111: Every draft law proposed by a member and rejected by the Assembly cannot be presented again in the course of the same session.

Art. 112: The President of the Republic shall have the right to promulgate laws or object to them.

Art. 113: If the President of the Republic objects to a draft law ratified by the People's Assembly he shall refer it back to the Assembly within 30 days from the Assembly's communication of it. If the draft law is not referred back within this period, it is considered a law and shall be promulgated. If it is referred back to the Assembly on the said date and approved once again by a majority of two-thirds of the members, it shall be considered a law and shall be promulgated.

Art. 114: The People's Assembly shall approve the general plan for economic and social development. The manner of the preparation of the plan and of its submission to the People's Assembly shall be determined by law.



*Art. 115:* The draft general budget shall be submitted to the People's Assembly at least two months before the beginning of the fiscal year. It shall be considered in effect after approval. The draft budget shall be voted upon title by title and shall be promulgated by a law. The People's Assembly may not effect any modification in the draft budget except with the approval.

*Art. 116:* The approval of the People's Assembly shall be considered necessary for the transfer from one title of the budget to another title, as well as for any expenditure not included in it or excess of its estimate, and this shall be issued by a law.

*Art. 117:* The provisions regulating the budgets and accounts of public organizations and organisms shall be prescribed by law.

*Art. 118:* The final account of the State budget shall be submitted to the People's Assembly within a period not exceeding one year from the date of the expiration of the fiscal year. It shall be voted upon title by title and issued by a law. The annual report of the Central Agency for Accounting and its observations must be submitted to the People's Assembly. The Assembly has the right to demand from the Central Agency for Accounting any data or other pertinent reports.

*Art. 119:* The imposition, modification or abolition of general taxes cannot be effected except in the cases decreed by law. No one may be exempted from their payment except in the cases specified by law. No one may be asked to pay additional taxes or imposts except in the cases specified by law.

*Art. 120:* The basic rules for collection of public funds and the procedure for their disbursement shall be regulated by law.

*Art. 121:* The Executive Authority shall not contract a loan, or bind itself to a project entailing expenditure of funds from the State Treasury in the course of a subsequent period, except with the approval of the People's Assembly.

*Art. 122:* The rules governing the granting of salaries, pensions, indemnities, subsidies and bonuses from the State Treasury shall be determined by law which shall also regulate the cases excepted from these rules, and the authorities charged with their application.

*Art. 123:* The rules and procedures for granting concessions relating to investment of the sources of natural wealth and of public utilities shall be determined by law; disposal, free of charge, of real estate properties belonging to the State or the ceding of moveable properties of the State, and the rules and problems relating to them shall also be determined by law.

*Art. 124:* Every member of the People's Assembly shall be entitled to address questions to the Prime Minister or any of his deputies or the Ministers or their deputies concerning matters within their jurisdiction. The Prime Minister, his deputies, the Ministers and the persons they delegate on their behalf shall answer the questions put to them by members. The member may withdraw his question at any time; this same question may not be transformed into an interpellation in the same session.

*Art. 125:* Every member of the People's Assembly shall be entitled to address interpellations to the Prime Minister or his deputies or the Ministers or their deputies concerning matters within their jurisdiction. Debate on an interpellation shall take place at least seven days after its submission, except in the cases of urgency as decided by the Assembly and with the government's consent.

*Art. 126:* The Ministers shall be responsible collectively for the general policy of the State before the People's Assembly; also every Minister shall be responsible for the acts of his Ministry. The People's Assembly may decide to withdraw its confidence from any of the Prime Minister's deputies or from many of the Ministers or their deputies. A motion of no-confidence should not be submitted except after an interpellation. Such a motion should be proposed by one-tenth of the Assembly's members. The Assembly should not decide on such a motion until after at least three days from the date of its presentation. Withdrawal of confidence shall be pronounced by the majority of the members of the Assembly.

*Art. 127:* The People's Assembly shall determine the responsibility of the Prime Minister, on a proposal by one-tenth of its members. Such a decision should be taken by the majority of the members of the Assembly. It may not be taken except after an interpellation addressed to the government, and after at least three days from the date of its presentation. In the event that such responsibility is determined, the Assembly shall submit a report to the President of the Republic including the elements of the subject, the conclusion reached on the matter and the reasons behind it.

The President of the Republic may return such a report to the Assembly within 10 days. If the Assembly ratifies it once again, the President of the Republic may put the subject of discord to a referendum. Such a referendum shall take place within 30 days from the date of the last ratification of the Assembly, in which case the Assembly sessions shall be terminated. If the result of the referendum is in support of the government, the Assembly shall be considered dissolved, otherwise the President of the Republic shall accept the resignation of the Council of Ministers.

*Art. 128:* If the Assembly withdraws its confidence from any of the Prime Minister's deputies or of the Ministers or of their deputies, they shall resign their office. The Prime Minister shall submit his resignation to the President of the Republic if he is found responsible before the People's Assembly.

*Art. 129:* Any 20 members, at least, of the People's Assembly may ask for the discussion of a public question to ascertain the government's policy regarding such a question.

*Art. 130:* The members of the People's Assembly shall be entitled to express their opinions concerning public questions before the Prime Minister or any of his deputies or of the Ministers.

*Art. 131:* The People's Assembly shall form an ad hoc committee or entrust any of its committees with the inspection of the activities of any of the administrative departments or the general establishments or any administrative or executive organ or any of the public projects, for the purpose of finding facts and informing the Assembly as to the actual financial or administrative or economic positions or for conducting investigations into a subject related to one

of the said activities. In the course of its work, such a committee shall be entitled to collect whatever evidence it deems necessary and to subpoena all those it needs. All executive and administrative bodies shall answer the demands of the committee and put under its disposal all the documents and evidence it asks for this purpose.

*Art. 132:* At the inaugural meeting of the ordinary session of the People's Assembly, the President of the Republic shall give a statement of the general policy of the State. He shall also give other statements before the Assembly. The Assembly is entitled to discuss the statement of the President of the Republic.

*Art. 133:* After the formation of the Cabinet and at the inaugural meeting of the ordinary session of the People's Assembly, the Prime Minister shall submit the programme of the government. The People's Assembly is entitled to discuss such programme.

*Art. 134:* The Prime Minister, his deputies, the Ministers and their deputies may become members of the People's Assembly. Those of them who are not members may attend the sessions and committees of the Assembly.

*Art. 135:* The Prime Minister and Ministers shall be heard in the People's Assembly and its committees whenever they request to speak. They may be assisted by high-ranking officials. A Minister shall have no counted vote when votes are taken, unless he is a member.

*Art. 136:* The President of the Republic shall not dissolve the People's Assembly unless it is necessary and after a referendum of the people. The President of the Republic shall issue a decision terminating the sessions of the Assembly and conducting a referendum within 30 days. If the total majority of the voters approve the dissolution of the Assembly, the President of the Republic shall issue the decision of dissolution. The decision dissolving the Assembly shall comprise an invitation to the electors to conduct new elections for the People's Assembly within a period not exceeding 60 days from the date of the declaration of the referendum results. The new Assembly shall convene during a period of ten days following the completion of elections.

### **CHAPTER III: The Executive**

#### ***SECTION I: The President of the Republic***

*Art. 137:* The President of the Republic shall assume executive power and shall exercise it in the manner stipulated in the Constitution.

*Art. 138:* The President of the Republic, in conjunction with the government, shall lay down the general policy of the State and supervise its implementation in the manner prescribed in the Constitution.

*Art. 139:* The President of the Republic may appoint one or more Vice-Presidents, define their jurisdiction and relieve them of their posts. The rules relating to the calling into account of the President of the Republic shall be applicable to the Vice-Presidents.

Art. 140: Before exercising his functions, the Vice-President shall take the following oath before the President of the Republic: "I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully and to safeguard the independence and territorial integrity of the motherland".

Art. 141: The President of the Republic shall appoint the Prime Minister, his deputies, the Ministers and their deputies and relieve them of their posts.

Art. 142: The President of the Republic shall have the right to call a meeting of the Council of Ministers and to attend its meeting. He shall also preside over the meetings he attends. He shall be entitled to demand reports from the Ministers.

Art. 143: The President of the Republic shall appoint the civil and military officials, and the diplomatic representatives, and dismiss them in the manner prescribed by the law. He shall also accredit the diplomatic representatives of foreign states.

Art. 144: The President of the Republic shall issue the necessary regulations for the implementation of the laws, in the manner that would not modify, obstruct or exempt them from execution. He shall have the right to vest others with authority to issue them. The law may determine whoever issues the decisions requisite or its implementation.

Art. 145: The President of the Republic shall issue the control regulations.

Art. 146: The President of Republic shall issue the decisions necessary for organising the public services and interests.

Art. 147: In case it becomes necessary, during the recess between the sessions of the People's Assembly, to take measures which cannot suffer delay, the President of the Republic shall issue decision in their respect, which shall have the force of law. Such decisions must be submitted to the People's Assembly within 15 days from their date of issuance if the Assembly is standing. In case of dissolution or recess of the Assembly, they shall be submitted at its first meeting. In case they are not submitted, their force of law disappears with retroactive effect, without need for issueing a decision to this effect. If they are submitted and are not ratified, their force of law disappears with retroactive effect, unless the Assembly ratifies their validity in the previous period or settling their effects in another way.

Art. 148: The President of the Republic shall proclaim a state of emergency in the manner prescribed by the law. Such proclamation must be submitted to the People's Assembly within the subsequent 15 days in order that the Assembly may take a decision thereon. In case the People's Assembly is dissolved, the matter shall be submitted to the new Assembly at its first meeting. In all cases, the proclamation of the state of emergency shall be for a limited period, which may not be extended unless by approval of the Assembly.

Art. 149: The President of the Republic shall have the right of granting amnesty or commute a sentence. As for general amnesty, it can only be granted by virtue of a law.

Art. 150: The President of the Republic shall be the Supreme Commander of the Armed Forces. He shall be the authority who declares war, after the approval of the People's Assembly.

Art. 151: The President of the Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with a suitable clarification. They shall have the force of law after their conclusion, ratification and publication according to the established procedure. However, peace treaties, alliance pacts, commercial and maritime and all the treaties involving modifications in the territory of the State, or having connection with the rights of sovereignty, or which lay upon the Treasury of the State certain charges not provided for in the budget, must acquire the approval of the People's Assembly.

Art. 152: The President of the Republic may call a referendum of the people on important matters affecting the supreme interests of the country.

### **SECTION II: The Government**

Art. 153: The government shall be the supreme executive and administrative organ of the State. It shall consist of the Prime Minister, his deputies, the Ministers and their deputies. The Prime Minister shall supervise the work of the government.

Art. 154: Whoever is appointed Minister or Deputy-Minister must be an Egyptian, no less than 35 Gregorian years of age, and enjoying full civil and political rights.

Art. 155: Before exercising the functions of their posts, the members of the Cabinet shall take the following oath before the President of the Republic: "*I swear by Almighty God to uphold the Republican system with loyalty, to respect the Constitution and the law, to look after the interests of the people fully, and to safeguard the independence and territorial integrity of the motherland*".

Art. 156: The Cabinet shall exercise the following functions in particular:

- a. Laying down the general policy of the State, and controlling its implementation in collaboration with the President of the Republic in accordance with the Presidential laws and decrees.
- b. Directing, coordinating and following up the works of the ministries, their affiliated organs, and the public organisations and institutions.
- c. Issuing administrative and executive decisions in accordance with the laws and decrees, as well as supervising their implementation.
- d. Preparing the draft laws and decrees.
- e. Preparing the draft of the general budget of the State.
- f. Preparing the State's overall plan.
- g. Contracting and granting loans in accordance with the rules of the Constitution.
- h. Supervising the implementation of laws, maintaining State security and protecting the rights of the citizens and the interests of the State.

Art. 157: The Minister shall be the administrative supreme chief of his ministry. He shall undertake the laying down of the ministry's policy in the framework of the State's general policy, and shall undertake its implementation.

Art. 158: During the term of his office, the Minister shall not practice a free profession - a commercial or financial or industrial occupation, buy or rent any State property, or lease or sell to or barter with the State any of his own property.

Art. 159: The President of the Republic and the People's Assembly shall have the right to bring a minister to trial for crimes committed by him in the performance of, or because of, the duties of his post. The decision of the People's Assembly to charge a minister shall be adopted upon a proposal submitted by at least one-fifth of its members. No indictment shall be issued except by a majority of two-thirds of the members of the Assembly.

Art. 160: Any minister indicted shall cease to function until his case is decided. The termination of his services shall not prevent legal action being taken or pursued against him. The trial of a minister, the procedures and guarantees of the trial, and the indictment shall be in accordance with the manner prescribed by the law. These rules shall be in force with regard to the Deputy Ministers.

### ***SECTION III: The Local Administration***

Art. 161: The Arab Republic of Egypt shall be divided into administrative units, enjoying moral entities, among which shall be governorates, cities and village. Other administrative units may be established, having moral entities, if this may be required by the common interest.

Art. 162: Local People's Councils shall be gradually formed, on the level of administrative units, by direct election, providing that half of their members at least shall be workers and farmers. The law shall provide for the gradual transfer of authority to them. Presidents and Vice-President of the Councils shall be selected from among their members by mean of elections.

Art. 163: The law shall prescribe the way of formation of the Local People's Councils, their competences, their financial resources, the guarantees for their members, their relations to the People's Assembly and to the government, and their role in preparing and implementing the development plan and in controlling the various activities.

### ***SECTION IV: The National Specialized Councils***

Art. 164: Specialized Councils shall be established on the national level to assist in laying down the general policy of the State in all fields of national endeavour. These councils are to be affiliated to the President of the Republic. A Presidential decree shall determine the formation and functions of each council.

### **CHAPTER IV: The Judiciary Authority**

Art. 165: The Judiciary Authority shall be independent. It shall be exercised by courts of justice of different sorts and classes, which shall issue their judgements in accordance with the law.

Art. 166: Judges shall be independent, subject to no other authority but the law. No authority may intervene in the cases or in justice affairs.

Art. 167: The law shall determine the judiciary organisations and their functions, organise the way of their formation, prescribe the conditions and measures for the appointment and transfer of their members.

Art. 168: The status of judges shall be irrevocable. The law shall regulate the disciplinary actions with regard to them.

Art. 169: The sessions of the courts shall be made public, unless a court decides to hold them in camera, for considerations of public order or morality. In all cases, judgements shall be pronounced in public session.

Art. 170: The people shall contribute in maintaining justice, in accordance with the manner, and the limits, prescribed by the law.

Art. 171: The law shall regulate the organisation of the State Security Courts, and prescribe their competences and the conditions to be fulfilled by those who occupy the office of judge in them.

Art. 172: The State Council shall be an independent judiciary organisation which has the competence of decisions in administrative disputes, and disciplinary cases. The law shall determine its other competences.

Art. 173: A Supreme Council, presided over by the President of the Republic, shall supervise the affairs of the judiciary organisations. The law shall prescribe its formation, its competences, and its rules of action. It shall be consulted with regard to the draft laws organising the affairs of the judiciary organisation.

#### **CHAPTER V: Supreme Constitutional Court**

Art. 174: The Supreme Constitutional Court shall be an independent judiciary body, having its own moral person in the Arab Republic of Egypt, and having its seat in Cairo.

Art. 175: The Supreme Constitutional Court alone shall undertake the judicial control in respect of the constitutionality of the laws and regulations, and shall undertake the explanation of the legislative texts, all of which in accordance with the manner prescribed by the law. The law shall determine the other competences of the court, and regulate the procedure to be followed before it.

Art. 176: The law shall organise the way of formation of the Supreme Constitutional Court, and prescribe the conditions required in its members, their rights and immunities.

Art. 177: The status of members of the Supreme Constitutional Court shall be irrevocable. The Court shall call to account its members, in the manner prescribed by the law.

Art. 178: The judgement issued by the Supreme Constitutional Court in constitutional cases, and its decisions concerning the interpretation of legislative

texts, shall be published in the Official Gazette. The law shall organise the effects subsequent to a decision concerning the unconstitutionality of a legislative text.

#### CHAPTER VI: The Socialist Public Prosecutor

Art. 179: The Socialist Public Prosecutor shall be responsible for taking the procedures which secure the people's rights, the safety of the society and its political system, the preservation of the socialist achievements, and commitment to the socialist behaviour. The law shall define his other competences. He shall be subject to the control of the People's Assembly in accordance to what is prescribed by law.

#### CHAPTER VII: Armed Forces and The National Defence Council

Art. 180: The State alone shall establish the Armed Forces, which shall belong to the people. Their duty shall be to protect the country, safeguard its territory and security, and protect the socialist achievements of the popular strife. No organisation or group may establish military or semi-military formations. The law shall prescribe the conditions of service and promotion for the Armed Forces.

Art. 181: General mobilisation shall be organised in accordance with the law.

Art. 182: A council shall be established, the National Defence Council, over which the President of the Republic shall preside, and which shall undertake the examination of the matter pertaining to the methods of ensuring the safety and security of the country. The law shall prescribe its other prerogatives.

Art. 183: The law shall organise military judiciary, prescribing their competences in the framework of the principles prescribed in the Constitutions.

#### CHAPTER VIII: Police

Art. 184: Police Authority shall be a civil disciplinary body. Its Supreme Chief shall be the President of the Republic. Police Authority shall perform its duty in the people's services, maintain peace and security for the citizens, preserve order, public security and morality, and undertake the implementation of the duties imposed upon it by laws and regulations, in the manner prescribed by the law.

### PART VI: GENERAL AND TRANSITIONAL PROVISIONS

Art. 185: The city of Cairo shall be the capital of the Arab Republic of Egypt.

Art. 186: The law shall prescribe the national flag and the provisions relating thereto, as well as the State emblem and the provisions relating thereto.

Art. 187: Provisions of the laws shall apply only from the date of their entry into force, and shall have no retroactive effect. However, provisions to the contrary may be made, in other than criminal matters, with the approval of the majority of the members of the People's Assembly.



Art. 188: All laws shall be published in the Official Gazette within two weeks from the date of their issuance. They shall be put in force after a month following the date of their publication unless another date is fixed for that.

Art. 189: The President of the Republic, as well as the People's Assembly, may request the amendment of one or more of the Constitution articles. The articles to be revised and the reasons justifying such amendment must be mentioned in the request for amendment. In case the request emanates from the People's Assembly, it should be signed by at least one-third of the Assembly members. In all cases, the Assembly shall discuss the amendment in principle, and the decision in this respect shall be taken by the majority of its members. If the request is rejected, the amendment of the same particular articles may not be requested again before the expiration of one year from the date of such rejection. If the People's Assembly approves the principle of revision, the articles requested to be amended shall be discussed after two months from the date of the said approval. If the modification is approved by two-thirds of the members of the Assembly, it must be referred to the people for a plebiscite. If the amendment is approved, it shall be considered in force from the date of the announcement of the result of the plebiscite.

Art. 190: The term of the present President of the Republic shall be terminated at the end of six years from the date of announcing his election as President of the Arab Republic of Egypt.

Art. 191: All the provisions of the laws and regulations prior to the proclamation of this Constitution shall remain valid and in force. However, they may be repealed or amended in this Constitution.

Art. 192: The Supreme Court shall exercise its competences prescribed in the law concerning its establishment until the formation of the Supreme Constitutional Court is completed.

Art. 193: This Constitution shall be in force as from the date of announcing the approval of the people, in this respect, in the plebiscite.

## **PART SEVEN: New Rulings**

### **CHAPTER I: The Shoura Assembly**

Art. 194: The Shoura Assembly is concerned with the study and proposal of what it deems necessary to preserve the principles of the July 23, 1952 Revolution and the May 15, 1971 Revolution, to consolidate national unity and social peace, to protect the alliance of the working forces of the people and the socialist gains as well as the basic components of society, its supreme values, its rights and liberties and its public duties, and to entrench the democratic socialist system and widen its scope.

Art. 195: The Shoura Assembly shall be consulted in the following:

- 1- Proposals for the amendment of one or more articles of the Constitutions.
- 2- Draft laws complementary to the Constitution.
- 3- Draft of the general plan for social and economic development.

- 4- Peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights.
- 5- Draft laws referred to the Assembly by the President of the Republic.
- 6- Whatever matters referred to the Assembly by the President of the Republic relative to the general policy of the State or its policy regarding Arab or foreign affairs.

The Assembly shall submit to the President of the Republic and the People's Assembly its opinion on such matters.

Art. 196: The Shoura Assembly shall be composed of a number of members defined by the law, not less than 132 members.

Two thirds of the members shall be elected by direct secret public balloting, half of whom at least must be workers and farmers.

The President of the Republic shall appoint the other third.

Art. 197: The law shall determine the electoral constituencies of the Shoura Assembly, the number of members in every constituency, and the necessary conditions stipulated in the elected or appointed members of the Shoura Assembly.

Art. 198: The term of membership of the Shoura Assembly is six years, whereas renewed election and appointment of 50% of the total number of members, whether elected or appointed, is every three years as defined by law. It is always possible to re-elect or re-appoint those whose membership has expired.

Art. 199: The Shoura Assembly shall elect a president and two vice-presidents at its first ordinary annual session for a period of three years. If one of these offices becomes vacant, the Assembly shall elect a successor for the rest of the term.

Art. 200: No member can hold office in both the People's Assembly and the Shoura Assembly at one and the same time.

Art. 201: The Prime Minister and his deputies, the ministers and government officials shall not be held responsible to the Shoura Assembly.

Art. 202: The President of the Republic has the right to make a statement upon the general policy of the state or upon any other matter before a joint meeting of the People's Assembly and the Shoura Assembly, headed by the Speaker of the People's Assembly. The President of the Republic has the right to make whatever statements he wishes before the Shoura Assembly.

Art. 203: The prime minister and the ministers and other government officials may make statements before the Shoura Assembly or before one of its committees upon a subject that comes within his competence. The prime minister and his deputies and other government officials shall be heard by the Shoura Assembly and its committees upon their request, and they may seek the assistance of any government official, as they see fit. However, the vote of the minister or government official is not valid upon any count of votes unless he is a member.

Art. 204: The President of the Republic may not dissolve the Shoura Assembly except when necessary, while such a decision should comprise a call to hold new elections for the Shoura Assembly within a period of 60 days from the date of its dissolution. The Assembly shall hold its first meeting within ten days from the date of its election.

Art. 205: The following articles of the Constitution shall apply to the Shoura Assembly: (89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 129, 130, 134), insofar as they are not incompatible with the stipulations cited in this part: The Shoura Assembly and its President shall exercise the competences specified in the aforementioned articles.

## CHAPTER II: The Press

Art. 206: The Press is a popular, independent authority exercising its true vocation in accordance with the stipulations of the Constitution and the law.

Art. 207: The Press shall exercise its true vocation freely and independently in the service of society through all means of expression. It shall thus interpret the trend of public opinion, while contributing to its formation and orientation within the framework of the basic components of society, the safeguard of the liberties, rights and public duties and respect of the sanctity of the private lives of citizens, as stipulated in the Constitution and defined by law.

Art. 208: The freedom of the press is guaranteed and press censorship is forbidden. Also forbidden is to threaten, suppress, or foreclose a newspaper through administrative measures, as stipulated in the Constitution and defined by law.

Art. 209: The freedom of body corporates, whether public or private, or political parties to publish or own newspapers is safeguarded in accordance with the law. The financing and ownership of newspapers come under the supervision of the people, as stipulated in the Constitution and defined by law.

Art. 210: Journalists have the right to obtain news and information according to the regulations set by law. Their activities are not subject to any authority other than the law.

Art. 211: A Supreme Press Council shall deal with matters concerning the press. The law shall define its composition, competences and its relationship with the State authorities. The Supreme Press Council shall exercise its competences with a view to consolidate the freedom of the press and its independence, to uphold the basic foundations of society, and to guarantee the soundness of national unity and social peace as stipulated in the Constitution and defined by law.



## CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN

of 24 October 1979  
as amended to 28 July 1989

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of Allah, the Compassionate, the Merciful  
لقد ارسلنا رسلنا بالبينات وانزلنا معهم الكتاب والميزان ليقوم الناس بالقسط...  
We sent aforesaid Our apostles with clear signs, and sent down with  
them the Book and the Balance that men may uphold justice... (25:25)

### PREAMBLE

The Constitution of the Islamic Republic of Iran sets forth the cultural, social, political, and economic institutions of Iranian society on the basis of Islamic principles and norms, which represent the earnest aspiration of the Islamic *Ummah*. This basic aspiration was made explicit by the very nature of the great Islamic Revolution of Iran, as well as the course of the Muslim people's struggle, from its beginning until victory, as reflected in the decisive and forceful slogans raised by all segments of the population. Now, at the threshold of this great victory, our nation, with all its being, seeks its fulfillment.

The basic characteristic of this revolution, which distinguishes it from other movements that have taken place in Iran during the past hundred years, is its ideological and Islamic nature. After experiencing the anti-despotic constitutional movement and the anti-colonialist movement centered on the nationalization of the oil industry, the Muslim people of Iran learned from this costly experience that the obvious and fundamental reason for the failure of those movements was their lack of an ideological basis. Although the Islamic line of thought and the direction provided by militant religious leaders played an essential role in the recent movements, nonetheless, the struggles waged in the course of those movements quickly fell into stagnation due to departure from genuine Islamic positions. Thus it was that the awakened conscience of the nation, under the leadership of the eminent *marji' al-taqlid*, Ayatullah al-Uzma Imam Khomeini, came to perceive the necessity of pursuing an authentically Islamic and ideological line in its struggles. And this time, the militant '*ulama*' of the country, who had always been in the forefront of popular movements, together with the committed writers and intellectuals, found new impetus by following his leadership. (The beginning of the most recent movement of the Iranian people is to be put at 1382 of the lunar Islamic calendar, corresponding to 1341 of the solar Islamic calendar [1962 of the Christian calendar]).

### The Dawn of the Movement

The devastating protest of Imam Khomeini against the American conspiracy known as the "White Revolution", which was a step intended to stabilize the foundation of despotic rule and to reinforce the political, cultural, and economic dependence of Iran on world imperialism, brought into being a united movement of the people and, immediately afterwards, a momentous revolution of the Muslim nation in the month of Khordad, 1342 [June 1963]. Although this revolution was drowned in blood, in reality it heralded the beginning of the

blossoming of a glorious and massive uprising, which confirmed the central role of Imam Khomeini as an Islamic leader. Despite his exile from Iran after his protest against the humiliating law of capitulation (which provided legal immunity for American advisers), the firm bond between the Imam and the people endured, and the Muslim nation, particularly committed intellectuals and militant 'ulama', continued their struggle in the face of banishment and imprisonment, torture and execution.

Throughout this time, the conscious and responsible segment of society was bringing enlightenment to the people from the strongholds of the mosques, centres of religious teaching, and universities. Drawing inspiration from the revolutionary and fertile teachings of Islam, they began the unrelenting yet fruitful struggle of raising the level of ideological awareness and revolutionary consciousness of the Muslim people. The despotic regime which had begun the suppression of the Islamic movement with barbaric attacks on the Faydiyyah Madrasah, Tehran University, and all other active centres of revolution, in an effort to evade the revolutionary anger of the people, resorted to the most savage and brutal measures. And in these circumstances, execution by firing squads, endurance of medieval torture, and long terms of imprisonment were the price our Muslim nation had to pay to prove its firm resolve to continue the struggle. The Islamic Revolution of Iran was nurtured by the blood of hundreds of young men and women, infused with faith, who raised their cries of *Allahu Akbar* at daybreak in execution yards, or were gunned down by the enemy in streets and marketplaces. Meanwhile, the continuing declarations and messages of the Imam that were issued on various occasions, extended and deepened the consciousness and determination of the Muslim nation to the utmost.

#### Islamic Government

The plan of the Islamic government based upon *wilayat al-faqih*, as proposed by Imam Khomeini at the height of the period of repression and strangulation practised by the despotic regime, produced a new specific, and streamlined motive for the Muslim people, opening up before them the true path of Islamic ideological struggle, and giving greater intensity to the struggle of militant and committed Muslims both within the country and abroad.

The movement continued on this course until finally popular dissatisfaction and intense rage of the public caused by the constantly increasing repression at home, and the projection of the struggle at the international level after exposure of the regime by the "ulama" and militant students, shook the foundations of the regime violently. The regime and its sponsors were compelled to decrease the intensity of repression and to 'liberalize' the political atmosphere of the country. This, they imagined, will serve as a safety valve, which would prevent their eventual downfall. But the people, aroused, conscious, and resolute under the decisive and unfaltering leadership of the Imam, embarked on a triumphant, unified, comprehensive, and countrywide uprising.

#### The Wrath of the People

The publication of an outrageous Art. meant to malign the revered 'ulama' and in particular Imam Khomeini on 15 Day 1356 [January 7, 1978] by the ruling regime accelerated the revolutionary movement and caused an outburst of popular outrage across the country. The regime attempted to quell the volcano of the people's anger by drowning the protest and uprising in blood, but

the bloodshed only quickened the pulse rate of the Revolution. The seventh-day and fortieth-day commemorations of the martyrs of the Revolution, like a series of steady heartbeats, gave greater vitality, intensity, vigour, and solidarity to this movement all over the country. In the course of this popular movement, the employees of all government establishments took an active part in the effort to overthrow the tyrannical regime by calling a general strike and participating in street demonstrations. The wide spread solidarity of men and women of all segments of society and of all political and religious factions, played a clearly determining role in the struggle. Especially the women were actively and massively present in a most conspicuous manner at all stages of this great struggle. The common sight of mothers with infants in their arms rushing towards the scene of battle and in front of the barrels of machine-guns indicated the essential and decisive role played by this major segment of society in the struggle.

#### The Price the Nation Paid

After slightly more than a year of continuous and unrelenting struggle, the sapling of the Revolution, watered by the blood of more than 60,000 martyrs and 100,000 wounded and disabled, not to mention billions of tumans' worth of property damage, came to bear fruit amidst the cries of "Independence! Freedom! Islamic government!" This great movement, which attained victory through reliance upon faith, unity, and the decisiveness of its leadership at every critical and sensitive juncture, as well as the self-sacrificing spirit of the people, succeeded in upsetting all the calculations of imperialism and destroying all its connections and institutions, thereby opening a new chapter in the history of all-embracing popular revolutions of the world.

Bahman 21 and 22, 1357 [February 12-13, 1979] witnessed the collapse of the monarchical regime; domestic tyranny and foreign domination, both of which were based upon it, were shattered. This great success proved to be the vanguard of Islamic government - a long-cherished desire of the Muslim people - and brought with it the glad tidings of final victory.

Unanimously, and with the participation of the *maraji' al-taqlid*, the 'ula-ma' of Islam, and the leadership, the Iranian people declared their final and firm decision, in the referendum on the Islamic Republic, to bring about a new political system, that of the Islamic Republic. A 98.2% majority of the people voted for this system. The Constitution of the Islamic Republic of Iran, setting forth as it does the political, social, cultural and economic institutions and their relations that are to exist in society, must now provide for the consolidation of the foundations of Islamic government, and propose the plan of a new system of government to be erected on the ruins of the previous *taghuti* order.

#### The Form of Government in Islam

In the view of Islam, government does not derive from interests of a class, nor does it serve the domination of an individual or a group. It represents rather the crystallization of the political ideal of a people who bear a common faith and common outlook, taking an organized form in order to initiate the process of intellectual and ideological evolution towards the final goal, i.e. movement towards *Allah*. Our nation, in the course of its revolutionary developments, has cleansed itself of the dust and impurities that accumulated during the *taghuti* past and purged itself of foreign ideological influences, returning to authentic intellectual standpoints and world-view of Islam. It now intends to establish an

ideal and model society on the basis of Islamic norms. The mission of the Constitution is to realize the ideological objectives of the movement and to create conditions conducive to the development of man in accordance with the noble and universal values of Islam.

With due attention to the Islamic content of the Iranian Revolution, which has been a movement aimed at the triumph of all the *mustad'afun* over the *mus-takbirun*, the Constitution provides the necessary basis for ensuring the continuation of the Revolution at home and abroad. In particular, in the development of international relations, the Constitution will strive with other Islamic and popular movements to prepare the way for the formation of a single world community (in accordance with the Qur'anic verse *إنا هذه امتكم امة واحدة وأنا ربكم فاعبدون* \* "This your community is a single community, and I am your Lord, so worship Me" (21:92), and to assure the continuation of the struggle for the liberation of all deprived and oppressed peoples in the world.

With due attention to the essential character of this great movement, the Constitution guarantees the rejection of all forms of intellectual and social tyranny and economic monopoly, and aims at entrusting the destinies of the people to the people themselves in order to break completely with the system of oppression. (This is in accordance with the Qur'an verse *ويضع عنهم اصرهم ويضع عنهم اصرهم والاغلال التي كانت عليهم* "He removes from them their burdens and the fetters that were upon them" [7:157]).

In creating, on the basis of ideological outlook, the political infrastructures and institutions that are the foundation of society, the righteous will assume the responsibility of governing and administering the country (in accordance with the Qur'anic verse *إن الأرض يرثها عبادي الصالحون* \* "Verily My righteous servants shall inherit the earth" [21:105]). Legislation setting forth regulations for the administration of society will revolve around the Qur'an and the Sunnah. Accordingly, the exercise of meticulous and earnest supervision by just, pious, and committed scholars of Islam (*al-fuqaha' al-'udul*) is an absolute necessity. In addition, the aim of government is to foster the growth of man in such a way that he progresses towards the establishment of a Divine order (in accordance with the Qur'anic phrase *والى الله المصير* "And toward God is the journeying" [3:28]); and to create favourable conditions for the emergence and blossoming of man's innate capacities, so that the theomorphic dimensions of the human being are manifested (in accordance with the injunction of the Prophet (S), *مخلقوا بأخلاق الله* "Mould yourselves according to the Divine morality"); this goal cannot be attained without the active and broad participation of all segments of society in the process of social development.

With due attention to this goal, the Constitution provides the basis of such participation by all members of society at all stages of the political decision-making process on which the destiny of the country depends. In this way, during the course of human development towards perfection, each individual will himself be involved in, and responsible for the growth, advancement and leadership of society. Precisely in this lies the realization of the government of the *mustad'afun* upon the earth (in accordance with the Qur'anic verse *ونريد أن نمن على الذين استضعفوا في الأرض ونجعلهم أئمة ونجعلهم الوارثين* "And we wish to show favour to those who have been oppressed upon earth, and to make them leaders and the inheritors" [28:51]).

#### The Wilayah of the Just Faqih:

In keeping with the principles of governance [*wilayat al-'amr*] and the perpetual necessity of leadership [*imamah*], the Constitution provides for the establish-



ment of leadership by a *faqih* possessing the necessary qualifications [*jami' al-shara'it*] and recognized as leader by the people (this is in accordance with the hadith بحار في الامور بيد العلماء بالله الامناء على حلاله وحرامه "The direction of [public] affairs is in the hands of those who are learned concerning God and are trustworthy in matters pertaining to what He permits and forbids" [*Tuhaf al'uqul*, p.176]). Such leadership will prevent any deviation by the various organs of State from their essential Islamic duties.

#### **The Economy is a Means, Not an End**

In strengthening the foundations of the economy, the fundamental consideration will be fulfillment of the material needs of man in the course of his overall growth and development. This principle contrasts with other economic systems, where the aim is concentration and accumulation of wealth and maximization of profit. In materialist schools of thought, the economy represents an end in itself, so that it comes to be a subversive and corrupting factor in the course of man's development. In Islam, the economy is a means, and all that is required of a means is that it should be an efficient factor contributing to the attainment of the ultimate goal.

From this viewpoint, the economic programme of Islam consists of providing the means needed for the emergence of the various creative capacities of the human being. Accordingly, it is the duty of the Islamic government to furnish all citizens with equal and appropriate opportunities, to provide them with work, and to satisfy their essential needs, so that the course of their progress may be assured.

#### **Woman in the Constitution**

Through the creation of Islamic social infrastructures, all the elements of humanity that hitherto served the multifaceted foreign exploitation shall regain their true identity and human rights. As a part of this process, it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the *taghuti* regime.

The family is the fundamental unit of society and the main centre for the growth and edification of human being. Compatibility with respect to belief and ideal, which provides the primary basis for man's development and growth, is the main consideration in the establishment of a family. It is the duty of the Islamic government to provide the necessary facilities for the attainment of this goal. This view of the family unit delivers woman from being regarded as an object or as an instrument in the service of promoting consumerism and exploitation. Not only does woman recover thereby her momentous and precious function of motherhood, rearing of ideologically committed human beings, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life. Given the weighty responsibilities that woman thus assumes, she is accorded in Islam great value and nobility.

#### **An Ideological Army**

In the formation and equipping of the country's defence forces, due attention must be paid to faith and ideology as the basic criteria. Accordingly, the Army of the Islamic Republic of Iran and the Islamic Revolutionary Guards Corps are to be organized in conformity with this goal, and they will be responsible not



only for guarding and preserving the frontiers of the country, but also for fulfilling the ideological mission of *jihad* in God's way; that is, extending the sovereignty of God's law throughout the world (this is in accordance with the Qur'anic verse وَأَعِدُوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ .. وعَدُوَّكُمْ وَأَخْرِبُونَ مَنْ دُونَهُمْ .. "Prepare against them whatever force you are able to muster, and strings of horses, striking fear into the enemy of God and your enemy, and others besides them" (8:60)).

#### The Judiciary in the Constitution

The judiciary is of vital importance in the context of safeguarding the rights of the people in accordance with the line followed by the Islamic movement, and the prevention of deviation within the Islamic nation. Provision has therefore been made for the creation of a judicial system based on Islamic justice and operated by just judges with meticulous knowledge of the Islamic laws. This system, because of its essentially sensitive nature and the need for full ideological conformity, must be free from every kind of unhealthy relation and connection (this is in accordance with the Qur'anic verse وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ "When you judge among the people, judge with justice"[4:58]).

#### Executive Power

Considering the particular importance of the executive power in implementing the laws and ordinances of Islam for the sake of establishing the rule of just relations over society, and considering, too, its vital role in paving the way for the attainment of the ultimate goal of life, the executive power must work toward the creation of an Islamic society. Consequently, the confinement of the executive power within any kind of complex and inhibiting system that delays or impedes the attainment of this goal is rejected by Islam. Therefore, the system of bureaucracy, the result and product of *taghuti* forms of government, will be firmly cast away, so that an executive system that functions efficiently and swiftly in the fulfilment of its administrative commitments comes into existence.

#### Mass-Communication Media

The mass-communication media, radio and television, must serve the diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution. To this end, the media should be used as a forum for healthy encounter of different ideas, but they must strictly refrain from diffusion and propagation of destructive and anti-Islamic practices.

It is incumbent on all to adhere to the principles of this Constitution, for it regards as its highest aim the freedom and dignity of the human race and provides for the growth and development of the human being. It is also necessary that the Muslim people should participate actively in the construction of Islamic society by selecting competent and believing [*mu'min*] officials and keeping close and constant watch on their performance. They may then hope for success in building an ideal Islamic society that can be a model for all people of the world and a witness to its perfection (in accordance with the Qur'anic verse وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ "Thus We made you a median community, that you might be witnesses to men" (2:143)).

### Representatives

The Assembly of Experts, composed of representatives of the people, completed its task of framing the Constitution, on the basis of the draft proposed by the government as well as all the proposals received from different groups of the people, in 175 Articles arranged in 12 chapters, on the eve of the fifteenth century after the migration of the Holy Prophet (peace and blessings be upon him and his Family), the founder of the redeeming school of Islam, and in accordance with the aims and aspirations set out above, with the hope that this century will witness the establishment of a universal government of the *mustad'afun* and the downfall of all the *mustakbirun*.

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### CHAPTER 1: GENERAL PRINCIPLES

Art. 1: The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Qur'anic justice, in the referendum of Farwardin 9 and 10 in the year 1358 of the solar Islamic calendar, corresponding to Jamadi al-`Awwal 1 and 2 in the year 1399 of the lunar Islamic calendar [March 29 and 30, 1979], through the affirmative vote of a majority of 98.2% of eligible voters, held after the victorious Islamic Revolution led by the eminent *marji' al-taqlid*, Ayatullah al-'Uzma Imam Khomeini.

Art. 2: The Islamic Republic is a system based on belief in:

1. The One God (as stated in the phrase لا اله الا الله "There is no god except Allah"), His exclusive sovereignty and the right to legislate, and the necessity of submission to His commands;
  2. Divine revelation and its fundamental role in setting forth the laws;
  3. The return to God in the Hereafter, and the constructive role of this belief in the course of man's ascent towards God;
  4. The justice of God in creation and legislation;
  5. Continuous leadership (*imamah*) and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam;
  6. The exalted dignity and value of man, and his freedom coupled with responsibility before God;
- in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to:
- a. Continuous *ijtihad* of the *fuqaha'* possessing necessary qualifications, exercised on the basis of the Qur'an and the *Sunnah* of the *Ma'sumun*, upon all of whom be peace;
  - b. Sciences and arts and the most advanced results of human experience, together with the effort to advance them further;
  - c. Negation of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and acceptance.

Art. 3: In order to attain the objectives specified in Art. 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

1. the creation of a favourable environment for the growth of moral virtues based on faith, piety and the struggle against all forms of vice and corruption;
2. raising the level of public awareness in all areas, through the proper use of the press, mass media, and other means;
3. free education and physical training for everyone at all levels, and the facilitation and expansion of higher education;
4. strengthening the spirit of inquiry, investigation, and innovation in all areas of science, technology, and culture, as well as Islamic studies, by establishing research centres and encouraging researchers;
5. the complete elimination of imperialism and the prevention of foreign influence;
6. the elimination of all forms of despotism and autocracy and all attempts to monopolize power;
7. ensuring political and social freedoms within the framework of the law;
8. the participation of the entire people in determining their political, economic, social, and cultural destiny;
9. the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres;
10. the creation of a correct administrative system and elimination of superfluous government organizations;
11. all round strengthening of the foundations of national defence to the utmost degree by means of universal military training for the sake of safeguarding the independence, territorial integrity, and the Islamic order of the country;
12. the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all;
13. the attainment of self-sufficiency in scientific, technological, industrial, agricultural, and military domains, and other similar spheres;
14. securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law;
15. the expansion and strengthening of Islamic brotherhood and public cooperation among all the people;
16. framing the foreign policy of the country on the basis of Islamic criteria, fraternal commitment to all Muslims, and unsparing support to the *mus-tad'afun* of the world.

Art. 4: All civil, penal financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the *fuqaha* of the Guardian Council are judges in this matter.

Art. 5: During the Occultation of the *Wali al-'Asr* (may God hasten his reappearance), the *wilayah* and leadership of the *Ummah* devolve upon the just [*'adil*] and pious [*muttaqil*] *faqih*, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Art. 107.

**Art. 6:** In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution.

**Art. 7:** In accordance with the command of the Qur'an contained in the verse *وأمرهم شورى بينهم* ("Their affairs are by consultations among them" [42:38]) and *وشاورهم في الأمر* ("Consult them in affairs" [3:159]), consultative bodies - such as the Islamic Consultative Assembly, Provincial Councils, and the City, Region, District and Village Councils and the likes of them - are the decision-making and administrative organs of the country. The nature of each of these councils, together with the manner of their formation, their jurisdiction, and scope of their duties and functions, is determined by the Constitution and laws derived from it.

**Art. 8:** In the Islamic Republic of Iran, *al-'amr bilma'ruf wa al-nahy 'an-munkar* is a universal and reciprocal duty that must be fulfilled by the people with respect to one another, by the government with respect to the people, and by the people with respect to the government. The conditions, limits, and nature of this duty will be specified by law. (This is in accordance with the Qur'anic verse: *المؤمنون والمؤمنات بعضهم أولياء بعض يأمرون بالمعروف وينهون عن المنكر*: "The believers, men and women, are guardians of one another; they enjoin the good and forbid the evil" [9:71]).

**Art. 9:** In the Islamic Republic of Iran, the freedom, independence, unity, and territorial integrity of the country are inseparable from one another, and their preservation is the duty of the government and all individual citizens. No individual, group or authority has the right to infringe in the slightest way upon the political, cultural, economic and military independence or the territorial integrity of Iran under the pretext of exercising freedom. Similarly, no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country.

**Art. 10:** Since the family is the fundamental unit of Islamic society, all laws, regulations, and pertinent programmes must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam.

**Art. 11:** In accordance with the sacred verse of the Qur'an *إن هذه امتكم أمة واحدة وأنا ربكم فاعبدون* ("This your community is a single community, and I am your Lord, so worship Me" [21:92]), all Muslims form a single nation, and the government of the Islamic Republic of Iran has the duty of formulating its general policies with a view to cultivating the friendship and unity of all Muslim peoples, and it must constantly strive to bring about the political, economic, and cultural unity of the Islamic world.

**Art. 12:** The official religion of Iran is Islam and the Twelver Ja'fari school (in *usul al-Din* and *fiqh*), and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy

official status in matters pertaining to religious education affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of *fiqh* constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of *fiqh*, without infringing upon the rights of the followers of other schools.

**Art. 13:** Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.

**Art. 14:** In accordance with the sacred verse لا ينهاكم الله عن الذين لم يقاتلوكم في الدين ولم يخرجوكم من دياركم أن تبروهم وتقسطوا اليهم إن الله يحب المقسطين ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.

## CHAPTER II: THE OFFICIAL LANGUAGE, SCRIPT, CALENDAR AND FLAG OF THE COUNTRY

**Art. 15:** The official language and script of Iran, the lingua franca of its people, is Persian. Official documents, correspondence, and texts as well as textbooks, must be in this language and script. However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian.

**Art. 16:** Since the language of the Qur'an and Islamic texts and teachings is Arabic, and since Persian literature is thoroughly permeated by this language, it must be taught after elementary level, in all classes of secondary school and in all areas of study.

**Art. 17:** The official calendar of the country takes as its point of departure the migration of the Prophet of Islam -God's peace and blessings upon him and his Family. Both the solar and lunar Islamic calendars are recognized, but government offices will function according to the solar calendar. The official weekly holiday is Friday.

**Art. 18:** The official flag of Iran is composed of green, white and red colours with the special emblem of the Islamic Republic, together with the motto الله أكبر ...

**CHAPTER III: THE RIGHTS OF THE PEOPLE**

Art.19: All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language, and the like, do not bestow any privilege.

Art. 20: All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.

Art. 21: The government must ensure the rights of women in all respects, in conformity with Islamic criteria and accomplish the following goals:

1. create a favourable environment for the growth of woman's personality and the restoration of the rights, both the material and intellectual
2. the protection of mothers, particularly during pregnancy and childbearing, the protection of children without guardians;
3. establishing competent courts to protect and preserve the family;
4. the provision of special insurance for widows, and aged women and women without support;
5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.

Art. 22: The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.

Art. 23: The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding certain belief.

Art. 24: Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law.

Art. 25: The inspection of letters and the failure to deliver them, the recording the disclosure of telephone conversations, the disclosure of telegraphic and telex communications, censorship, or the wilful failure to transmit them, eavesdropping, and all forms of covert investigation are forbidden, except as provided by law.

Art. 26: The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them.

Art. 27: Public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam.

Art.28: Everyone has the right to choose any occupation he wishes, if it is not contrary to Islam and the public interests, and does not infringe the rights of others.

The government has the duty, with due consideration of the need of society for different kinds of work, to provide every citizen with the opportunity to work, and to create equal conditions for obtaining it.

Art. 29: To benefit from social security with respect to retirement, unemployment, old age, disability, absence of a guardian, and benefits relating to being stranded, accidents, health services, and medical care and treatment, provided through insurance or other means, is accepted as a universal right. The government must provide the foregoing services and financial support for every individual citizen by drawing, in accordance with the law, on the national revenues and funds obtained through public contributions.

Art. 30: The government must provide all citizens with free education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency.

Art. 31: It is the right of every Iranian individual and family to possess housing commensurate with his needs. The government must make land available for the implementation of this article, according to priority to those whose need is greatest, in particular the rural population and the workers.

Art. 32: No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this Article will be liable to punishment in accordance with the law.

Art. 33: No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases provided by law.

Art. 34: It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse.

Art. 35: Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.

Art. 36: The passing and execution of a sentence must be only by a competent court and in accordance with law.

Art. 37: Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.

Art. 38: All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this Article is liable to punishment in accordance with the law.



Art. 39: All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.

Art. 40: No one is entitled to exercise his rights in a way injurious to others or detrimental to public interests.

Art. 41: Iranian citizenship is the indisputable right of every Iranian, and the government cannot withdraw citizenship from any Iranian unless he himself requests it or acquires the citizenship of another country.

Art. 42: Foreign nationals may acquire Iranian citizenship within the framework of the laws. Citizenship may be withdrawn from such persons if another State accepts them as its citizens or if they request it.

#### **CHAPTER IV: ECONOMY AND FINANCIAL AFFAIRS**

Art. 43: The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. the provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education, and the necessary facilities for the establishment of a family;
2. ensuring conditions and opportunities of employment for everyone, with a view to attaining full employment; placing the means of work at the disposal of everyone who is able to work but lacks the means, in the form of cooperatives, through granting interest-free loans or recourse to any other legitimate means that neither results in the concentration or circulation of wealth in the hands of a few individuals or groups, nor turns the government into a major absolute employer. These steps must be taken with due regard for the requirements governing the general economic planning of the country at each stage of its growth;
3. the plan for the national economy, must be structured in such a manner that the form, content, and hours of work of every individual will allow him sufficient leisure and energy to engage, beyond his professional endeavour, in intellectual, political and social activities leading to all-round development of his self, to take active part in leading the affairs of the country, improve his skills, and to make full use of his creativity;
4. respect for the right to choose freely one's occupation; refraining from compelling anyone to engage in a particular job; and preventing the exploitation of another's labour;
5. the prohibition of infliction of harm and loss upon others, monopoly, hoarding, usury, and other illegitimate and evil practices;
6. the prohibition of extravagance and wastefulness in all matters related to the economy, including consumption, investment, production, distribution and services;
7. the utilization of science and technology, and the training of skilled personnel in accordance with the developmental needs of the country's economy;
8. prevention of foreign economic domination over the country's economy;



9. emphasis on increase of agricultural, live-stock, and industrial production in order to satisfy public needs and to make the country self-sufficient and free from dependence.

Art. 44: The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on systematic and sound planning.

The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State.

The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria.

The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors.

Ownership in each of these three sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other articles of this chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country, and does not harm society. The [precise] scope of each of these sectors, as well as the regulations and conditions governing their operation, will be specified by law.

Art. 45: Public wealth and property, such as uncultivated or abandoned land, mineral deposits, seas, lakes, rivers and other public waterways, mountains, valleys, forests, marshland, natural forests, unenclosed pastureland, legacies without heirs, property of undetermined ownership, and public property recovered from usurpers, shall be at the disposal of the Islamic government for it to utilize in accordance with the public interest. Law will specify detailed procedures for the utilization of each of the foregoing items.

Art. 46: Everyone is the owner of the fruits of his legitimate business and labour, and no one may deprive another of the opportunity of business and work under the pretext of his right to ownership.

Art. 47: Private ownership, legitimately acquired, is to be respected. The relevant criteria are determined by law.

Art. 48: There must be no discrimination among the various provinces with regard to the exploitation of natural resources, utilization of public revenues, and distribution of economic activities among the various provinces and regions of the country thereby ensuring that every region has access to the necessary capital and facilities in accordance with its needs and capacity for growth.

Art. 49: The government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centres of corruption, and other illicit means and sources, and restoring it to its legitimate owner; and if not such owner can be identified, it must be entrusted to the public treasury. This rule must be executed by the

government with due care, after investigation and furnishing necessary evidence in accordance with the law of Islam.

Art. 50: The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment of cause irreparable damage to it are therefore forbidden.

Art. 51: No form of taxation may be imposed except in accordance with the law. Provisions for tax exemption and reduction will be determined by law.

Art. 52: The annual budget of the country will be drawn up by the government, in the manner specified by law, and submitted to the Islamic Consultative Assembly for discussion and approval. Any change in the figures contained in the budget will be in accordance with the procedures prescribed by law.

Art. 53: All sums collected by the government will be deposited into the government accounts at the central treasury, and all disbursements, within the limits of allocations approved, shall be made in accordance with law.

Art. 54: The National Accounting Agency is to be directly under the supervision of the Islamic Consultative Assembly. Its organization and mode of operation in Tehran and at the provincial capitals, are to be determined by law.

Art. 55: The National Accounting Agency will inspect and audit, in the manner prescribed by law, all the accounts of ministers, government institutions and companies as well as other organizations that draw, in any way, on the general budget of the country, to ensure that no expenditure exceeds the allocations approved and that all sums are spent for the specified purpose. It will collect all relevant accounts documents, and records, in accordance with law, and submit to the Islamic Consultative Assembly a report for the settlement of each year's budget together with its own comments. This report must be made available to the public.

#### CHAPTER V: THE RIGHT OF NATIONAL SOVEREIGNTY AND THE POWERS DERIVING THEREFROM

Art. 56: Absolute sovereignty over the world and man belongs to God, and it is He Who has made man master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles.

Art. 57: The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute *wilayat al-'amr* and the Leadership of the *Ummah*, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other.

Art. 58: The functions of the legislature are to be exercised through the Islamic Consultative Assembly, consisting of the elected representatives of the

people. Legislation approved by this body, after going through the stages specified in the articles below, is communicated to the executive and the judiciary for implementation.

Art. 59: It extremely important economic, political, social, and cultural matters, the functions of the legislature may be exercised through direct recourse to popular vote through a referendum. Any request for such direct recourse to public opinion must be approved by two-thirds of the members of the Islamic Consultative Assembly.

Art. 60: The functions of the executive, except in the matters that are directly placed under the jurisdiction of the Leadership by the Constitution, are to be exercised by the President and the ministers.

Art. 61: The functions of the judiciary are to be performed by courts of justice, which are to be formed in accordance with the criteria of Islam, and are vested with the authority to examine and settle lawsuits, protect the rights of the public, dispense and enact justice, and implement the Divine limits [*al-hu dud al-Ilahiyyah*].

## CHAPTER VI: THE LEGISLATIVE POWER

### *SECTION ONE: The Islamic Consultative Assembly*

Art. 62: The Islamic Consultative Assembly is constituted by the representatives of the peoples elected directly and by secret ballot. The qualifications of voters and candidates, as well as the nature of election, will be specified by law.

Art. 63: The term of membership in the Islamic Consultative Assembly is four years. Elections for each term must take place before the end of the preceding term, so that the country is never without an Assembly.

Art. 64: There are to be 270 members of the Islamic Consultative Assembly which, keeping in view the human, political, geographic and other similar factors, may increase by not more than 20 for each ten-year period from the date of the national referendum of the year 1368 of the solar Islamic calendar. The Zoroastrians and Jews will each elected one representative; Assyrian and Chaldean Christian will jointly elect one representative; and Armenian Christians in the north and those in the south of the country will each elect one representative. The limits of the election constituencies and the number of representatives will be determined by law.

Art. 65: After the holding of elections, sessions of the Islamic Consultative Assembly are considered legally valid when two-thirds of the total number of members are present. Drafts and bills will be approved in accordance with the code of procedure approved by it, except in cases where the Constitution has specified a certain quorum. The consent of two-thirds of all members present is necessary for the approval of the code of procedure of the Assembly.

Art. 66: The manner of election of the Speaker and the Presiding Board of the Assembly, the number of committees and their term of office, and matters

related to conducting the discussions and maintaining the discipline of the Assembly will be determined by the code of procedure of the Assembly.

**Art. 67:** Members of the Assembly must take the following oath at the first session of the Assembly and affix their signatures to its text:

*In the Name of God, the Compassionate, the Merciful. In the presence of the Glorious Qur'an, I swear by God, the Exalted and Almighty, and undertake, swearing by my own honour as a human being, to protect the sanctity of Islam and guard the accomplishments of the Islamic Revolution of the Iranian people and the foundations of the Islamic Republic; to protect, as a just trustee, the honour bestowed upon me by the people, to observe piety in fulfilling my duties as people's representative; to remain always committed to the independence and honour of the country; to fulfilling my duties towards the nation and the service of the people' to defend the Constitution; and to bear in mind, both in speech and writing and in the expression of my views, the independence of the country, the freedom of the people, and the security of their interests.*

Members belonging to the religious minorities will swear by their own sacred books while taking this oath. Members not attending the first session will perform the ceremony of taking the oath at the first session they attend.

**Art. 68:** In time of war and the military occupation of the country, elections due to be held in occupied areas or countrywide may be delayed for a specified period if proposed by the President of the Republic, and approved by three-fourths of the total members of the Islamic Consultative Assembly, with the endorsement of the Guardian Council. If a new Assembly is not formed, the previous one will continue to function.

**Art. 69:** The deliberations of the Islamic Consultative Assembly must be open, and full minutes of them made available to the public by the radio and the official gazette. A closed session may be held in emergency conditions, if its is required for national security, upon the requisition of the President, one of the ministers, or ten members of the Assembly. Legislation passed at a closed session is valid only when approved by three-fourths of the members in the presence of the Guardian Council. After emergency conditions have ceased to exist, the minutes of such closed sessions, together with any legislation approved in them, must be made available to the public.

**Art. 70:** The President, his deputies and the ministers have the right to participate in the open sessions of the Assembly either collectively or individually. They may also have their advisers accompany them. If the members of the Assembly deem it necessary, the ministers are obliged to attend.[Conversely], whenever they request it, their statements are to be heard.

#### **SECTION TWO: Powers and Authority of the Islamic Consultative Assembly**

**Art. 71:** The Islamic Consultative Assembly can establish laws on all matters, within the limits of its competence as laid down in the Constitution.

Art. 72: The Islamic Consultative Assembly cannot enact laws contrary to the *usul* and *ahkam* of the official religion of the country or to the Constitution. It is the duty of the Guardian Council to determine whether a violation has occurred, in accordance with Art. 96.

Art. 73: The interpretation of ordinary laws falls within the competence of the Islamic Consultative Assembly. The intent of this Article does not prevent the interpretations that judges may make in the course of cassation.

Art. 74: Government bills are presented to the Islamic Consultative Assembly after receiving the approval of the Council of Ministers. Members' bills may be introduced in the Islamic Consultative Assembly if sponsored by at least fifteen members.

Art. 75: Members' bills and proposals and amendments to government bills proposed by members that entail the reduction of the public income or the increase of public expenditure may be introduced in the Assembly only if means for compensating for the decrease in income or for meeting the new expenditure are also specified.

Art. 76: The Islamic Consultative Assembly has the right to investigate and examine all the affairs of the country.

Art. 77: International treaties, protocols, contracts and agreements must be approved by the Islamic Consultative Assembly.

Art. 78: All changes in the boundaries of the country are forbidden, with the exception of minor amendments in keeping with the interests of the country, on condition that they are not unilateral, do not encroach on the independence and territorial integrity of the country, and receive the approval of four-fifths of the total members of the Islamic Consultative Assembly.

Art. 79: The proclamation of martial law is forbidden. In case of war or emergency conditions akin to war, the government has the right to impose temporarily certain necessary restrictions, with the agreement of the Islamic Consultative Assembly. In no case can such restrictions last for more than 30 days; if the need for them persists beyond this limit, the government must obtain new authorization for them from the Assembly.

Art. 80: The taking and giving of loans or grants-in-aid, domestic and foreign, by the government, must be approved by the Islamic Consultative Assembly.

Art. 81: The granting of concessions to foreigners for the formation of companies or institutions dealing with commerce, industry, agriculture, services or mineral extraction, is absolutely forbidden.

Art. 82: The employment of foreign experts is forbidden, except in cases of necessity and with the approval of the Islamic Consultative Assembly.

Art. 83: Government buildings and properties forming part of the national heritage cannot be transferred except with the approval of the Islamic Consultative Assembly; that, too, is not applicable in the case of irreplaceable treasures.

Art. 84: Every representative is responsible to the entire nation and has the right to express his views on all internal and external affairs of the country.

Art. 85: The right of membership is vested with the individual, and is not transferable to others. The Assembly cannot delegate the power of legislation to an individual or committee. But whenever necessary, it can delegate the power of legislating certain laws to its own committees, in accordance with Art. 72. In such a case, the laws will be implemented on a tentative basis for a period specified by the Assembly, and their final approval will rest with the Assembly.

Likewise, the Assembly may, in accordance with Art. 72, delegate to the relevant committees the responsibility for permanent approval of articles of association of organizations, companies, government institutions, or organizations affiliated to the government and or invest the authority in the government and or invest the authority in the government. In such a case, the government approvals must not be inconsistent with the principles and commandments of the official religion in the country and or the Constitution which question shall be determined by the Guardian Council in accordance with what is stated in Art. 96. In addition to this, the government approvals shall not be against the laws and other general rules of the country and, while calling for implementation, the same shall be brought to the knowledge of the Speaker of the Islamic Consultative Assembly for his study and indication that the approvals in question are not inconsistent with the aforesaid rules.

Art. 86: Members of the Assembly are completely free in expressing their views and casting their votes in the course of performing their duties as representatives, and they cannot be prosecuted or arrested for opinions expressed in the Assembly or votes cast in the course of performing their duties as representatives.

Art. 87: The President must obtain, for the Council of Ministers, after being formed and before all other business, a vote of confidence from the Assembly. During his incumbency, he can also seek a vote of confidence for the Council of Ministers from the Assembly on important and controversial issues.

Art. 88: Whenever at least one-fourth of the total members of the Islamic Consultative Assembly pose a question to the President, or any one members of the Assembly poses a question to a minister on a subject relating to their duties, the President or the minister is obliged to attend the Assembly and answer the question. This answer must not be delayed more than one month in the case of the President and ten days in the case of the minister, except with an excuse deemed reasonable by the Islamic Consultative Assembly.

Art. 89:

1. Members of the Islamic Consultative Assembly can interpellate the Council of Ministers or an individual minister in instances they deem necessary. Interpellations can be tabled if they bear the signatures of at least ten members.

The Council of Ministers of interpellated minister must be present in the Assembly within ten days after the tabling of the interpellation in order to answer it and seek a vote of confidence. If the Council of Ministers or the minister concerned fails to attend the Assembly, the members who tabled

the interpellation will explain their reasons, and the Assembly will declare a vote of no-confidence if it deems it necessary.

If the Assembly does not pronounce a vote of confidence, the Council of Ministers or the minister subject to interpellation is dismissed. In both cases, the ministers subject to interpellation cannot become members of the next Council of Ministers formed immediately afterwards.

2. In the event at least one-third of the members of the Islamic Consultative Assembly interpellate the President concerning his executive responsibilities in relation with the executive power and the executive affairs of the country, the President must be present in the Assembly within one month after the tabling of the interpellation in order to give adequate explanations in regards to the matters raised. In the event, after hearing the statements of the opposing and favouring members and the reply of the President, two-thirds of the members of the Assembly declare a vote of no confidence, the same will be communicated to the Leadership for information and implementation of Section (10) of Art. 110 of the Constitution.

Art. 90: Whoever has a complaint concerning the work of the Assembly or the executive power, or the judicial power can forward his complaint in writing to the Assembly. The Assembly must investigate his complaint and give a satisfactory reply. In cases where the complaint relates to the executive or the judiciary, the Assembly must demand proper investigation in the matter and an adequate explanation from them, and announce the results within a reasonable time. In cases where the subject of the complaint is of public interest, the reply must be made public.

Art. 91: With a view to safeguard the Islamic ordinances and the Constitution, in order to examine the compatibility of the legislations passed by the Islamic Consultative Assembly with Islam, a council to be known as the Guardian Council is to be constituted with the following composition:

1. six '*adil fuqaha*', conscious of the present needs and the issues of the day, to be selected by the Leader, and
2. six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly from among the Muslim jurists nominated by the Head of the Judicial Power.

Art. 92: Members of the Guardian Council are elected to serve for a period of six years, but during the first term, after three years have passed, half of the members of each group will be changed by lot and new members will be elected in their place.

Art. 93: The Islamic Consultative Assembly does not hold any legal status if there is no Guardian Council in existence, except for the purpose of approving the credentials of its members and the election of the six jurists on the Guardian Council.

Art. 94: All legislation passed by the Islamic Consultative Assembly must be sent to the Guardian Council. The Guardian Council must review it within a maximum of ten days from its receipt with a view to ensuring its compatibility with the criteria of Islam and the Constitution. If it finds the legislation incompatible, it will return it to the Assembly for review. Otherwise the legislation will be deemed enforceable.



Art. 95: In cases where the Guardian Council deems ten days inadequate for completing the process of review and delivering a definite opinion, it can request the Islamic Consultative Assembly to grant an extension of the time limit not exceeding ten days.

Art. 96: The determination of compatibility of the legislation passed by the Islamic Consultative Assembly with the laws of Islam rests with the majority vote of the *fuqaha* on the Guardian Council; and the determination of its compatibility with the Constitution rests with the majority of all the members of the Guardian Council.

Art. 97: In order to expedite the work, the members of the Guardian Council may attend the Assembly and listen to its debates when a government bill or a members' bill is under discussion. When an urgent government or members' bill is placed on the agenda of the Assembly, the members of the Guardian Council must attend the Assembly and make their views known.

Art. 98: The authority of the interpretation of the Constitution is vested with the Guardian Council, which is to be done with the consent of three-fourths of its members.

Art. 99: The Guardian Council has the responsibility of supervising the elections of the Assembly of Experts for Leadership, the President of the Republic, the Islamic Consultative Assembly, and the direct recourse to popular opinion and referenda.

#### CHAPTER VII: COUNCILS

Art. 100: In order to expedite social, economic, development, public health, cultural and educational programmes and facilitate other affairs relating to public welfare with the cooperation of the people according to local needs, the administration of each village, division, city, municipality and province will be supervised by a council to be named the Village, Division, City, Municipality, or Provincial Council. Members of each of these councils will be elected by the people of the locality in question.

Qualifications for the eligibility of electors and candidates for these councils, as well as their functions and powers, the mode of election, the jurisdiction of these councils, the hierarchy of their authority, will be determined by law, in such a way as to preserve national unity, territorial integrity, the system of the Islamic Republic, and the sovereignty of the central government.

Art. 101: In order to prevent discrimination in the preparation of programmes for the development and welfare of the provinces, to secure the cooperation of the people, and to arrange for the supervision of coordinated implementation of such programmes, a Supreme Council of the Provinces will be formed, composed of representatives of the Provincial Councils. Law will specify the manner in which this council is to be formed and the functions that it is to fulfil.

Art. 102: The Supreme Council of the Provinces has the right within its jurisdiction, to draft bills and to submit them to the Islamic Consultative Assembly, either directly or through the government. These bills must be examined by the Assembly.



Art. 103: Provincial governors, city governors, divisional governors, and other officials appointed by the government must abide by all decisions taken by the councils within their jurisdiction.

Art. 104: In order to ensure Islamic equity and cooperation in chalking out the programmes and to bring about the harmonious progress of all units of production, both industrial and agricultural, councils consisting of the representatives of the workers, peasants, other employees, and managers, will be formed in educational and administrative units, units of service industries, and other units of a like nature, similar councils will be formed in educational and administrative units, units of service industries, and other units of a like nature, similar councils will be formed, composed of representatives of the members of those units. The mode of the formation of these councils and the scope of their functions and powers, are to be specified by law.

Art. 105: Decisions taken by the councils must not be contrary to the criteria of Islam and the laws of the country.

Art. 106: The councils may not be dissolved unless they deviate from their legal duties. The body responsible for determining such deviation, as well as the manner for dissolving the councils and reforming them, will be specified by law. Should a council have any objection to its dissolution, it has the right to appeal to a competent court, and the court is duty-bound to examine its complaint outside the docket sequence.

#### CHAPTER VIII: THE LEADERS OR LEADERSHIP COUNCIL

Art. 107: After the demise of these eminent *marji' al-taqlid* and great leader of the universal Islamic revolution, and founder of the Islamic Re-public of Iran, Ayatullah *al-'Uzma* Imam Khomeini - *quaddisa sirruh al-sharif* - who was recognized and accepted as *marji'* and Leader by a decisive majority of the people, the task of appointing the Leader shall be vested with the experts elected by the people. The experts will review and consult among themselves concerning all the *fuqaha'* possessing the qualifications specified in Articles 5 and 109. In the event they find one of them better versed in Islamic regulations, the subjects of the *fiqh*, or in political and social issues, or possessing general popularity or special prominence for any of the qualifications mentioned in Art. 109, they shall elect him as the Leader. Otherwise, in the absence of such a superiority, they shall elect and declare one of them as the Leader. The Leader thus elected by the Assembly of Experts shall assume all the powers of the *wilayat al-amr* and all the responsibilities arising therefrom. The Leader is equal with the rest of the people of the country in the eyes of law.

Art. 108: The law setting out the number and qualifications of the experts [mentioned in the preceding article], the mode of their election and the code of procedure regulating the sessions during the first term must be drawn up by the *fuqaha'* on the first Guardian Council, passed by a majority of votes and then finally approved by the Leader of the Revolution. The power to make any subsequent change or a review of this law, or approval of all the provisions concerning the duties of the experts is vested in themselves.

Art. 109: Following are the essential qualifications and conditions for the Leader:

- a. scholarship, as required for performing the functions of *mufti* in different fields of *fiqh*.
- b. Justice and piety, as required for the leadership of the Islamic *Ummah*.
- c. right political and social perspicacity, prudence, courage, administrative facilities and adequate capability for leadership.

In case of multiplicity of persons fulfilling the above qualifications and conditions, the person possessing the better jurisprudential and political perspicacity will be given preference.

Art. 110: Following are the duties and powers of the Leadership:

1. Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Exigency Council.
2. Supervision over the proper execution of the general policies of the system.
3. Issuing decrees for national referenda.
4. Assuming supreme command of the armed forces.
5. Declaration of war and peace, and the mobilization of the armed forces.
6. Appointment, dismissal, and acceptance of resignation of:
  - a. the *fuqaha'* on the Guardian Council.
  - b. the supreme judicial authority of the country.
  - c. the head of the radio and television network of the Islamic Republic of Iran.
  - d. the chief of the joint staff.
  - e. the chief commander of the Islamic Revolution Guards Corps.
  - f. the supreme commanders of the armed forces.
7. Resolving differences between the three wings of the armed forces and regulations of their relations.
8. Resolving the problems, which cannot be solved by conventional methods, through the Nation's Exigency Council.
9. Signing the decree formalizing the election of the President of the Republic by the people. The suitability of candidates for the Presidency of the Republic, with respect to the qualifications specified in the Constitution, must be confirmed before elections take place by the Guardian Council, and, in the case of the first term [of the Presidency], by the Leadership;
10. Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after a vote of the Islamic Consultative Assembly testifying to his incompetence on the basis of Art. 89 of the Constitution.
11. Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation (to that effect) from the Head of judicial power.

The Leader may delegate part of his duties and powers to another person.

Art. 111: Whenever the Leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in Art.s 5 and 109, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed. The authority of determination in this matter is vested with the experts specified in Art. 108. In the event of the death, or resignation or dismissal of the Leaders, the experts shall take steps within the shortest possible time for the appointment of the new Leader. Till the appointment of

the new Leader, a council consisting of the President, head of the judiciary power, and a *faqih* from the Guardian Council, shall temporarily take over all the duties of the Leader. In the event, during this period, any one of them is unable to fulfil his duties for whatsoever reason, another person, upon the decision of majority of *fuqaha'* in the Nation's Exigency Council shall be elected in his place. This council shall take action in respect of items 1,3,5, and 10, and sections d,e and f of item 6 of Art. 119, upon the decision of three-fourths of the members of the Nation's Exigency Council.

Whenever the Leader becomes temporarily unable to perform the duties of leadership owing to his illness or any other incident, then during this period, the council mentioned in this Article shall assume his duties.

Art. 112: Upon the order of the Leader, the Nation's Exigency Council shall meet at any time the Guardian Council judges a proposed bill of the Islamic Consultative Assembly to be against the principles of *Shari'ah* or the Constitution, and the Assembly is unable to meet the expectations of the Guardian Council. Also, the Council shall meet for consideration on any issue forwarded to it by the Leader and shall carry out any other responsibility as mentioned in this Constitution. The permanent and changeable members of the Council shall be appointed by the Leader. The rules for the Council shall be formulated and approved by the Council members subject to the confirmation by the Leader.

## CHAPTER IX: THE EXECUTIVE POWER

### SECTION ONE: The Presidency

Art. 113: After the office of Leadership, the President is the highest official in the country. His is the responsibility for implementing the Constitution and acting as the head of the executive, except in matters directly concerned with (the office of) the Leadership.

Art. 114: The President is elected for a four-year term by the direct vote of the people. His re-election for a successive term is permissible only once.

Art. 115: The President must be elected from among religious and political personalities possessing the following qualifications: Iranian origin; Iranian nationality; administrative capacity and resourcefulness; a good past-record; trustworthiness and piety; convinced belief in the fundamental principles of the Islamic Republic of Iran and the official *madhhab* of the country.

Art. 116: Candidates nominated for the post of President must declare their candidature officially. Law lays down the manner in which the President is to be elected.

Art. 117: The President is elected by an absolute majority of votes polled by the voters. But if none of the candidates is able to win such a majority in the first round, voting will take place a second time on Friday of the following week. In the second round only the two candidates who received greatest number of votes in the first round will participate. If, however, some of the candidates securing greatest votes in the first round withdraw from the elec-

tions, the final choice will be between the two candidates who won greater number of votes than all the remaining candidates.

**Art. 118:** Responsibility for the supervision of the election of the President lies with the Guardian Council, as stipulated in Art. 99. But before the establishment of the first Guardian Council, however, it lies with a supervisory body to be constituted by law.

**Art. 119:** The election of a new President must take place no later than one month before the end of the term of the outgoing President. In the interim period before the election of the new President and the end of the term of the outgoing President, the outgoing President will perform the duties of the President.

**Art. 120:** In case any of the candidates whose suitability is established in terms of the qualifications listed above should die within ten days before polling day, the elections will be postponed for two weeks. If one of the candidates securing greatest number of votes dies in the intervening period between the first and second rounds of voting, the period for holding (the second round of) the election will be extended for two weeks.

**Art. 121:** The President must take the following oath and affix his signature to it at a session of the Islamic Consultative Assembly in the presence of the head of the judicial power and the members of the Guardian Council:

*In the Name of God, the Compassionate, the Merciful, I, as President, swear, in the presence of the Noble Qur'an and the people of Iran, by God, the Exalted and Almighty, that I will guard the official religion of the country, the order of the Islamic Republic and the Constitution of the country; that I will devote all my capacities and abilities to the fulfilment of the responsibilities that I have assumed; that I will dedicate myself to the service of the people, the honour of the country, the propagation of religion and morality, and the support of truth and justice, refraining from every kind of arbitrary behaviour; that I will protect the freedom and dignity of all citizens and the rights that the Constitution has accorded the people; that in guarding the frontiers and the political, economic, and cultural independence of the country I will not shirk any necessary measure; that, seeking help from God and following the Prophet of Islam and the infallible Imams (peace be upon them), I will guard, as a pious and selfless trustee, the authority vested in me by the people as a sacred trust, and transfer it to whomever the people may elect after me.*

**Art. 122:** The President, within the limits of his powers and duties, which he has by virtue of this Constitution or other laws, is responsible to the people, the Leader and the Islamic Consultative Assembly.

**Art. 123:** The President is obliged to sign legislation approved by the Assembly or the result of a referendum, after the (related) legal procedures have been completed and it has been communicated to him. After signing, he must forward it to the responsible authorities for implementation.

**Art. 124:** The President may have deputies for the performance of his constitutional duties. With the approval of the President, the first deputy of the

President shall be vested with the responsibilities of administering the affairs of the Council of Ministers and coordination of functions of other deputies.

Art. 125: The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly.

Art. 126: The President is responsible for national planning and budget and state employment affairs and may entrust the administration of these to others.

Art. 127: In special circumstances, subject to approval of the Council of Ministers, the President may appoint one or more special representatives with specific powers. In such cases, the decisions of his representative(s) will be considered as the same as those of the President and the Council of Ministers.

Art. 128: The ambassadors shall be appointed upon the recommendation of the foreign minister and approval of the President. The President signs the credentials of ambassadors and receives the credentials presented by the ambassador of the foreign countries.

Art. 129: The award of state decorations is a prerogative of the President.

Art. 130: The President shall submit his resignation to the Leader and shall continue performing his duties until his resignation is not accepted.

Art. 131: In case of death, dismissal, resignation, absence, or illness lasting longer than two months of the President, or when his term in office has ended and a new president has not been elected due to some impediments, or similar other circumstances, his first deputy shall assume, with the approval of the Leader, the powers and functions of the President. The Council, consisting of the Speaker of the Islamic Consultative Assembly, head of the judicial power, and the first deputy to the President, or other matters which prevent him to perform his duties, or when the President does not have a first deputy, the Leader shall appoint another person in his place.

Art. 132: During the period when the powers and responsibilities of the President are assigned to his first deputy or the other person in accordance with Art. 131, neither can the ministers be interpellated nor can a vote of no-confidence be passed against them. Also, neither can any step be undertaken for a review of the Constitution, nor a national referendum be held.

***SECTION TWO: The President and Ministers***

Art. 133: Ministers will be appointed by the President and will be presented to the Assembly for a vote of confidence. With the change of Assembly, a new vote of confidence will not be necessary. The number of ministers and the jurisdiction of each will be determined by law.

Art. 134: The President is the head of the Council of Ministers. He supervises the work of the ministers and takes all necessary measures to coordinate the decisions of the government. With the cooperation of the ministers, he

determines the programme and policies of the government and implements the laws. In the case of discrepancies, or interferences in the constitutional duties of the government agencies, the decision of the Council of Ministers at the request of the President shall be binding provided it does not call for an interpretation of or modification in the laws.

The President is responsible to the Assembly for the actions of the Council of Ministers.

Art. 135: The ministers shall continue in office unless they are dismissed, or given a vote of no-confidence by the Assembly as a result of their interpellation, or a motion for a motion for a vote of no-confidence against them.

The resignation of the Council of Ministers, or that of each of them shall be submitted to the President, and the Council of Ministers shall continue to function until such time as the new government is appointed. The President can appoint a caretaker for a maximum period of three months for the ministries having no minister.

Art. 136: The President can dismiss the ministers and in such a case he must obtain a vote of confidence for the new minister(s) from the Assembly. In case half of the members of the Council of Ministers are changed after the government has received its vote of confidence from the Assembly, the government must seek a fresh vote of confidence from the Assembly.

Art. 137: Each of the ministers is responsible for his duties to the President and the Assembly, but in matters approved by the Council of Ministers as a whole, he is also responsible for the actions of the others.

Art.138: In addition to instances in which the Council of Ministers or a single minister is authorised to frame procedures for the implementation of laws, the Council of Ministers has the right to lay down rules, regulations, and procedures for performing its administrative duties, ensuring the implementation of laws, and setting up administrative bodies. Each of the ministers also has the right to frame regulations and issue circulars in matters within his jurisdiction and in conformity with the decisions of the Council of Ministers. However, the content of all such regulations must not violate the letter or the spirit of the law.

The government can entrust any portion of its task to the commissions composed of some ministers. The decisions of such commissions within the rules will be binding after the endorsement of the President.

The ratifications and the regulations of the government and the decisions of the commissions mentioned under this Article shall also be brought to the notice of the Speaker of the Islamic Consultative Assembly while being communicated for implementation so that in the event he finds them contrary to law, he may send the same stating the reason for reconsideration by the Council of Ministers.

Art. 139: The settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.

Art. 140: Allegations of common crimes against the President, his deputies, and the ministers will be investigated in common courts of justice with the knowledge of the Islamic Consultative Assembly.

Art. 141: The President, the deputies to the President, ministers, and government employees cannot hold more than one government position, and it is forbidden for them to hold any kind of additional post in institutions of which all or a part of the capital belongs to the government or public institutions, to be a member of the Islamic Consultative Assembly, to practise the profession of attorney or legal adviser, or to hold the post of president, managing director, or membership of the board of directors of any kind of private company, with the exception of cooperative companies affiliated to the government departments and institutions. Teaching positions in universities and research institutions are exempted from this rule.

Art. 142: The assets of the Leader, the President, the deputies to the President, and ministers, as well as those of their spouses and offspring, are to be examined before and after their term of office by the head of the judicial power, in order to ensure they have not increased in a fashion contrary to law.

**SECTION THREE: The Army and the Islamic Revolution Guards Corps**

Art. 143: The Army of the Islamic Republic of Iran is responsible for guarding the independence and territorial integrity of the country, as well as the order of the Islamic Republic.

Art. 144: The Army of the Islamic Republic of Iran must be an Islamic Army, i.e., committed to Islamic ideology and the people, and must recruit into its service individuals who have faith in the objectives of the Islamic Revolution and are devoted to the cause of realizing its goals.

Art. 145: No foreigner will be accepted into the army or security forces of the country.

Art. 146: The establishment of any kind of foreign military based in Iran, even for peaceful purposes, is forbidden.

Art. 147: In time of peace, the government must utilize the personnel and technical equipment of the Army in relief operations, and for educational and productive ends, and the Construction Jihad, while fully observing the criteria of Islamic justice and ensuring that such utilization does not harm the combat-readiness of the Army.

Art. 148: All forms of personal use of military vehicles, equipment, and other means, as well as taking advantage of Army personnel as personal servants and chauffeurs or in similar capacities, are forbidden.

Art. 149: Promotions in military rank and their withdrawal take place in accordance with the law.

Art. 150: The Islamic Revolution Guards Corps, organized in the early days of the triumph of the Revolution, is to be maintained so that it may continue in its role of guarding the Revolution and its achievements. The scope of the duties



of this Corps, and its areas of responsibility, in relation to the duties and areas of responsibility of the other armed forces, are to be determined by law, with emphasis on brotherly cooperation and harmony among them.

Art. 151: In accordance with the noble Qur'anic verse: *وأعدوا لهم ما استطعتم من قوة ومن رباط الخيل ترهبون به عدو الله وعدوكم وآخرين من دونهم لا تعلمونهم الله يعلمهم* Prepare against them whatever force you are able to muster, and horses ready for battle, striking fear into God's enemy and your enemy, and others beyond them unknown to you but known to God...(8:60).

The government is obliged to provide a programme of military training, with all requisite facilities, for all its citizens, in accordance with the Islamic criteria, in such a way that all citizens, will always be able to engage in the armed defence of the Islamic Republic of Iran. The possession of arms, however, requires the granting of permission by the competent authorities.

#### CHAPTER X: FOREIGN POLICY

Art. 152: The foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination, both the exertion of its and submission to it, the preservation of the independence of the country in all respects and its territorial integrity, the defence of the rights of all Muslims, non-alignment with respect to the hegemonist superpowers, and the maintenance of mutually peaceful relations with all non-belligerent States.

Art. 153: Any form of agreement resulting in foreign control over the natural resources, economy, army, or culture of the country, as well as other aspects of the national life, is forbidden.

Art. 154: The Islamic Republic of Iran has as its ideal human felicity throughout human society, and considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world. Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the *mustad'afun* against the *mustakbirun* in every corner of the globe.

Art. 155: The government of the Islamic Republic of Iran may grant political asylum to those who seek it unless they are regarded as traitors and saboteurs according to the laws of Iran.

#### CHAPTER XI: THE JUDICIARY

Art. 156: The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice, and entrusted with the following duties:

1. investigating and passing judgment on grievances, violations of rights, and complaints; the resolving of litigation; the settling of disputes; and the taking of all necessary decisions and measures in probate matters as the law may determine;
2. restoring public rights and promoting justice and legitimate freedoms;
3. supervising the proper enforcement of laws;



4. uncovering crimes; prosecuting, punishing and chastising criminals; and enacting the penalties and provisions of the Islamic penal code;
5. taking suitable measures to prevent the occurrence of crime and to reform criminals.

**Art. 157:** In order to fulfil the responsibilities of the judiciary power in all the matters concerning judiciary, administrative and executive areas, the Leader shall appoint a just *Mujtahid* well versed in judiciary affairs and possessing prudence and administrative abilities as the head of the judiciary power for a period of five years who shall be the highest judicial authority.

**Art. 158:** The head of the judiciary branch is responsible for the following:

1. Establishment of the organizational structure necessary for the administration of justice commensurate with the responsibilities mentioned under Art. 156.
2. Drafting judiciary bills appropriate for the Islamic Republic.
3. Employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties, promotions, and carrying out similar administrative duties, in accordance with the law.

**Art. 159:** The courts of justice are the official bodies to which all grievances and complaints are to be referred. The formation of courts and their jurisdiction is to be determined by law.

**Art. 160:** The Minister of Justice owes responsibility in all matters concerning the relationship between the judiciary, on the one hand, and the executive and legislative branches, on the other hand. He will be elected from among the individuals proposed to the President by the head of the judiciary branch.

The head of the judiciary may delegate full authority to the Minister of Justice in financial and administrative areas and for employment of personnel other than judges in which case the Minister of Justice shall have the same authority and responsibility as those possessed by the other ministers in their capacity as the highest ranking government executives.

**Art. 161:** The Supreme Court is to be formed for the purpose of supervising the correct implementation of the laws by the courts, ensuring uniformity of judicial procedure, and fulfilling any other responsibilities assigned to it by law, on the basis of regulations to be established by the head of the judicial branch.

**Art. 162:** The chief of the Supreme Court and the Prosecutor-General must both be just *mijtahids* well versed in judicial matters. They will be nominated by the head of the judiciary branch for a period of five years, in consultation with the judges of the Supreme Court.

**Art. 163:** The conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with the criteria of *fiqh*.

**Art. 164:** A judge cannot be removed, whether temporarily or permanently, from the post he occupied except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge cannot be transferred or redesignated without his consent, except in cases when the interest of society necessitates it, that too, with the decision of the head of the judiciary branch after consultation with the chief of the Supreme Court and the Prosecutor Ge-

neral. The periodic transfer and rotation of judges will be in accordance with general regulations to be laid down by law.

Art. 165: Trials are to be held openly and members of the public may attend without any restriction; unless the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both the parties request not to hold open hearing.

Art. 166: The verdicts of courts must be well reasoned out and documented with reference to the articles and principles of the law in accordance with which they are delivered.

Art. 167: The judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic *fatawa*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement.

Art. 168: Political and press offences will be tried openly and in the presence of a jury, in courts of justice. The manner of the selection of the jury, its powers, and the definition of political offences, will be determined by law in accordance with the Islamic criteria.

Art. 169: No act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently.

Art. 170: Judges of courts are obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam, or lie outside the competence of the executive power. Everyone has the right to demand the annulment of any such regulation from the Court of Administrative Justice.

Art. 171: Whenever an individual suffers moral or material loss as the result of a default or error of the judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular cases, the defaulting judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default. Otherwise, losses will be compensated for by the State. In all such cases, the repute and good standing of the accused will be restored.

Art. 172: Military courts will be established by law to investigate crimes committed in connection with military or security duties by members of the Army, the Gendarmerie, the police, and the Islamic Revolution Guards Corps. They will be tried in public courts, however, for common crimes or crimes committed while serving the department of justice in executive capacity. The office of military prosecutor and the military courts form part of the judiciary and are subject to the same principles that regulate the judiciary.

Art. 173: In order to investigate the complaints, grievances, and objections of the people with respect to government officials, organs, and statutes, a court will be established to be known as the Court of Administrative Justice under

the supervision of the head of the judiciary branch. The jurisdiction, power and mode of operation of this court will be laid down by law.

**Art. 174:** In accordance with the right of the judiciary to supervise the proper conducting of affairs and the correct implementation of laws by the administrative organs of the government, an organization will be constituted under the supervision of the head of the judiciary Branch to be known as the National General Inspectorate. The powers and duties of this organization will be determined by law.

## **CHAPTER XII: RADIO AND TELEVISION**

**Art. 175:** The freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be guaranteed in keeping with the Islamic criteria and the best interests of the country. The appointment and dismissal of the head of the Radio and Television of the Islamic Republic of Iran rests with the Leader. A council consisting of two representatives each of the President, the head of the judiciary branch and the Islamic Consultative Assembly shall supervise the functioning of this organization. The policies and the manner of managing the organization and its supervision will be determined by law.

## **CHAPTER XIII: SUPREME COUNCIL FOR NATIONAL SECURITY**

**Art. 176:** In order to safeguarding the national interests and preserving the Islamic Revolution, the territorial integrity and national sovereignty, a Supreme Council for National Security presided over by the President shall be constituted to fulfil the following responsibilities:

1. Determining the defence and national security policies within the framework of general policies determined by the Leader.
2. Coordination of activities in the areas relating to politics, intelligence, social, cultural and economic fields in regard to general defence and security policies.
3. Exploitation of materialist and intellectual resources of the country for facing the internal and external threats.

The Council shall consist of: heads of three branches of the government, chief of the Supreme Command Council of the Armed Forces, the officer in charge of the planning and budget affairs, two representatives nominated by the Leader, ministers of foreign affairs, interior, and information, a minister related with the subject, and the highest ranking officials from the Armed Forces and the Islamic Revolution's Guards Corps. Commensurate with its duties, the Supreme Council for National Security shall form sub-councils such as Defence Sub-council and National Security Sub-council. Each Sub-council will be presided over by the President or a member of the Supreme Council for National Security appointed by the President. The scope of authority and responsibility of the Sub-councils will be determined by law and their organizational structure will be approved by the Supreme Council for National Defence. The decisions of the Supreme Council for National Security shall be effective after the confirmation by the Leader.

**CHAPTER XIV: THE REVISION OF THE CONSTITUTION**

Art. 177: The revision of the Constitution of the Islamic Republic of Iran, whenever needed by the circumstances, will be done in the following manner: The Leader issues an edict to the President after consultation with the Nation's Exigency Council stipulating the amendments or additions to be made by the Council for Revision of the Constitution which consists of:

1. Members of the Guardian Council.
2. Heads of the three branches of the government.
3. Permanent members of the Nation's Exigency Council.
4. Five members from among the Assembly of Experts.
5. Ten representatives selected by the Leader.
6. Three representatives from the Council of Ministers.
7. Three representatives from the judiciary branch.
8. Ten representatives from among the members of the Islamic Consultative Assembly.
9. Three representatives from among the university professors.

The method of working, manner of selection and the terms and conditions of the Council shall be determined by law. The decisions of the Council, after the confirmation and signatures of the Leaders, shall be valid if approved by an absolute majority vote in a national referendum. The provisions of Art. 59 of the Constitution shall not apply to the referendum for the "Revision of the Constitution."

The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria; the religious footing; the objectives of the Islamic Republic of Iran; the democratic character of the government; the *wilayat al-'amr*; the Imamate of *Umma*; and the administration of the affairs of the country based on national referenda, official religion of Iran [Islam] and the school. [Twelver Ja'fari] are unalterable.



## THE IRAQI INTERIM CONSTITUTION

Promulgated by the Revolutionary Command Council  
on July 16, 1970<sup>1</sup>

### **Decision No. 792**

The Revolutionary Command Council, in its session dated July 16, 1970, decided the following: *"Promulgating the new Interim Constitution and publishing it in the Official Paper"*.

*Ahmed Hassan Al-Bakr*  
*President of the Revolutionary Command Council*

### **CHAPTER I: THE REPUBLIC OF IRAQ**

Art. 1: Iraq is a Sovereign People's Democratic Republic. Its basic objective is the realization of one Arab State and the build-up of the socialist system.

Art. 2: The people are the source of authority and its legitimacy.

Art. 3: (a) The sovereignty of Iraq is an indivisible entity.  
(b) The territory of Iraq is an indivisible entity, of which no part can be ceded.

Art. 4: Islam is the religion of the State.

Art. 5:  
(a) Iraq is a part of the Arab Nation.  
(b) The Iraqi People are composed of two principal nationalisms: the Arab Nationalism and the Kurdish Nationalism. This constitution acknowledges the national rights of the Kurdish People and the legitimate rights of all minorities within the Iraqi unity.

Art. 6: The Iraqi nationality is regulated by the Law.

Art. 7:  
(a) Arabic is the official language.  
(b) The Kurdish language is official, besides Arabic, in the Kurdish Region.

Art. 8:  
(a) Baghdad is the Capital of the Iraqi Republic, and it can be transferred by law.  
(b) The Iraqi Republic is divided into administrative units and is organized on the basis of decentralization.

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<sup>1</sup> Translated from the Official Arabic Text by Fouad Famy Shafik

Art. 9: The Flag of the Iraqi Republic, its Emblem, and stipulations concerning the two, are regulated by law.

<b>CHAPTER II: SOCIAL AND ECONOMIC FOUNDATIONS OF THE IRAQI REPUBLIC</b>
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Art. 10: The social solidarity is the first foundation for the Society. Its essence is that every citizen accomplished his duty in full, and that the Society guarantees the citizen's rights and liberties in full.

Art. 11: The family is the nucleus of the Society. The State secures its protection and support, and ensures maternal and child care.

Art. 12: The State assumes the responsibility for planning, directing and steering the national economy for the purpose of:

- (a) Establishing the socialist system on scientific and revolutionary foundations.
- (b) Realising the economic Arab unity.

Art. 13: National resources and basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy.

Art. 14: The State secures, encourages and supports all types of cooperation in production, distribution and consumption.

Art. 15: Public ownership and properties of the Public Sector are inviolable. The State and all People are responsible for safeguarding, securing and protecting it. Any sabotage to it or aggression against it, is considered as sabotage and aggression against the entity of the society.

Art. 16:

- (a) Ownership is a social function, to be exercised within the objectives of the Society and the State's plans, according to stipulations of the law.
- (b) Private ownership and economic individual liberty are guaranteed according to the law, and on the basis of not exercising them in a manner incompatible with the economic and general planning.
- (c) Private property is not expropriated except for considerations of public interest and for just compensation in accordance with the law.
- (d) The maximum limit of agricultural property is prescribed by the law; the surplus is owned by the People.

Art. 17: Inheritance is a guaranteed right, regulated by the law.

Art. 18: Immobile ownership is prohibited for non-Iraqi, except otherwise mentioned by a law.

**CHAPTER III: FUNDAMENTAL RIGHTS AND DUTIES**

Art. 19:

- (a) Citizens are equal before the law, without discrimination because of sex, blood, language, social origin or religion.
- (b) Equal opportunities are guaranteed to all citizens, according to the law.

Art. 20:

- (a) An accused is presumed to be innocent, until proved guilty at a legal trial.
- (b) The right of defense is sacred, in all stages of proceedings and prosecution
- (c) Courts sessions are public, unless it becomes secret by a court's decision.

Art. 21:

- (a) Penalty is personal.
- (b) There can be no crime, nor punishment, except in conformity with the law. No penalty shall be imposed, except for acts criminalized by the law, while they are committed. A severe penalty than that prescribed by the law, when the act was committed, cannot be inflicted.

Art. 22:

- (a) The dignity of man is safeguarded. It is inadmissible to cause any physical or psychological harm.
- (b) It is inadmissible to arrest a person, to stop him, to imprison him or to search him, except in accordance with the rules of the law.
- (c) Homes have their sanctity. It is inadmissible to enter or search them, except in accordance with the rules of the law.

Art. 23: The secrecy of means of communications by mail, telegrams and telephones is guaranteed. It is inadmissible to disclose it, except for considerations of justice and security, in accordance with the rules prescribed by the law.

Art. 24: It is inadmissible to prevent the citizen from the departure from the Country or returning to it, nor to restrict his moves or residence in the Country, except in cases laid down by the law.

Art. 25: Freedom of religions, faith and the exercise of religious rites, is guaranteed, in accordance with the rules of constitution and laws and in compliance with morals and public order.

Art. 26: The Constitution guarantees freedom of opinion, publication, meeting, demonstrations and formation of political parties, syndicates and societies in accordance with the objectives of the Constitution and within the limits of the law. The State ensures the considerations necessary to exercise these liberties, which comply with the revolutionary, national and progressive trend.

Art. 27:

- (a) The State undertakes the struggle against illiteracy and guarantees the right of education, free of charge, in its primary, secondary and university stages, for all citizens.
- (b) The State strives to make the primary education compulsory, to expand vocational and technical education in cities and rural areas and to encourage particularly night education which enables the popular masses to combine science and work.

- (c) The State guarantees the freedom of scientific research, encourages and rewards excellence and initiative in all mental, scientific and artistic activities and all aspects of popular excellence.

Art. 28: Education has the objective of raising and developing the general educational level, promoting scientific thinking, animating the research spirit, responding to exigencies of economic and social evolution and development programs, creating a national, liberal and progressive generation, strong physically and morally, proud of his people, his homeland and heritage, aware of all his national rights, and who struggles against the capitalistic ideology, exploitation, reaction, Zionism, and imperialism for the purpose of realizing the Arab unity, liberty and socialism.

Art. 29: The State undertakes to make available, the means of enjoying the achievements of modernization, by the popular masses and to generalize the progressive accomplishments of contemporary civilization on all citizens.

Art. 30:

- (a) Public office is a sacred confidence and a social service; its essence is the honest and conscious obligation to the interests of the masses, their rights and liberties, in accordance with the rules of the constitution and the laws.  
(b) Equality in the appointment for public offices is guaranteed by the law.

Art. 31-

- (a) The defense of the homeland is a sacred duty and honor for the citizens; conscription is compulsory and regulated by the law.  
(b) Armed Forces belong to the People and are entrusted with ensuring his security, defending his independence, protecting the safety and the integrity of the people and territory, and realizing his national and regional objectives and aspirations.  
(c) The State alone establishes the Armed Forces. No other organization or group, is entitled to establish military or para-military formations.

Art. 32:

- (a) Work is a right, which is ensured to be available for every able citizen.  
(b) Work is an honor and a sacred duty for every able citizen, and is indispensable by the necessity to participate in building the society, protecting it and realizing its evolution and prosperity.  
(c) The States undertakes to improve the conditions of work and raise the standard of living, experience and culture for all working citizens.  
(d) The State undertakes to provide the largest scale of social securities for all citizens, in cases of sickness,  
(e) The State undertakes to elaborate the plan to secure the means necessary to enable the working citizens to pass their vacation in an atmosphere, which enables them to improve their health standard and to promote their cultural and artistic talents.  
(f)

Art. 33: The State assumes the responsibility to safeguard the public health by continually expanding free medical services, in protection, treatment and medicine, within the scope of cities and rural areas.

Art. 34:

- (a) The Iraqi Republic grants the right of political asylum for all militants, per-



secuted in their countries because of defending the liberal and human principles which are assumed by the Iraqi People in this Constitution.

(b) The extradition of political refugees is prohibited.

Art. 35: Payment of taxes is the duty of every citizen. Taxes cannot be imposed, nor modified, nor levied, except by a law.

Art. 36: It is prohibited to exercise any activity against the objectives of the People stipulated in this Constitution. Every act or behavior, having for purpose to crumble the national unity of the popular masses or to provoke racial, sectarian or regional discrimination among them, or to be hostile to their gains and progressive achievements.

#### CHAPTER IV: INSTITUTIONS OF THE IRAQI REPUBLIC

##### *SECTION I: The Revolutionary Command Council*

Art. 37: The Revolutionary Command Council is the supreme institution in the State, which on July 17, 1968, assumed the responsibility to realize the public will of the people, by removing the authority from the reactionary, individual and corruptive regime, and returning it to the people.

Art. 38: The Revolutionary Command Council exercises the following competences by a two-third majority of its members:

- (a) Electing a President from its members, called President of the Revolutionary Council, who is President of the Republic.
- (b) Electing a Vice-President from its members, called Vice-President of the Revolutionary Command Council, who replaces the President, as qualified in the preceding paragraph, in case of his official absence or in case of the impossibility of exercising his constitutional competences for any legitimate reason.
- (c) Selecting new members for the Council from members of the Regional Leadership of the Socialist Arab Ba'ath Party, not to exceed 12 members.
- (d) Taking a decision concerning the resignation of the President, and Vice-President or any of the Council's members.
- (e) Relieving any member of the Council's membership.
- (f) Accusing and prosecuting members of the Revolutionary Command Council, Vice-Presidents and Ministers.

Art. 39: The President of the Revolutionary Command Council, the Vice-President and the members take the following oath before the Council: *"I swear by God Almighty, by my honor and by my faith to preserve the Republican system, to commit myself to its Constitution and laws, to look after the independence of the Country, its security and territorial integrity and to do my best earnestly and sincerely to realize the objectives of the Arab Nation for Unity, Freedom and Socialism."*

Art. 40: The President of the Revolutionary Command Council, the Vice-President, and the members enjoy full immunity. No measures can be taken against any of them without a priori permission of the Council.

**Art. 41:**

- (a) The President, the Vice-President or the third of the members can call a meeting of the Revolutionary Command Council. Meetings held are presided by the President or the Vice-President, and are attended by the majority of the members.
- (b) Meetings and debates of the Revolutionary Command Council are closed. Disclosing it invokes constitutional responsibility before the Council. Decisions of the Council are declared, published and communicated by the means specified in this Constitution.
- (c) Laws and decisions are ratified in the Council by the majority of its members, except otherwise stipulated by the Constitution.

**Art. 42:** The Revolutionary Command Council exercises the following competences:

- (a) Issuing laws and decrees having the force of the law.
- (b) Issuing decisions indispensable for applying the rules of the enacted laws.

**Art. 43:** The Revolutionary Command Council exercises the following competences by the majority of its members:

- (a) Ratifying matters of the Ministry of Defense and Public Security, elaborating the laws and taking the decisions in whatever concerns them from the point of view of organization and competences.
- (b) Declaring the public mobilization totally or partially, declaring the war, accepting the truce and concluding the peace.
- (c) Ratifying the draft general budget of the State, independent and investment budgets annexed to it and ratifying final accounts.
- (d) Ratifying treaties and international agreements.
- (e) Elaborating its internal rules of procedure, determining its competences, ratifying its budget, appointing its officials, determining rewards and remunerations of the President, the Vice-President, its members and officials.
- (f) Elaborating the rules regarding the prosecution of its members, concerning the formation of the court and the procedures to be followed in it.
- (g) Vesting its President or the Vice-President with some of his competences prescribed in this Constitution, except legislative competences.

**Art. 44:** The President of the Revolutionary Command Council undertakes:

- (a) Presiding over the meetings of the Council, representing it, controlling its session and issuing order for expenditure.
- (b) Signing all laws and decisions issued by the Council and publishing them in the Official Gazette.
- (c) Supervising the activities of Ministries and Organizations in the State, calling Ministers to discuss matters concerning their Ministries and questioning them in case of necessity and notifying the Revolutionary Command Council regarding that.

**Art. 45:** The President of the Revolutionary Command Council, the Vice-President and its members, each is responsible before the Council, for violating the Constitution or for breaking the constituencies of the constitutional oath, or for any action or behavior, considered by the Council as disgracing the honor of the responsibility which he assumes.

**SECTION II: The National Council**

**Art. 46:** The National Council is composed of the People's representatives from various political, economic and social sectors. Its formation, membership, work procedures and its jurisdiction are determined by a special law, called the National Council Law.

**Art. 47:** The National Council must be held in two ordinary sessions, every year. The President can call it for an extraordinary meeting in case of necessity, and the meeting is restricted to matters which necessitated calling the meeting. Sessions of the National Council are held and dismissed by a decision of the Revolutionary Common Council.

**Art. 48:** The meetings of the Council are public, unless it is decided that some are to be held closed according to rules specified in its law.

**Art. 49:**

- (a) Members of the National Council are not censured for opinions or suggestions expressed by them in the performance of their tasks.
- (b) No member of the Council can be pursued or arrested for a crime committed during a meeting session without permission of the Council, except in the case of flagrante delicto.

**Art. 50:** The National Council undertakes:

- (a) Elaborating its internal statute, determining its competences, deciding its budget and appointing its employees. Rewards and remunerations of its President and members are determined by a law.
- (b) Elaborating rules for accusing and prosecuting its members, in case of committing one of the actions stipulated in Article 55 of this Constitution.

**Art. 51:** The National Council considers the draft laws proposed by the Revolutionary Command Council within 15 days from the date of their delivery to the office of the Presidency of the National Council. If the Council approves the draft, it is sent to the President of the Republic, to be promulgated; but if it is rejected or modified by the National Council, it is returned to the Revolutionary Command Council. If this latter approves the modification, it sends the draft to the President of the Republic, to be promulgated. If the Revolutionary Command Council insists upon its point of view, in the second reading, it is returned to the National Council, to be reviewed in a common meeting between the two Councils; the decision taken by a two-thirds majority, is considered final.

**Art. 52:** The National Council, considers, within 15 days, the draft laws presented to it by the President of the Republic. If the Council rejects the draft, it is returned to the President of the Republic, with the reasons which justified the rejection. But, if it approves it, it is sent to the Revolutionary Command Council, which if approves it, becomes issuable. But, if the National Council Command Council modifies it, the draft is sent to the Revolutionary Command Council which if approves it, becomes issuable. But, if the Revolutionary Command Council opposes to modifying the draft, or if it makes another modification, it is returned another time to the National Council within a week. If the National Council approves the point of view of the Revolutionary Command Council, it sends the draft to the President of the Republic for promulgating it. But if the National Council insists, in the second

reading, upon its point of view, a common meeting for the two Councils is held, and the draft issued by the two-thirds majority is considered definite and is sent to the President of the Republic, to be promulgated.

Art. 53: The National Council considers the draft laws presented by a quarter of its members, in other than military, financial matters and public security affairs.

If the Council approves the draft law, it is sent to the Revolutionary Command Council to be considered within 15 days from its delivery to the Council's Office. If the Revolutionary Command Council approves the draft it is sent to the President of the Republic, to be promulgated. But, if the Revolutionary Command Council rejects it, the draft is returned to the National Council. But, if the Revolutionary Command Council modifies it, it is returned to the National Council. If this latter insists upon its point of view, in the second reading, a common meeting for the two Councils is held, presided over by the President of the Revolutionary Command Council or the Vice-President. The draft issued by a two-thirds majority is considered definite and is sent to the President of the Republic, to be promulgated.

Art. 54:

- (a) Vice-Presidents of the Republic, Ministers and those at their rank, have the right to attend the meetings of the National Council and to participate in its debates.
- (b) The National Council, with a permission of the President of the republic, has the right to call Ministers for the purpose of clarification or investigation.

Art. 55: The President of the National Council and every member of it, is responsible before the Council, for violating the Constitution or for breaking the constituencies of the constitutional oath or for any action or behavior, considered by the National Council as disgracing the honor of the responsibility which he assumes.

### ***SECTION III: The President of the Republic***

Art. 56:

- (a) The President of the Republic is the Head of the State and the Supreme Commander of the Armed Forces and he exercises the Executive Authority directly or by the assistance of his Deputies and Ministers, according to the rules of the Constitution.
- (b) The President of the Republic issues the decrees necessary for exercising his competences stipulated in this Constitution.

Art. 57: The President of the Republic exercises the following competences:

- (a) Preserving the independence of the Country, its territorial integrity, safeguarding its internal and external security and protecting the rights and liberties of all citizens.
- (b) Declaring the state of total and partial emergency and ending it according to the law.
- (c) Appointing the Vice-Presidents of the Republic and relieving them of their posts.
- (d) Appointing the governors, the judges and all civil and military State employees, promoting them, terminating their services, placing them on dispo-

bility and granting badges of honor and military grades, according to the law.

- (e) Elaborating the draft general State budget, the independent and investment budgets annexed to it and ratifying the final accounts of these budgets and referring them to the National Council to discuss them.
- (f) Preparing the general plan of the State in all economic and social affairs, elaborated by competent Ministries and referring it to the National Council.
- (g) Contracting and granting loans, supervising the organization and administration of money and credit.
- (h) Supervising all the public utilities, official and quasi-official organizations and public sector organizations.
- (i) Directing and controlling the work of ministries and public organizations and coordinating them.
- (j) Conducting negotiations and concluding agreements and international treaties.
- (k) Accepting the diplomatic and international representatives in Iraq and demanding their withdrawal.
- (l) Appointing and accrediting the Iraqi diplomatic representatives in Arab and foreign Capitals and in international conferences and organizations

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Art. 53: The National Council considers the draft laws presented by a quarter of its members, in other than military, financial matters and public security affairs.

If the Council approves the draft law, it is sent to the Revolutionary Command Council to be considered within 15 days from its delivery to the Council's Office. If the Revolutionary Command Council approves the draft it is sent to the President of the Republic, to be promulgated. But, if the Revolutionary Command Council rejects it, the draft is returned to the National Council. But, if the Revolutionary Command Council modifies it, it is returned to the National Council. If this latter insists upon its point of view, in the second reading, a common meeting for the two Councils is held, presided over by the President of the Revolutionary Command Council or the Vice-President. The draft issued by a two-thirds majority is considered definite and is sent to the President of the Republic, to be promulgated.

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- (b) Declaring the state of total and partial emergency and ending it according to the law.
- (c) Appointing the Vice-Presidents of the Republic and relieving them of their posts.

- bility and granting badges of honor and military grades, according to the law.
- (e) Elaborating the draft general State budget, the independent and investment budgets annexed to it and ratifying the final accounts of these budgets and referring them to the National Council to discuss them.
  - (f) Preparing the general plan of the State in all economic and social affairs, elaborated by competent Ministries and referring it to the National Council.
  - (g) Contracting and granting loans, supervising the organization and administration of money and credit.
  - (h) Supervising all the public utilities, official and quasi-official organizations and public sector organizations.
  - (i) Directing and controlling the work of ministries and public organizations and coordinating them.
  - (j) Conducting negotiations and concluding agreements and international treaties.
  - (k) Accepting the diplomatic and international representatives in Iraq and demanding their withdrawal.
  - (l) Appointing and accrediting the Iraqi diplomatic representatives in Arab and foreign Capitals and in international conferences and organizations.
  - (m) Issuing special amnesty and ratifying judgements of capital punishment.
  - (n) Supervising the good enforcement of the Constitution, the laws, decisions, judicial judgements and developmental plans in all parts of the Iraqi Republic.
  - (o) Conferring some of his constitutional competences to one or more of his deputies.

Art. 58: Vice-President of the Republic and Ministers are responsible for their functions before the President of the Republic. He has the right to bring any of them to trial according to the rules of Constitution, for functional errors committed by him, for exploiting the authority or for misusing it

Art. 59: Vice-President of the Republic and Ministers take the following oath before the President of the Republic, before assuming the responsibilities of their functions: *"I swear by God Almighty, by my honor and my faith to preserve the Republican system, to commit myself to its Constitution and laws, to look after the independence of the Country, its security and territorial integrity and to do my best earnestly and sincerely to realize the objectives of the People."*

#### **SECTION IV: The Judiciary**

Art. 60:

- (a) The judiciary is independent and is subject to no other authority save that of the law.
- (b) The right of litigation is ensured to all citizens.
- (c) The law determines the way of Courts formation, their levels, jurisdiction and conditions for the appointment, transfer, promotion, litigation and dismissal of judges and magistrates.

Art. 61: The law determines the posts of public prosecution, its agencies and conditions for the appointment of the attorneys general, their deputies, rules of their transfer, promotion, litigation and dismissal

**CHAPTER V: GENERAL PROVISIONS**

Art. 62:

- (a) To be member of the Revolutionary Command Council or Vice-President of the Republic or Minister, a person must be Iraqi by birth, born of two Iraqi parents, by birth also.
- (b) It is inadmissible for Members of the Revolutionary Command Council, Vice-Presidents of the Republic and Ministers, during their term of office, to pursue an private professional or commercial work or to buy any State property or to sell or exchange with the State any of their own properties.

Art. 63:

- (a) The rules of this constitution are enforced till the Permanent Constitution is promulgated.
- (b) This Constitution cannot be modified except by the Revolutionary Command Council and by a two-thirds majority of its members.

Art. 64:

- (a) Laws are published in the Official Gazette and are put into force, effective the date of publication, unless otherwise stipulated.
- (b) Laws have no retroactive effect, unless otherwise stipulated. This exception does not include penal laws, tax laws and fiscal fees.

Art. 65: This Interim Constitution and all laws and judiciary judgements are promulgated and put into force, in the name of the People.

Art. 66: All laws and decisions of the Revolutionary Command Council, enacted prior to the promulgation of this Constitution, remain in force and cannot be modified or abolished except in accordance with the procedures prescribed in this Constitution.

Art. 67: The President of the Revolutionary Command Council undertakes promulgating this Constitution and publishing it in the Official Gazette.





## ISRAEL'S BASIC LAWS

### BASIC LAW: THE KNESSET

(Adopted: 12 Feb 1958 / Status: 19 May 1987)

#### PART 1: STATUS, ELECTION

##### Section 1: What the Knesset is

The Knesset is the parliament of the State.

##### Section 2: Place of sitting

The place of sitting of the Knesset is Jerusalem.

##### Section 3: Composition

The Knesset shall, upon its election, consist of 120 members.

##### Section 4: Electoral system

The Knesset shall be elected by general, national, direct, equal, secret and proportional elections, in accordance with the Knesset Elections Law; this section shall not be varied save by a majority of the members of the Knesset.

##### Section 5: The right to vote

Every Israel national of or over the age of eighteen years shall have the right to vote in elections to the Knesset unless a court has deprived him of that right by virtue of any law; the Elections Law shall determine the time at which a person shall be considered to be eighteen years of age for the purpose of the exercise of the right to vote in elections to the Knesset.

##### Section 6: The right to be elected

- (a) Every Israel national who on the day of the admission of a candidates list containing his name is 21 years of age or over shall have the right to be elected to the Knesset unless a court has deprived him of that right by virtue of any Law or he has been sentenced to a penalty of actual imprisonment for a term of five years or more for an offence against the security of the State designated in that behalf by the Knesset Elections Law and five years have not yet passed since the day when he terminated his period of imprisonment.
- (b) Where an Israeli national is a national also of another state, and the law of that state enables his release from its nationality, he shall not be a candidate for the Knesset unless, by the time of the submission of the candidates' list including his name and to the satisfaction of the chairman of the Knesset Central Elections Committee, he has done everything required on his part to be released therefrom. For this purpose, a person shall not be regarded as a national of another state unless, at any time, he had a passport of that state or another document attesting to his being a national of that state.

##### Section 7: Who shall not be a candidate

The following shall not be candidates for the Knesset:

- (1) the President of the State;
- (2) the two Chief Rabbis;

- (3) a judge, so long as he holds office;
- (4) a judge of a religious court, so long as he holds office;
- (5) the State Comptroller;
- (6) the Chief of the General Staff of the Defence Army of Israel;
- (7) rabbis and ministers of other religions while holding office for a remuneration;
- (8) senior State employees and senior Army officers of such grades or ranks and in such functions as shall be determined by Law.

**Section 7a: Prevention of Participation of Candidates List**

A candidate's list shall not participate in elections to the Knesset if its objects or actions, expressly or by implication, include one of the following:

- (1) negation of the existence of the State of Israel as state of the Jewish people;
- (2) negation of the democratic character of the State;
- (3) incitement to racism.

**Section 8: Term of office of the Knesset**

The term of office of the Knesset shall be four years from the day on which it is elected.

**Section 9: Date of elections**

The elections to the Knesset shall take place on the third Tuesday of the month of Cheshvan in the year in which the tenure of the outgoing Knesset ends. But if the year which preceded that year was a leap year, the elections shall take place on the first Tuesday of that month.

**Section 9a: Lengthening of Period of Service**

- (a) The Knesset will not lengthen its period of service save by a law adopted by a majority of 80 of the Knesset members and in special circumstances that prevent the conduct of timely elections; the period of extension shall not exceed the amount of time necessitated by the said circumstances; the stated law will state the date of the elections.
- (b) Without prejudice to the provisions of Section 34, the Knesset may by a decision of a majority of its members, bring forward the election date determined according to Subsection (a), provided that the new date not precede the election date for the Knesset according to Section 9.

**Section 10: Election day to be a day of rest**

Election day shall be a day of rest, but transport services and other public services shall function normally.

**Section 11: Publication of election results**

The results of the elections shall be published in Reshumot within 14 days from election day.

**PART II: OPENING**

**Section 12: Convening of the Knesset**

The Knesset shall convene for its first meeting on Monday in the second week following the week in which the election results are published, at four o'clock in the afternoon, or, if that day is a festival or the eve of festival, on the work-day next following the festival.

**Section 13: Opening of the Knesset**

The Knesset shall be opened by the President of the State or, in his absence, by the oldest Knesset member present; if the President of the State opens the Knesset, he shall hand over the chairmanship of the meeting to the oldest Knesset member present.

**Section 14: Declaration of allegiance by members of the Knesset**

When the oldest Knesset member has opened the first meeting of the Knesset or taken over the chairmanship thereof, he shall make his declaration of allegiance as a Knesset member; the declaration shall read as follows: "*I pledge myself to bear allegiance to the State of Israel and faithfully to discharge my mandate in the Knesset.*" When the oldest Knesset member has made his declaration of allegiance, he shall read the text once more to the members of the Knesset, and each of them in turn shall rise and declare: "*I pledge myself.*"

**Section 15: Declaration after the opening meeting**

A Knesset member who was not present at the opening meeting or who became a Knesset member after that meeting shall make his declaration of allegiance at the first meeting that he attends; the chairman of the meeting shall read to him the text of the declaration, and the member shall rise and declare: "*I pledge myself.*"

**Section 16: Failure to make declaration**

Where the Chairman of the Knesset has called upon a member of the Knesset to make his declaration of allegiance and the member has not done so, the member shall not enjoy the rights of a member of the Knesset so long as he has not made the declaration.

**Section 17: Immunity of Knesset members**

The members of the Knesset shall have immunity; particulars shall be prescribed by Law.

**Section 18: Immunity of Knesset buildings**

The building of the Knesset shall have immunity; particulars shall be prescribed by Law.

**PART III: PROCEDURES, FUNCTIONS****Section 19: Procedure and rules**

The Knesset shall itself prescribe its procedure; in so far as such procedure has not been prescribed by Law, the Knesset shall prescribe it by rules; so long as the procedure has not been prescribed as aforesaid, the Knesset shall follow its accepted practice and routine.

**Section 20: Chairman and Vice-Chairmen**

The Knesset shall elect from among its members a Chairman and Vice-Chairmen.

**Section 20a: Acting Chairman and Interim Chairman of Knesset**

- (a) Whenever the Chairman of the Knesset leaves the territory of the State, a Vice-Chairman shall serve as Acting Chairman until his return.
- (b) Whenever the Chairman of the Knesset notifies the House Committee, or if the House Committee decides, that for reasons of health the Chairman of

the Knesset is temporarily unable to carry out his functions, a Vice-Chairman shall serve as Acting Chairman until the Chairman notifies the House Committee or until the House Committee decides that the Chairman is no longer unable to carry out his functions.

(c) When the post of Chairman of the Knesset has fallen vacant - because the Chairman has resigned or has died or because the House Committee has decided that for reasons of health he is permanently unable to carry out his functions - a Vice-Chairman shall serve as Interim Chairman until the Knesset elects a new Chairman.

(d) The Vice-Chairman who is to serve as Acting or Interim Chairman of the Knesset shall be elected in that behalf by the House Committee.

(e) During his tenure as Acting Chairman or Interim Chairman of the Knesset, the Vice-Chairman shall serve in every capacity assigned to the Chairman of the Knesset by law, shall carry out every function imposed upon the Chairman of the Knesset by law and shall exercise every power vested in the Chairman of the Knesset by law.

(f) The provisions of this section shall also apply, mutatis mutandis, if the circumstances envisaged in Subsection (a), (b) or (c) with regard to the Chairman of the Knesset exist with regard to a Vice-Chairman who is serving as Acting Chairman or Interim Chairman.

#### **Section 21: Committees**

The Knesset shall elect from among its members permanent committees, and it may elect from among its members committees for specific matters; the functions, powers and procedure of the committees shall, in so far as they are not prescribed by Law, be prescribed by the Rules.

#### **Section 22: Commissions of inquiry**

The Knesset may appoint commissions of inquiry - either by empowering one of the permanent committees in that behalf or by electing a commission from among its members - to investigate matters designated by the Knesset; the powers and functions of a commission of inquiry shall be prescribed by the Knesset; every commission of inquiry shall include also representatives of party groups which do not participate in the Government, in accordance with the relative strength of the party groups in the Knesset.

#### **Section 23: Government member who is not a member of the Knesset**

A member of the Government who is not a member of the Knesset shall, as to everything relating to the Knesset, have the same status as a member of the Government who is a member of the Knesset, except that he shall not have the right to vote.

#### **Section 24: Quorum**

The Knesset shall hold debates and pass decisions whatever the number of members present save as otherwise provided by Law.

#### **Section 25: Majority**

Save as otherwise provided by Law, the Knesset shall pass its decisions by a majority of those participating in the voting - those abstaining not being reckoned as participating - and the voting procedure shall be prescribed by the rules.

#### **Section 26: Meetings**

The meetings of the Knesset shall be held at its place of sitting:

to the date of the elections to the next Knesset.

**Section 36: Term of office of the Knesset after dissolution**

If the Knesset decides to dissolve itself, the term of office of the next Knesset shall run until the month of Cheshvan next following the termination of four years from the day of its election.

**Section 37: Continuity of the Knesset**

The outgoing Knesset shall continue to hold office until the convening of the incoming Knesset.

**Section 38: Extension of validity of enactments**

Any enactment due to expire during the last two months of the term of office of the outgoing Knesset or within four months after the Knesset has decided to dissolve itself or during the first three months of the term of office of the incoming Knesset shall continue in force until the expiration of the said three months.

**PART V: MEMBERS**

**Section 39: Remuneration of members of the Knesset**

The members of the Knesset shall receive a remuneration as provided by Law.

**Section 40: Resignation of member of the Knesset**

A member of the Knesset may resign his office; resignation shall be by personal presentation of a letter of resignation by the resigning member to the Chairman of the Knesset or, if the member is unable to present the letter of resignation personally, by transmission thereof in the manner prescribed by the Rules; the letter of resignation shall be signed on the day of the presentation or transmission.

**Section 41: Consequences of resignation**

If a member of the Knesset tenders his resignation, his membership of the Knesset shall cease 48 hours after the letter of resignation reaches the Chairman of the Knesset, unless the member withdraws resignation before then.

**Section 42: Termination of tenure of member of the Knesset**

If a member of the Knesset is elected or appointed to one of the posts the holders of which are debarred from being candidates for the Knesset, his membership of the Knesset shall cease upon the election or appointment.

**Section 42a: Knesset Member who has been convicted**

- (a) The Knesset may, by resolution, remove a Knesset Member from office if it finds that he is not worthy of his office because he has been convicted, by final judgment, of a criminal offence and been sentenced to a penalty of actual imprisonment for a term of one year or more.
- (b) The Knesset shall not remove a Knesset Member from office save following a complaint brought before the House Committee by at least ten Knesset Members and upon the proposal of the House Committee. A resolution of the Knesset to remove a Knesset Member from office shall not be passed save by a two-thirds majority of the Members of the Knesset.

The House Committee shall not propose, and the Knesset shall not resolve upon the removal of a Knesset Member from office before he has been given an opportunity to be heard.

**Section 42b: Suspension**

- (a) Where a Knesset Member has been convicted of a criminal offence, the House Committee may, upon the proposal of any Knesset Member, suspend him from office as a Knesset member for the period during which the judgment is not final.
- (b) Where a Knesset member has been convicted of a criminal offence and sentenced to imprisonment, the House Committee may, upon the proposal of any Knesset Member, suspend him from his office as a Knesset Member for the period during which he is undergoing his penalty of imprisonment.
- (c) The House Committee shall not pass a resolution under this section before the Knesset Member has been given an opportunity to be heard.

**Section 43: Replacement of Knesset member**

- (a) If the seat of a member of the Knesset falls vacant, it shall be filled by the candidate who, in the list of candidates which included the name of the late member, figured immediately after the last of the elected candidates.
- (b) Where a person's membership of the Knesset has been suspended under Section 42, his seat shall become vacant for the period of the suspension and his place shall be taken by the candidate referred to in Subsection (a). If he resumes his seat, the last of the list of candidates who became a Knesset Member shall cease to hold office, but his right to become again a Knesset Member thereafter, by virtue of the provision of Subsection (a), shall not be affected thereby.

**PART VI: MISCELLANEOUS**

**Section 44: Law not to be affected by emergency regulations**

Notwithstanding the provision of any other law, this Law cannot be varied, suspended, or made subject to conditions, by emergency regulations.

**Section 45: Entrenched sections**

The Section 44 or this section shall not be varied save by a majority of 80 members of the Knesset.

**Section 45a: Entrenchment provision**

The provision of Section 45 will also apply to a change according to Section 9a (a).

**Section 46: Special majority when required**

The majority required under this law for the alteration of sections 4,9,34,44 or 45 shall be required for decisions of the Knesset plenary at every stage of law-making, except a debate on a motion for the Knesset agenda. In this section, "variation" means both an express and an implicit variation.

**BASIC LAW: ISRAEL LANDS**

(Adopted: 19 July 1960 / Status: 19 July 1960)

**Section 1: Prohibition of transfer of ownership**

The ownership of Israel lands, being the lands in Israel of the State, the Deve-

lopment Authority or the Keren Kayemet Le-Israel, shall not be transferred either by sale or in any other manner.

**Section 2: Permission by Law**

The Section 1 shall not apply to classes of lands and classes of transactions determined for that purpose by Law.

**Section 3: Definition**

In this Law, "lands" means land, houses, buildings and anything permanently fixed to land.

**AGREEMENT ON THE GAZA STRIP AND JERICHO AREA**

(Adopted: 4 May 1994 / Valid: 1 Jan 1995 / Status: 1 Jan1995)

**Section 1: Purpose of the Law**

The purpose of this law is to ensure compliance with the undertaking of the Palestine Liberation Organization (hereinafter "the PLO") concerning the restriction on the activity of the Palestinian Authority to the areas of Gaza and Jericho in accordance with the Agreement and to prevent activity of a political or governmental nature or other similar activity within the area of the State of Israel which does not accord with respect for the sovereignty of the State of Israel by the Palestinian Authority or the PLO, without the agreement of the State of Israel.

**Section 2: Definitions**

"Meeting" -includes a march, assembly or congress; "the Agreement" - the Agreement on the Gaza Strip and the Jericho Area signed at Cairo between the State of Israel and the PLO on 4 May, 1994; "the Palestinian Authority" and "the areas of Gaza and Jericho" - as defined in the Emergency Regulations (Judea and Samaria and the Gaza Strip - Jurisdiction over Offences and Legal Assistance) 1967; "Representative Mission" - includes any institution, office or branch.

**Section 3: Restriction on Palestinian Authority**

- (a) The Palestinian Authority shall not open or operate a representative mission, and shall not hold a meeting, in the area of the State of Israel unless written permission for this has been given by the State of Israel or by someone authorized by it to do so;
- (b) The Minister of Police may, by means of an order, prohibit the opening or operation of a representative mission of the Palestinian Authority, order its closure, or prevent the holding of a meeting, if permission has not been obtained in accordance with sub-paragraph (a).
- (c) Orders referred to in sub-paragraph (b) shall be served, insofar as possible, on the owner of the premises, or the occupier, or the organizers, or whoever it seems to the Minister of Police is responsible for the activity which is the subject of the order; where it is not possible to serve the order as aforesaid, the Minister of Police shall give instructions for its publication in a manner which he shall establish; a notice concerning the giving of the order shall be published in the Official Gazette.

**Section 4: Restriction on activity of the PLO**

- (a) The Government may, by means of an order, prohibit the opening or the

operation of a representative mission of the PLO, order its closure, or prevent the holding of a meeting on behalf of the PLO or under its auspices within the area of the State of Israel.

(b) The provisions of paragraph 3(c) above shall apply, with the necessary changes, to an order referred to in sub-paragraph (a) above.

**Section 5: Duration of order**

The duration of a closure order issued pursuant to paragraphs 3 or 4 shall not exceed 6 months and may be extended from time to time for an additional period which shall not exceed 6 months at any one time.

**Section 6: Ancillary authorities**

For the purpose of executing orders pursuant to paragraphs 3 or 4, the Israel Police shall have all the authorities given to it by any law, including the authority to enter into any place, to remove from there any person, to close the place, to disperse any meeting, and to take any action necessary to ensure the execution of the order and to use reasonable force for this purpose. For the purpose of this paragraph, "the Palestinian Authority" includes any person acting on its behalf or under its auspices or using its name.

**Section 7: Restriction on licensing**

Where an order has been issued pursuant to paragraph 3 or 4, prohibiting the opening of or operation of a representative mission, the license required for such activity shall not be granted under any law.

**Section 8: Validity and entry into force**

(a) This Law shall enter into force on 1 January 1995.

(b) This law shall continue in force for the period of the continuance in force of the Emergency Regulations (Judea and Samaria and the Gaza Strip - Jurisdiction over Offences and Legal Assistance) 1967, as extended by the Law implementing the Agreement on the Gaza Strip and the Jericho Area (Judicial Powers and Miscellaneous Provisions) (Legislative Amendments) 1994.

**BASIC LAW: THE PRESIDENT OF THE STATE**

(Adopted: 16 June 1964 / Status: 16 June 1964)

**PART I: STATUS, ELECTION**

**Section 1: Status**

A President shall be the head of the state.

**Section 2: Place of residence**

The place of residence of the President of the State shall be Jerusalem.

**Section 3: Election and period of tenure**

The President of the State shall be elected by the Knesset for five years.

**Section 4: Eligibility**

A person who has held office as President of the State for two successive periods shall not be a candidate in the election for the period immediately follow-



ing.

**Section 5: Date of election**

The election of the President of the State shall be held not earlier than 90 days and not later than 30 days before the expiration of the period of tenure of the President in office. If the place of the President of the State falls vacant before the expiration of his period of tenure, the election shall be held within 45 days from the day on which such place falls vacant. The Chairman of the Knesset, in consultation with the Deputy Chairman, shall fix the day of the election and shall notify it to all the Members of the Knesset in writing at least twenty days in advance. If the day of the election does not fall in one of the session terms of the Knesset, the Chairman of the Knesset shall convene the Knesset for the election of the President of the State.

**Section 6: Proposal of candidates**

- (a) When the day of the election has been fixed, any ten or more Members of the Knesset may propose a candidate. The proposal shall be in writing and shall be delivered to the Chairman of the Knesset, together with the consent of the candidate in writing or by telegram, not later than ten days before the day of the election. A member of the Knesset shall not sponsor the proposal of more than one candidate.
- (b) The Chairman of the Knesset shall notify all the members of the Knesset, in writing, not later than seven days before the day of the election, of every candidate proposed and of the names of the Members of the Knesset who have proposed him, and shall announce the candidates at the opening of the meeting at which the election is held.

**Section 7: Voting**

The election of the President of the State shall be by secret ballot at a meeting of the Knesset assigned only for that purpose.

**Section 8: Election by majority of votes**

The candidate who has received the votes of a majority of the Members of the Knesset is elected. If no candidate receives such a majority, a second ballot shall be held. If there is no majority as aforesaid at the second ballot, either, voting shall be continued. At the third and every subsequent ballot, the candidate who at the preceding ballot received the smallest number of votes shall no longer stand for election. The candidate who at the third or any subsequent ballot receives a majority of the votes of the Members of the Knesset who take part in the voting and vote for one of the candidates is elected. If two candidates receive the same number of votes, voting shall be repeated.

**Section 9: Declaration of allegiance**

The President-Elect shall make and sign before the Knesset the following declaration of allegiance: *"I pledge myself to bear allegiance to the State of Israel and to its laws and faithfully to carry out my functions as President of the State"*.

**PART II: OFFICE****Section 10: Making of declaration and commencement of period of tenure**

The President-Elect shall make his declaration of allegiance and begin to hold office upon the expiration of the period of tenure of the preceding President of the State. If the place of the preceding President of the State falls vacant be-

fore the expiration of his period of tenure, the President-Elect shall make his declaration of allegiance as soon as possible after his election and shall begin to hold office upon making his declaration of allegiance.

**Section 11: Functions and Powers**

(a) The President of the State -

- (1) shall sign every Law, other than a Law relating to its powers;
  - (2) shall take action to achieve the formation of a Government and shall receive the resignation of the Government in accordance with Law;
  - (3) shall receive from the Government a report on its meetings;
  - (4) shall accredit the diplomatic representatives of the State, shall receive the credentials of diplomatic representatives sent to Israel by foreign states, shall empower the consular representatives of the State and shall confirm the appointments of consular representatives sent to Israel by foreign states;
  - (5) shall sign such conventions with foreign states as have been ratified by the Knesset;
  - (6) shall carry out every function assigned to him by Law in connection with the appointment and removal from office of judges and other office-holders.
- (b) The President of the State shall have power to pardon offenders and to lighten penalties by the reduction or commutation thereof.
- (c) The President of the State shall carry out every other function and have every other power assigned to him by Law.

**Section 12: Countersignature**

The signature of the President of State on an official document, other than a document connected with the formation of a Government, shall require the countersignature of the Prime Minister or of such other Minister as the Government may decide.

**Section 13: Immunity with regard to discharge of functions**

- (a) The President of the State shall not be amenable to any court or tribunal, and shall be immune from any legal act, in respect of anything connected with his functions or powers.
- (b) The President of the State shall not, in giving evidence, have to disclose anything which came to his knowledge in the discharge of his functions as President of the State.
- (c) The immunity of the President of the State under this section shall continue after he has ceased to be President of the State.

**Section 14: Immunity from criminal proceedings**

The President of the State shall not be criminally prosecuted. The period during which, by virtue of this section, the President of the State cannot be prosecuted for an offence shall not be counted in calculating the period of prescription of that offence.

**Section 15: Evidence**

If the President of the State is required to give evidence, his evidence shall be taken at such place and time as shall be determined with his sanction.

**Section 16: Salary and other payments**

The salary of the President of the State, and other payments to be made to him

during or after his period of tenure, including payments to be made to his survivors, shall be fixed by resolution of the Knesset, which may empower the Finance Committee in that behalf. Resolutions under this section shall be published in Reshumot.

**Section 17: President to hold no other office**

- (a) Save with the sanction of the House Committee of the Knesset, the President of the State shall not hold any post, or exercise any function, other than the post and functions of President of the State.
- (b) The President of the State shall be exempt from all compulsory service.

**Section 18: Departure for abroad**

The President of the State shall not leave the territory of the State save with the sanction of the Government.

**PART III: END OF OFFICE**

**Section 19: Resignation**

The President of the State may resign his office by submitting a letter of resignation to the Chairman of the Knesset. The letter of resignation shall not require a countersignature. The place of the President of the State shall become vacant 48 hours after the letter of resignation reaches the Chairman of the Knesset.

**Section 20: Removal of President from office**

- (a) The Knesset may, by resolution, remove the President of the State from office if it finds that he is unworthy of his office owing to conduct unbecoming his status as President of the State.
- (b) The Knesset shall not remove the President of the State from office, save following a complaint brought before the House Committee by at least 20 members of the Knesset and upon the proposal of the House Committee passed by a three-quarters majority of the members of the Committee. A resolution by the Knesset to remove the President from office shall require a three-quarters majority of the Members of the Knesset.
- (c) The House Committee shall not propose the removal of the President of the State from office before he has been given an opportunity to refute the complaint in accordance with procedure prescribed by the Committee with the approval of the Knesset, and the Knesset shall not resolve to remove the President of the State from office before he has been given an opportunity to be heard in accordance with procedure prescribed by the House Committee with the approval of the Knesset.
- (d) The President of the State may be represented before the House Committee and before the Knesset by an authorised representative. A member of the Knesset shall not act as the representative of the President. The House Committee and the Knesset may summon the President of the State to be present at proceedings under this section.
- (e) Proceedings of the Knesset under this section shall be taken at a meeting, or successive meetings, assigned solely for that purpose. The proceedings shall begin not later than 20 days after the resolution of the House Committee. The time of their beginning shall be notified by the Chairman of the Knesset to all the Members of the Knesset, in writing, at least ten days in advance. If the beginning of the proceedings does not fall in one of the

session terms of the Knesset, the Chairman of the Knesset shall convene the Knesset for the proceedings.

**Section 21: Vacation of post for reasons of health**

- (a) The Knesset may, by resolution passed by a majority of its members, declare that for reasons of health the President of the State is permanently unable to carry out his functions.
- (b) The Knesset shall not pass a resolution as aforesaid save upon the proposal of the House Committee passed by a two-thirds majority of its members on the strength of a medical opinion given in accordance with rules prescribed by the Committee.
- (c) If the Knesset resolves as aforesaid, the place of the President of the State shall become vacant on the day of the resolution.

**Section 22: Temporary cessation of exercise of office**

- (a) The President of the State shall temporarily cease to carry out his functions and exercise his powers -
  - (1) if he leaves the territory of the State - from the time of his leaving until his return
  - (2) if he notifies the House Committee that for reasons of health he is temporarily unable to carry out his functions and the Knesset Committee approves his notification by a majority of votes - from the time of the approval of the notification until the expiration of the period fixed by the Committee in its resolution or until the President of the State notifies the House Committee that he is no longer unable to carry out his functions, whichever is the earlier date;
  - (3) if the House Committee, by a two-thirds majority of its members, on the strength of a medical opinion given in accordance with rules prescribed by the Committee, resolves that for reasons of health the President of the State is temporarily unable to carry out his functions - from the passing of the resolution until the expiration of the period fixed by the House Committee in the resolution or until the House Committee resolves that the President is no longer unable to carry out his functions.
- (b) The House Committee shall not, under Subsection (a)(2) or (3), fix a period exceeding three months. It may extend the period, without a break, up to a maximum of three additional months. Any further extension shall require a resolution of the Knesset passed by a majority of the Members of the Knesset upon the proposal of the House Committee.

**Section 23: Interim President and Acting President**

- (a) If the place of the President of the State has fallen vacant, and so long as the new President has not yet begun to hold office, the Chairman of the Knesset shall hold office as Interim President of the State.
- (b) During a period in which the President of the State has temporarily ceased to carry out his functions and exercise his powers, the Chairman of the Knesset shall hold office as Acting President of the State.
- (c) While holding office as Interim President of the State or Acting President of the State, the Chairman of the Knesset shall carry out the functions assigned to the President of the State by Law and shall exercise the powers vested in the President of the State by Law.

**Section 24: Notices in Reshumot**

- (a) The Chairman of the Knesset shall publish a notice in Reshumot as to -

- (1) the commencement of the tenure of the President of the State;
  - (2) the vacancy of the place of the President of the State;
  - (3) the commencement and termination of the tenure of the Chairman of the Knesset as Acting President of the State under Section 22 (a)(2) and (3).
- (b) The Prime Minister shall publish a notice in Reshumot as to the President's leaving the territory of the State and as to his return.

**Section 25: Law not to be affected by emergency regulations**

Notwithstanding the provisions of any other law, this Law cannot be varied, suspended, or made subject to conditions, by emergency regulations.

**BASIC LAW: THE STATE ECONOMY**

(Adopted: 21 July 1975 / Status: 21 March 1983)

**Section 1: Taxes, compulsory loans, and fees**

- (a) Taxes, compulsory loans and other compulsory payment shall not be imposed, and their amounts shall not be varied, save by or under Law; the same shall apply with regard to fees.
- (b) Where the amounts of any taxes, compulsory loans or other compulsory payments, or fees, payable to the Treasury are not prescribed in the Law itself and the Law does not provide that the amounts prescribed therefore by regulations shall require approval by the Knesset or by a committee of the Knesset, the amounts prescribed therefor by regulations shall require approval - in advance or within the period prescribed by the Law - by a decision of the Knesset or of a committee of the Knesset empowered by it in that behalf.

**Section 2: State property**

Transactions in State property and the acquisition of rights and assumption of liabilities on behalf of the State shall be effected by a person empowered in that behalf by or under Law.

**Section 3: The State Budget**

- (a)
  - (1) The State Budget shall be prescribed by Law.
  - (2) The Budget shall be for one year and shall set out the expected and planned expenditure of the Government.
- (b)
  - (1) The Government shall lay the Budget Bill on the table of the Knesset at the time prescribed by the Knesset or by a committee of the Knesset empowered by it in that behalf but not later than 60 days before the beginning of the financial year.
  - (2) The Budget Bill shall be detailed.
  - (3) The detailed Budget Bill of the Ministry of Defence shall not be laid on the table of the Knesset but on the table of a joint committee of the Finance Committee and the Foreign Affairs and Security Committee of the Knesset.
  - (4) The Budget Bill shall be accompanied by an estimate of the sources for financing the Budget.
- (c) In case of necessity, the Government may bring in an Additional Budget Bill during the financial year.

(d) Where it appears to the Government that the Budget Law will not be adopted before the beginning of the financial year, it may bring in an Interim Budget Bill.

(e) The Minister of Finance shall submit to the Knesset every year a report on the implementation of the State Budget. Particulars shall be prescribed by Law.

**Section 3b: Failure to adopt the Budget Law**

(a) should the Budget fail to be adopted before the beginning of the fiscal year, the Government will be permitted to spend, on a monthly basis the amount equalling one twelfth of the budget of the previous year, with the addition of linkage according to the consumer price index, published by the Central Bureau of Statistics.

(b) Moneys according to Subsection (a) will be initially designated for the discharging of legal obligations, contracts and treaties; the remainder will be used by the Government exclusively for the operation of essential services and the activities included in the previous Budget Law.

(c) This section may only be amended by a majority of the Knesset members.

**Section 4: Currency notes and coins**

The printing of legal tender currency notes and the minting of legal tender coins, and the issue thereof, shall be done under Law.

**Section 5: Inspection**

The State economy shall be subject to the inspection of the State Comptroller. Particulars shall be prescribed by Law.

**BASIC LAW: THE ARMY**

(Adopted: 31 March 1976 / Status: 31 March 1976)

**Section 1: Defence Army of Israel**

The Defence Army of Israel is the army of the State.

**Section 2: Subordination to civil authority**

(a) The Army is subject to the authority of the Government.

(b) The Minister in charge of the Army on behalf of the Government is the Minister of Defence.

**Section 3: Chief of the General Staff**

(a) The supreme command level in the Army is the Chief of the General Staff.

(b) The Chief of the General Staff is subject to the authority of the Government and subordinate to the Minister of Defence.

(c) The Chief of the General Staff shall be appointed by the Government upon the recommendation of the Minister of Defence.

**Section 4: Duty to serve and recruitment**

The duty of serving in the Army and recruitment for the Army shall be as prescribed by or by virtue of Law.

**Section 5: Instructions and orders in the Army**

The power to issue instructions and orders binding in the Army shall be pre-

scribed by or by virtue of Law.

**Section 6: Other armed forces**

No armed force other than the Defence Army of Israel shall be established or maintained except under Law.

**BASIC LAW: JERUSALEM, CAPITAL OF ISRAEL**

(Adopted: 30 July 1980 / Status: 30 July 1980)

**Section 1: Jerusalem, Capital of Israel**

Jerusalem, complete and united, is the capital of Israel.

**Section 2: Seat of the President, the Knesset, the Government and the Supreme Court**

Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court.

**Section 3: Protection of Holy Places**

The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.

**Section 4: Development of Jerusalem**

- (a) The Government shall provide for the development and prosperity of Jerusalem and the well-being of its inhabitants by allocating special funds, including a special annual grant to the Municipality of Jerusalem (Capital City Grant) with the approval of the Finance Committee of the Knesset.
- (b) Jerusalem shall be given special priority in the activities of the authorities of the State so as to further its development in economic and other matters.
- (c) The Government shall set up a special body or special bodies for the implementation of this section.

**ISRAEL - BASIC LAW: THE GOVERNMENT - BASIC LAW: JUDICATURE**

(Adopted: 28 Feb 1984 / Status: 28 Feb 1984)

**CHAPTER ONE: BASIC PROVISIONS**

**Section 1: Judicial power**

(a) Judicial power is vested in the following courts:

- (1) the Supreme Court;
- (2) a District Court;
- (3) a Magistrate's Court;
- (4) another court designated by Law as a court.

In this Law, "judge" means a judge of a court as aforesaid.

(b) Judicial power is vested also in the following:

- (1) a religious court;

- (2) any other court;
- (3) another authority all as prescribed by Law.
- (c) No court or court shall be established for a particular case.

**Section 2: Independence**

A person vested with judicial power shall not, in judicial matters, be subject to any authority but that of the Law.

**Section 3: Publicity of proceedings**

A court shall sit in public unless otherwise provided by Law or unless the court otherwise directs under Law.

**CHAPTER TWO: JUDGES**

**Section 4: Appointment of judges**

- (a) A judge shall be appointed by the President of the State upon election by a Judges' Election Committee.
- (b) The Committee shall consist of nine members, namely the President of the Supreme Court, two other judges of the Supreme Court elected by the body of judges thereof, the Minister of Justice and another Minister designated by the Government, two members of the Knesset elected by the Knesset and two representatives of the Chamber of Advocates elected by the National Council of the Chamber. The Minister of Justice shall be the chairman of the Committee.
- (c) The Committee may act even if the number of its members has decreased, so long as it is not less than seven.

**Section 5: Nationality**

Only an Israeli national shall be appointed judge.

**Section 6: Declaration of allegiance**

A person appointed judge shall make a declaration of allegiance before the President of the State. The declaration shall be as follows: "I pledge myself to be in allegiance to the State of Israel and to its laws, to dispense justice fairly, not to pervert the law and to show no favour."

**Section 7: Period of tenure**

The tenure of a judge shall begin upon his declaration of allegiance and shall end only -

- (1) upon his retirement on pension; or
- (2) upon his resignation; or
- (3) upon his being elected or appointed to one of the positions the holders of which are debarred from being candidates for the Knesset; or
- (4) upon a decision of the Judges' Election Committee prepared by the chairman of the Committee or the President of the Supreme Court and passed by a majority of at least seven members; or
- (5) upon a decision of the Court of Discipline.

**Section 8: Retired judge**

A judge who has retired on pension may be appointed to the position of a judge for such time, in such manner and on such conditions as may be prescribed by law.



**Section 9: Restriction on re-posting**

- (a) A judge shall not be permanently transferred from the locality where he is serving to a court in another locality save with the consent of the President of the Supreme Court or pursuant to a decision of the Court of Discipline.
- (b) A judge shall not without his consent be appointed to an acting position at a lower court.

**Section 10: Salary and benefits**

- (a) The salaries of judges and other payments to be made to them during or after their period of tenure or to their survivors after their death shall be prescribed by law or by a decision of the Knesset or of a Knesset committee empowered by the Knesset in that behalf.
- (b) No decision shall be passed reducing the salaries of judges only.

**Section 11: Judge not to engage in additional occupation, etc.**

A judge shall not engage in an additional occupation, and shall not carry out any public function save with the consent of the President of the Supreme Court and the Minister of Justice.

**Section 12: Criminal proceedings**

- (a) No criminal investigation shall be opened against a judge save with the consent of the Attorney-General, and no information shall be filed against a judge save by the Attorney-General.
- (b) A criminal charge against a judge shall not be tried save before a District Court consisting of three judges unless the judge has consented that the charge be tried in the ordinary manner.
- (c) The provisions of this section shall not apply to categories of offences designated by Law.

**Section 13: Disciplinary proceedings**

- (a) A judge shall be subject to the jurisdiction of a Court of Discipline.
- (b) A Court of Discipline shall consist of judges and judges retired on pension appointed by the President of the Supreme Court.
- (c) Provisions as to the grounds for instituting disciplinary proceedings, the modes of filing complaints, the composition of the bench, the powers of the Court of Discipline and the disciplinary measures it shall be authorised to impose shall be prescribed by law. The rules of procedure shall be in accordance with law.

**Section 14: Suspension**

Where a complaint or information is filed against a judge, the President of the Supreme Court may suspend him from office for such period as he may prescribe.

**CHAPTER THREE: THE COURTS**

**Section 15: Supreme Court**

- (a) The seat of the Supreme Court is Jerusalem.
- (b) The Supreme Court shall hear appeals against judgments and other decisions of the District Courts.
- (c) The Supreme Court shall sit also as a High Court of Justice. When so sitting, it shall hear matters in which it deems it necessary to grant relief for the

sake of justice and which are not within the jurisdiction of another court (beit mishpat or beit din).

(d) Without prejudice to the generality of the provisions of Subsection (c), the Supreme Court sitting as a High Court of Justice shall be competent -

- (1) to make orders for the release of persons unlawfully detained or imprisoned.
- (2) to order State and local authorities and the officials and bodies thereof, and other persons carrying out public functions under law, to do or refrain from doing any act in the lawful exercise of their functions or, if they were improperly elected or appointed, to refrain from acting;
- (3) to order courts (batei mishpat and batei din) and bodies and persons having judicial or quasi-judicial powers under law, other than courts dealt with by this Law and other than religious courts (batei din), to hear, refrain from hearing, or continue hearing a particular matter or to void a proceeding improperly taken or a decision improperly given;
- (4) to order religious courts (batei din) to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not within their jurisdiction, provided that the court shall not entertain an application under this paragraph if the applicant did not raise the question of jurisdiction at the earliest opportunity; and if he had no measurable opportunity to raise the question of jurisdiction until a decision had been given by a religious court, the court may quash a proceeding taken or a decision given by the religious court without authority.

(e) Other powers of the Supreme Court shall be prescribed by Law.

**Section 16: Other courts**

The establishment, powers, places of sitting and areas of jurisdiction of the District Courts, the Magistrates' Courts and other courts shall be in accordance with law.

**Section 17: Appeal**

A judgment of a court of first instance, other than a judgment of the Supreme Court, shall be appealable as of right.

**Section 18: Further hearing**

In a matter adjudged by the Supreme Court by a bench of three, a further hearing may be held by a bench of five on such grounds and in such manner as shall be prescribed by law.

**Section 19: Retrial**

In a criminal matter adjudged finally, a retrial may be held on such grounds and in such manner as shall be prescribed by law.

**Section 20: Established rule**

- (a) A rule laid down by a court shall guide any lower court.
- (b) A rule laid down by the Supreme Court shall bind any court other than the Supreme Court.

**Section 21: Registrar**

A court may have a registrar, who may or may not be a judge.

#### **CHAPTER FOUR: MISCELLANEOUS PROVISIONS**

**Section 22: Law not to be affected by emergency regulations**

This Law cannot be varied, suspended, or made subject to conditions by emergency regulations.

**Section 23: Provisions to be prescribed by Law**

Provisions as to the following matters shall be prescribed by Law:

- (1) the manner of electing, and duration of the tenure of, the members of the Judges' Election Committee;
- (2) qualifications for the posts of judges of the various grades;
- (3) the manner of appointing the President of the Supreme Court, the Deputy President of the Supreme Court and the President and Vice-president of a District Court and a Magistrate's Court;
- (4) the conditions and procedures for terminating the tenure of a judge;
- (5) the manner of appointing a judge to an acting assignment at another court and of transferring a judge, temporarily or permanently, from the locality where he is serving to a court in another locality;
- (6) proceedings for the suspension of a judge from office, and review of the suspension;
- (7) the matters which the courts of the different grades are to hear by a single judge or by three or more judges;
- (8) the manner of designating the judge or judges who is or are to hear a particular matter.

**Section 24: Provisions to be prescribed under Law**

Provisions as to the following matters shall be prescribed under Law:

- (1) rules as to the administration of the courts, the making thereof and responsibility for their implementing;
- (2) the rules of procedure of the Judges' Election Committee;
- (3) procedure for the resignation of a judge;
- (4) procedure for the appointment and the powers of the registrar of a court;
- (5) the number of judges who are to serve in the courts of the different grades and location.

**BASIC LAW: FREEDOM OF OCCUPATION 1992**

(Adopted: 3 March 1992 / Status: 3 March 1992)

**Section 1: Freedom of occupation**

Every Israel national or resident has the right to engage in any occupation, profession or trade; there shall be no limitation on this right except by a Law enacted for a proper purpose and on grounds of the general welfare.

**Section 2: Reasons for licensing**

Where a license is required to engage in an occupation, the right to a license shall not be denied except by virtue of a Law and for reasons of state security, public policy, public peace and health, safety, environment or public morals.

**Section 3: Application**

All governmental authorities are bound to respect the freedom of occupation of all Israel nationals and residents.

**Section 4: Stability**

This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations.

**Section 5: Entrenchment**

This Basic Law shall not be varied except by a Basic Law passed by a majority of the members of the Knesset.

**Section 6: Provisional measure**

The provisions of any enactment in force prior to the commencement of this Basic Law which are inconsistent with its provisions shall remain in effect no longer than two years from the date of commencement of this Basic Law; however, such provisions shall be construed in the spirit of the provisions of this Basic Law.

**BASIC LAW: HUMAN DIGNITY AND LIBERTY**

(Adopted: 17 March 1992 / Status: 9 March 1994)

**Section 1: Basic Principles**

Basic human rights in Israel are based on the recognition of the value of the human being, and the sanctity of his life and his freedom, and these will be respected in the spirit of the principles of the Declaration of Independence of the State of Israel.

**Section 1a: Purpose**

The purpose of this Basic Law is to protect human dignity and liberty, in order to anchor in a Basic Law the values of the State of Israel as a Jewish and democratic state.

**Section 2: Preservation of life, body and dignity**

There shall be no violation of the life, body or dignity of any person as such.

**Section 3: Protection of property**

There shall be no violation of the property of a person.

**Section 4: Protection of life, body, and dignity**

All persons are entitled to protection of their life, body, and dignity.

**Section 5: Personal liberty**

There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or by any other manner.

**Section 6: Leaving and entering Israel**

- (a) All persons are free to leave Israel.
- (b) Every Israel national has the right of entry into Israel from abroad.

**Section 7: Privacy**

- (a) All persons have the right to privacy and to intimacy.
- (b) There shall be no entry into the private premises of a person who has not consented thereto.

- (c) No search shall be conducted on the private premises or body of a person, nor in the body or belongings of a person.
- (d) There shall be no violation of the secrecy of the spoken utterances, writings or records of a person.

**Section 8: Violation of rights**

There shall be no violation of rights under this Basic Law except by a Law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required or by such a law enacted with explicit authorization therein.

**Section 9: Reservation regarding security forces**

There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defence Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a Law and to an extent no greater than required by the nature and character of the service.

**Section 10: Validity of laws**

This Basic Law shall not affect the validity of any law (din) in force prior to the commencement of the Basic Law.

**Section 11: Application**

All governmental authorities are bound to respect the rights under this Basic Law.

**Section 12: Stability**

This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under Section 9 of the Law and Administration Ordinance 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than required.

<p style="text-align: center;"><b>ISRAEL - BASIC LAW: THE GOVERNMENT</b> (Adopted: 14 April 1992 / Status: 14 April 1992)</p>
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**PART I: Composition**

**Section 1: Nature**

The Government is the executive authority of the State.

**Section 2: Seat of power**

The seat of the Government is Jerusalem.

**Section 3: Source of authority and composition**

- (a) The Government is comprised of the Prime Minister and Ministers.
- (b) The Prime Minister serves by virtue of his being elected in the national general elections, to be conducted on a direct, equal, and secret basis in compliance with The Election Law (The Knesset and The Prime Minister).
- (c) The Ministers will be appointed by the Prime Minister; their appointment

requires the approval of the Knesset.

- (d) Should the Knesset reject the Prime Minister's proposal regarding the composition of the Government, it will be regarded as an expression of no confidence in the Prime Minister, and the provisions of Section 19 (b) will apply.

## **PART II: Election**

### **Section 4: Election date**

Whenever elections are being conducted for the Knesset, the same date will also be determined for the elections for the Prime Minister, excepting when new elections are held pursuant to an election appeal.

### **Section 5: Special elections**

In the cases specified in this Basic Law separate elections will be held for the election of the Prime Minister (hereinafter 'special elections').

### **Section 6: The right to vote**

Persons entitled to vote in the elections to the Knesset shall be entitled to vote in the elections for the Prime Minister.

### **Section 7: Period of service**

The period of service of the Prime Minister and the Ministers shall be equal to the period of service of the Knesset to which they were elected; in special elections for the period of service of the Knesset serving at that time, unless specified differently in this Basic Law.

### **Section 8: Eligibility of Prime Ministerial candidates**

(a) Persons fulfilling the following conditions are eligible candidates for the Prime Ministership:

- (1) Eligible for candidacy to the Knesset and at least 30 years old on the day of submission of candidacy.
- (2) Should the elections for the Prime Minister be conducted at the same time as the Knesset elections -the candidate for Prime Minister will head the list of candidates for the Knesset.
- (3) Should special elections be held - he will be a member of Knesset.

### **Section 9: The right to propose a candidate**

(a) The following bodies may propose Prime Ministerial candidates:

- (1) A faction of the outgoing Knesset, with no less than ten members, having submitted a list of candidates to the Knesset.
- (2) A few factions of the outgoing Knesset, with not less than ten members, having submitted a list of candidates or lists of candidates to the Knesset.
- (3) 50,000 enfranchised persons.

(b) In special elections, a candidate may be proposed by a faction or factions of the Knesset, the total number of members of the faction or factions not being less than ten members or 50,000 enfranchised persons.

### **Section 10: Election date for special elections**

- (a) Should this Basic Law give cause for the conducting of special elections, the said elections will be conducted on the last Tuesday preceding the passage of 60 days from the day that the cause for the elections was created.
- (b) Should this Basic Law give cause for the conducting of special elections

and the date thereof is one year or less prior to the conducting of Knesset elections according to Section 9 of The Basic Law: The Knesset, the Knesset elections will be brought forward, and the Knesset elections and the Prime Ministerial elections will be conducted on the date initially determined for the special elections.

**Section 11: Postponement of elections due to day of rest**

Should the date of the Knesset elections or the date of the Prime Ministerial elections according to this Basic Law, fall on a day of rest, the eve of a day of rest or the day after a day of rest, the elections will then be held on the first subsequent Tuesday that is not a day of rest, the eve of a day of rest or the day after a day of rest.

**Section 12: Death of candidate or cessation of candidacy**

In the event of a candidate's death or if reasons of health prevent him from being a candidate, after the final date specified by law for the submission of candidacy, the elections for the Knesset and the Prime Minister or the special elections will accordingly be postponed accordingly.

**PART III: Establishment**

**Section 14: Beginning of service**

- (a) Within 45 days of the publication of the election results the Prime Minister elect will appear before the Knesset, present the Ministers of the Government, announce the division of tasks and the guiding principles of the Government's policies, and the Prime Minister and the Ministers will begin their service, provided that the provisions of Section 33 (a) and (b) have been complied with. As soon as possible after that the Prime Minister and the Ministers will make their declarations of allegiance before the Knesset in the version specified in Subsection (c).
- (b) The Prime Minister elect will give the Speaker of the Knesset preliminary notice of his intention to appear before the Knesset not later than seven days before the termination of the period specified in Subsection (a); should the notification be not be given during one of the Knesset sessions, the Knesset Speaker will convene the Knesset for that purpose.
- (c) This is the text of the declaration of allegiance of the Prime Minister:  
*"I (name) as Prime Minister undertake to uphold the State of Israel and its laws, to faithfully fulfil my role as the Prime Minister and to comply with the decisions of the Knesset."*  
 This is the text of the declaration of allegiance of the Ministers:  
*"I (name) as a member of the Government, undertake to uphold the State of Israel and its laws, to faithfully fulfil my role as a member of the Government, and to comply with the decisions of the Knesset."*

**Section 15: Failure to present Government**

- (a) Should the Government not be presented in accordance with the provisions of Section 14, special elections will be held.
- (b) Should the Prime Minister elect fail to present the Government as stated, and is again elected Prime Minister and again fails to present a Government, he may not submit his candidacy in the subsequent special elections.

**Section 16: Eligibility of Ministers**

- (a) A person ineligible for candidacy to the Knesset may not be appointed as a Minister; however, a person having served in a position or role as specified in Section 7 of The Basic Law: The Knesset, may be appointed as Ministers, provided that he cease functioning in the said position or role prior to his appointment.
- (b) A person convicted of an offence involving moral turpitude, prior to the passage of ten years from the day he completed his period of punishment, may not be appointed as a Minister.
- (c) A Knesset member seceding from his faction and failing to tender his resignation as a Knesset member may not be appointed as a Minister during the period of service of that Knesset.

**Section 17: Publication of agreements**

- (a) Should a written agreement be drawn up pertaining to the election of the Prime Minister or the establishment of the Government, or relating an expression of no confidence therein, or pertaining to the adding of Ministers to the Government after its establishment, or pertaining to the appointment of a Deputy Minister, the sides to the agreement shall then submit its complete text to the Secretary of the Knesset within three days of signing, and not later than 48 hours before the election day or 24 hours before the presentation of the Government or the no confidence vote, respectively; in the figuring of days and hours, legally endorsed days of rest or religious holidays shall not be included; should an agreement be drawn up by a list of candidates to the Knesset, the sides will immediately submit a copy thereof to the Secretary of the Knesset.
- (b) The Secretary of the Knesset will immediately notify the Knesset of any agreement submitted to him according to this section, and during an Knesset election period he shall also bring them to the attention of the representatives of the candidates, lists.
- (c) After the time period specified in Subsection (a) no agreement pertaining to any of the stated issues shall signed unless a new period has been specified for the same issue allowing publication of the agreement as specified in this section.

**Section 18: Restrictions of the agreement**

- (a) Where the Law confers authority to remove persons from any position in the Knesset, the Government, the civil service, a statutory company, a Government company or any other public body, no agreement shall be made nor shall any commitment be given regarding the permanence of that person in his role.
- (b) No guarantee shall be granted either directly or indirectly in money, its equivalent, via services or any other kind of benefit, for the ensurance of the performance of an agreement or commitment as specified in this section, and such guarantees will not be valid.

**PART IV: Failure**

**1. Section 19: Expression of no confidence**

- 1. The Knesset may by means of a majority of its members adopt an expression of no confidence in the Prime Minister.



2. An expression of no confidence in the Prime Minister will be deemed to be a Knesset decision to disperse prior to the completion of its period of service.

**Section 20: Dispersion due to failure to adopt budget**

Non-adoption of the Budget Law within three months subsequent to the beginning of the fiscal year will be considered to be a Knesset decision on its dispersion, prior to the completion of its term of service.

**Section 21: Early elections**

- (a) Should the Knesset express no confidence in the Prime Minister, or fail to adopt the Budget Law under the provisions of Section 20, elections to the Knesset and to the position of Prime Minister will be conducted on the last Tuesday before the passage of 60 days after the expression of no confidence, or upon the completion of the period as stated in Section 20.
- (b) Sections 34 and 35 of the Basic Law: The Knesset will not apply to the dispersion of the Knesset in accordance with Sections 19 and 20.
- (c) The Speaker of the Knesset will give notice in Reshumot of an expression of no confidence or of failure to adopt the Budgetary Law.

**Section 22: Dispersion of the Knesset by the Prime Minister**

- (a) Should the Prime Minister ascertain that a majority of the Knesset opposes the Government, and that the effective functioning of the Government is prevented as a result, he may, with the approval of the President of the State, disperse the Knesset by way of an order to be published in Reshumot; a decision to disperse the Knesset will be regarded as a decision of the Knesset to disperse prior to the completion of its term of service, and new elections for the Knesset and the Prime Minister, will be conducted on the last Tuesday before the passage of 60 days from the day of the dispersion of the Knesset.
- (b) The Prime Minister may not exercise his authority according to this section:
  - (1) from the beginning of the period of service of the incoming Knesset and until the establishment of the new Government;
  - (2) from the day on which the Knesset committee of the Knesset decided to recommend that he be removed from service and until the day the Knesset plenum renders its decision in the matter in accordance with the provisions of Sections 26 and 27.

**Section 23: Resignation of Prime Minister**

- (a) The Prime Minister may, after notifying the Government of his decision to do so, resign by way of submitting his written resignation to the President of the State; the resignation will go into force 48 hours after the letter of resignation is submitted to the President, unless the Prime Minister retracts prior to such time.
- (b) A Prime Minister who has resigned will give notice thereof to the Speaker of the Knesset, and the Speaker of the Knesset will then give notice to the Knesset.
- (c) Should the Prime Minister resign, special elections will be conducted.

**Section 24: Prime Minister ceasing to function as member of Knesset**

Should the Prime Minister cease to function as a member of the Knesset, he will be deemed to have resigned.

**Section 25: Interrogation and impeachment of the Prime Minister**

- (a) Criminal proceedings shall not be commenced against the Prime Minister save with the agreement of the Attorney General, and the Prime Minister may only be impeached by the Attorney General.
- (b) An indictment against the Prime Minister will be filed and presided over in the Jerusalem District Court, in a presidium of three judges.
- (c) Should the Court convict the Prime Minister of an offence, it will state in its decision whether the offence involved moral turpitude.

**Section 26: Removal from office pursuant to an offence**

- (a) Should the Prime Minister be convicted of an offence involving moral turpitude, the Knesset may remove him from office, pursuant to a decision of a majority of the Knesset members.
- (b) Within 30 days of the verdict becoming final, the Knesset Committee of the Knesset will render its decision regarding its recommendation pertaining to the removal of the Prime Minister from office; a committee decision to remove the Prime Minister from office shall be a majority decision of its members; should the committee recommend that the Prime Minister be removed from his office, its decision will be brought before the Knesset plenum; should the committee fail to bring its recommendation to the plenum during the prescribed period, the Speaker will raise the issue in the Knesset plenum at the earliest date possible.
- (c) No decision shall be made by either the Knesset or the Knesset Committee regarding the removal of the Prime Minister from office, before the Prime Minister has been given an opportunity to state his case before them.
- (d) Should the Knesset decide to remove the Prime Minister from office, special elections will be conducted.
- (e) The provisions of Sections 42a and 42b of the Basic Law: the Knesset, shall not apply to the Prime Minister.

**Section 27: Removal from office not pursuant to an offence**

- (a) The Knesset may, pursuant to a vote of 80 of its members, remove the Prime Minister from office.
- (b) A motion to remove the Prime Minister from office will be submitted by at least 40 Knesset members to the Speaker of the Knesset, and the Speaker will submit it for debate in the Knesset Committee of the Knesset.
- (c) The Knesset Committee will decide regarding the motion and present its recommendation to the Knesset plenum within 30 days of the motion being submitted to it; should the Committee fail to present its recommendation in the specified period, the Speaker of the Knesset will bring the matter to debate in the Knesset plenum at the earliest possible date.
- (d) Neither the Knesset Committee nor the Knesset itself may decide to remove the Prime Minister unless the Prime Minister has been first given an opportunity to state his case before them.
- (e) Should the Knesset decide to remove the Prime Minister from his office, special elections will be conducted.

**Section 28: Death of the Prime Minister**

Should the Prime Minister die or be permanently incapacitated, special elections will be held.

**Section 29: Acting Prime Minister**

- (a) Should the Prime Minister die, be permanently incapacitated, or be removed

from office, the Government will empower one of the Ministers who is also a Knesset member, to serve as acting Prime Minister until the new Prime Minister takes office.

(b) The acting Prime Minister will have all the powers of the Prime Minister, except for the power to disperse the Knesset.

**Section 30: Inability to function**

(a) Should the Prime Minister be absent from the country, meetings of the Government will be convened and conducted by the Minister delegated by the Prime Minister.

(b) Should the Prime Minister be temporarily unable to discharge his duties for a period not exceeding 100 consecutive days, his place will be filled by a Minister who is also a Knesset member and appointed by the Prime Minister; failing the appointment of a Deputy, or should the appointed person not be able to perform his duties, a Minister who is a Knesset member shall be appointed by the Government as acting Prime Minister until either the Prime Minister or permanent acting Prime Minister resumes his functions.

(c) The provisions of Subsection (a) shall apply to the acting Prime Minister during the period in which he acts in that capacity.

(d) After the passage of 100 days upon which the Prime Minister does not resume his duties, the Prime Minister will be deemed to have permanently ceased to discharge his duties and the provisions of Sections 28 and 29 shall apply.

**Section 31: Continued functioning of the Prime Minister and Ministers**

(a) A Prime Minister who has resigned or in whom the Knesset expressed no confidence, will continue in office until the newly elected Prime Minister assumes office.

(b) In the event of the Prime Minister's death, permanent incapacitation, resignation, removal from office, or an expression of no confidence by the Knesset, the Ministers will continue in office until the newly elected Prime Minister assumes office.

**Section 32: Continuity of Government**

During the election period for the Knesset and the Prime Minister or during special elections, the Prime Minister and the Ministers of the outgoing Knesset will continue in office until the Prime Minister and the Ministers of the new Government assume office.

**PART V: Ministers**

**Section 33: The Ministers**

(a) The Government shall not exceed 18 members in number and not be less than eight.

(b) At least one half of the Ministers shall be Knesset members.

(c) A Minister shall be appointed over an office, but a Minister may be a Minister without portfolio.

(d) The Prime Minister may also function as a Minister appointed over an office.

(e) Subject to the provisions of Subsections (a) and (b), the Prime Minister may add extra Ministers to the Government after its establishment; the commencement of service of a Minister so added to the Government shall be with the submission of notice from the Prime Minister to the Knesset

regarding his appointment; immediately afterwards, the new Minister will submit his declaration of allegiance in accordance with the version prescribed in Section 14 (c).

**Section 34: The required minimum of Ministers**

- (a) In a Government in which the number of Ministers including the Prime Minister does not exceed eight, no Minister may be removed from his post.
- (b) Should the number of Ministers in the Government including the Prime Minister be less than eight, the Prime Minister will appoint a Minister or Ministers to complement the required minimum; the appointment shall be made within 72 hours and until such time he may not remove any Minister from his post; if the required minimum is not complemented in accordance with these provisions, special elections will be conducted.

**Section 35: Termination of service of a Minister**

- (a) A Minister may resign from the Government by submitting a letter of resignation to the Prime Minister. His service in the Government will be terminated upon the passage of 48 hours from the time the letter of resignation reached the Prime Minister, unless he retracts prior to such time.
- (b) The Prime Minister may, by way of written notification, remove a Minister from his post; the removal of Minister will take effect 48 hours after the letter notifying thereof was given to the Minister, unless the Prime Minister retracts prior to such time.
- (c) The Knesset may remove a Minister from his post, by way of a decision of a majority of 70 of its members; the Knesset will not debate the removal of a Minister from his post unless the initial recommendation of a majority of the Knesset committee members is received and after the Minister has been provided with an opportunity to state his case before the Knesset Committee and before the Knesset plenum.
- (d) The Prime Minister will give notice of the termination of the service of a Minister to both the Government and to the Knesset, at a meeting or in another manner.

**Section 36: Acting Minister**

Should the Minister cease to serve, be absent from the country, or be temporarily incapable of discharging his duties, the Prime Minister or another Minister appointed by the Prime Minister will discharge his duties until the Minister resumes his regular duties or until the appointment of his replacement; the Prime Minister will give notification to the Government and to the Speaker of the Knesset regarding the appointed acting Minister, and the Speaker of the Knesset will give notice to the Knesset.

**Section 37: Deputy Ministers**

- (a) The Minister in charge of an office, may, with the approval of the Prime Minister, appoint a Deputy Minister for the office, the Deputy having been appointed from amongst the Knesset members; the Prime Minister too may appoint a Deputy in the stated manner; a Deputy Minister shall assume his role after notice of his appointment has been given by the Government to the Knesset; a Deputy Minister appointed by the Prime Minister shall be entitled "a Deputy Minister in the Prime Minister's office"; the number of Deputy Ministers shall not exceed six.

- (b) The Deputy Minister shall act both in the Knesset and in office, on behalf of the Knesset member who appointed him and within the parameters allocated to him.
- (c) A Knesset member seceding from his faction without resigning from his position subsequent to his secession, may not be appointed to the position of Deputy Minister during the period of service of the same Knesset.

**Section 38: Termination of service of Knesset member**

The service of a Deputy Minister will be terminated in any of the following cases:

- (1) The Deputy Minister resigned by submitting a letter of resignation to the member of Government who appointed him;
- (2) The same Minister ceased being a Minister or being in charge of the same office; or in the case of the Prime Minister ceasing to serve if the Deputy was a Deputy Minister in the Prime Minister's office;
- (3) The Prime Minister or the appointing Minister decide to terminate the service of the Deputy Minister;
- (4) The Deputy Minister ceased being a Knesset member.

**Section 39: Prime Minister and functioning of Government**

(a) The Prime Minister may:

- (1) Determine the roles of the Ministers;
- (2) Change the division of roles amongst the Ministers;
- (3) Transfer authorities and duties not specified in the Law from one Minister to another;
- (4) Transfer areas of actions from one office to another;
- (5) Establish the Government offices, unite or divide them, abolish them or establish new offices, and having done so give notice thereof to the Knesset;
- (6) Establish permanent or temporary Ministerial committees for particular matters; after the appointment of a committee the Government may conduct its operations through it;

(b) Authority granted by law to a particular Minister may be transferred by the Prime Minister either totally or partially to another Minister; a decision according to this section must be approved by the Government;

(c) The Prime Minister will conduct the functioning of the Government and will set work procedures and voting procedures in the Government and its committees;

(d) Government decisions will be adopted by a majority vote; should the vote be drawn, the Prime Minister will have an additional vote.

**Section 40: Government powers**

The Government is authorized to perform in the name of the State and subject to any law, all actions which are not legally incumbent on another authority.

**Section 41: Delegation of powers**

(a) with the exception of powers granted in accordance with this Basic Law, powers granted by law to the Government may be delegated to one of the Ministers.

(b) Powers granted to a Minister by law, transferred to him under the provisions of Section 39 (b) with the exclusion of the authority to make regulations, may be delegated by the Minister either totally or partially or subject to conditions to a civil servant.

(c) Powers delegated by the Government to a Minister, with the exception of the power to make regulations, may be delegated by the Minister either totally or partially or subject to conditions to a civil servant provided that the Government empowered him to do so.

(d) For the purposes of this section and Section 39 (b)

(1) The power granted to the Government or a Minister also refers to duties incumbent upon them;

(2) A Minister - includes the Prime Minister.

(e) The provisions of this section will apply provided no other intention is evidenced by the law conferring the power or imposing the obligation.

**Section 42: Assumption of powers**

A Minister, including the Prime Minister, charged the implementation of the law, may assume any power, with the exception of powers of a judicial nature, granted by law to a civil servant, provided that no other intention is evidenced by the law; the Minister may do the above for a particular matter or for a specific period.

**PART VII: Office**

**Section 43: Exclusivity of office**

The Prime Minister, Ministers and Deputy Ministers will discharge their roles in good faith, and will not engage in economic or public activities save within the parameters and in compliance with the principles stipulated by the Government

**Section 44: Secrecy**

(a) The debates and decisions of the Government and those of the Ministerial committees regarding the following matters are secret and their disclosure and publication is prohibited; and these are the matters:

(1) State security;

(2) Foreign relations of the State;

(3) Matters regarding which the Government deems secrecy to be essential to the State, a notification thereof having been declared in an order, for the purposes of this law;

(4) A matter that the Government has decided to keep secret; the disclosure and publication of such matters is forbidden only to persons who were aware of the decision.

(b) The provisions of Subsection (a) shall not apply to matters regarding which the Government or the Prime Minister, or such persons that the Government or the Prime Minister have specifically authorized, have permitted their publication or matters the publication of which is legally mandatory.

**Section 45: Salaries and pensions**

The salaries of the Prime Minister, the Ministers and the Deputy Ministers and other payments paid to them during their period of service or thereafter, or to their next of kin after their deaths, will be specified by law, or by virtue of a decision of the Knesset, or a public committee appointed by the Knesset for that purpose.

**Section 46: Government Secretary**

The Government will, according to the proposal of the the Prime Minister, appoint a Government Secretary and specify his duties.

**Section 47: Regulations**

- (a) The Prime Minister or the Minister charged with the implementation of a law, is empowered to make regulations for its implementation.
- (b) A law may empower the Prime Minister or a Minister to make regulations in a matter specified in the authorization.

**Section 48: Knesset supervision of subsidiary legislation**

- (a) Regulations made by the Prime Minister or a Minister and mandating penal sanctions for their violation will not come into force unless having been approved prior to their publication by the specific Knesset committee responsible for the matter treated therein, should the committee fail to render its decision either approving or rejecting the regulation within 30 days from the day the regulations were submitted, the regulations will be considered to have been approved.
- (b) Nothing in the provisions of this section shall derogate from the provisions of a basic law or another law relating to regulations.

**PART VIII: Emergency**

**Section 49: Declaration of a state of emergency**

- (a) Should the Knesset ascertain that the State is in a state of emergency, it may, of its own initiative or, pursuant to a Government proposal, declare that a state of emergency exists.
- (b) The declaration will remain in force for the period prescribed therein, but may not exceed one year; the Knesset may make a renewed declaration of a state of emergency as stated.
- (c) Should the Government ascertain that a state of emergency exists in the State and that its urgency necessitates the declaration of a state of emergency, even before it becomes possible to convene the Knesset, it may declare a state of emergency. The declaration's validity shall expire upon 7 days from its proclamation, if not previously approved or revoked by the Knesset, pursuant to a decision by a majority of its members; should the Knesset fail to convene, the Government may make a renewed declaration of a state of emergency as stated in this subsection.
- (d) The Knesset and Governmental declarations of a state of emergency will be published in Reshumot; should publication in Reshumot not be possible, another appropriate manner will be adopted, provided that notification thereof be published in Reshumot at the earliest possible date.
- (e) The Knesset may at all times revoke the declaration of the state of emergency; notification of its revocation will be published in Reshumot.

**Section 50: State of emergency**

- (a) During a state of emergency the Government may make emergency regulations for the defence of the State, public security and the maintenance of supplies and essential services; emergency regulations will be submitted to the Foreign Affairs and Security Committee at the earliest possible date after their enactment.
- (b) Should the Prime Minister deem it impossible to convene the Knesset, given the existence of an immediate and critical need to make emergency regulations, he may make such regulations or empower a Minister to make them.



- (c) Emergency regulations may alter any law temporarily suspend its effect or introduce conditions, and may also impose or increase taxes or other compulsory payments unless there be another provision by law.
- (d) Emergency regulations may not prevent recourse to legal action, or prescribe retroactive punishment or allow infringement upon human dignity.
- (e) Emergency regulations shall not be enacted, nor shall arrangements, measures and powers be implemented in their wake, except to the extent warranted by the state of emergency.
- (f) The force of emergency regulations shall expire three months after the day of their enactment unless their force is extended by law, or they are revoked by the Knesset by law, or pursuant to a decision of a majority of the members of Knesset.
- (g) Emergency regulations shall come into force on the day of their publication in Reshumot; should publication in Reshumot not be possible another appropriate means of publication will be adopted provided that they be published in Reshumot as soon as possible.
- (h) Should the state of emergency cease to exist, the regulations enacted will remain in force for the duration of the prescribed period, however not longer than for 60 days after the termination of the state of emergency; state of emergency regulations whose force was lengthened by law shall remain in force.

**Section 51: Declaration of war**

- (a) The state may only begin a war pursuant to a Government decision.
- (b) Nothing in the provisions of this section will prevent the adoption of military actions necessary for the defence of the state and public security.
- (c) Notification of a Government decision to begin a war under the provision of Subsection (a) will be submitted to the Knesset Foreign Affairs and Security Committee as soon as possible; the Prime Minister also will give notice to the Knesset plenum as soon as possible; notification regarding military actions as stated in Subsection (b) will be given to the Knesset Foreign Affairs and Security Committee as soon as possible.

**Section 52: The Government and Knesset committees**

- (a) The Government will provide the Knesset and its committees with information upon request and will assist them in the discharging of their roles; special provisions will be prescribed by law for the classification of information when the same is required for the protection of state security and foreign relations or international trade connections or the protection of a legally mandated privilege.
- (b) The Knesset may, at the request of at least forty of its members, conduct a session with the participation of the Prime Minister, pertaining to a topic decided upon; requests as stated may be submitted no more than once a month.
- (c) The Knesset may obligate a Minister to appear before it, similar authority is granted to any of the Knesset committees within the framework of their tasks.
- (d) Any of the Knesset committees may within the framework of the discharging of their duties, and under the auspices of the relevant Minister and with his knowledge, require a civil servant or any other person prescribed in the law, to appear before them.
- (e) The Prime Minister and any Minister may speak before the Knesset and its committees.



- (f) Details regarding the implementation of this section may be prescribed by law or in the Knesset articles.

**Section 53: Inapplicability of emergency laws**

Notwithstanding the provisions of any law, emergency regulations cannot change this Basic Law, temporarily suspend it, or make it subject to conditions.

**Section 54: Notifications to the Knesset**

(a) The Government shall notify the Knesset regarding the following matters:

- (1) The appointment of an acting Prime Minister or the appointment of the Prime Minister;
- (2) The resignation or the death of the Prime Minister;
- (3) The resignation or the death of a Minister;
- (4) Transfer of activities from one office to another;
- (5) The expiration of the office of a Deputy Minister.

(b) The notification will be made in the Knesset, and, during the Knesset recess, to the Speaker of the Knesset, who will notify the Knesset members thereof.

**Section 55: Publication in Reshumot**

(a) The Knesset shall give public notice of the following in Reshumot:

- (1) Knesset expression of no-confidence in the Prime Minister;
- (2) Removal of the Prime Minister from his office;
- (3) The removal of a Minister from his office by the Knesset;
- (4) A Knesset approval in accordance with Section 39 (b);
- (5) A decision under Section 45;

(b) The Government shall give public notice of the following in Reshumot:

- (1) The presentation of the Government to the Knesset, its Ministers and the allocation of roles between them;
- (2) The addition of a Minister to the Government;
- (3) Assumption of powers under Section 42;
- (4) A Prime Ministerial decision under Sections 39 (a)(1)-(5);
- (5) The appointment of a Deputy Minister or the expiration of his office;
- (6) The appointment of the Government Secretary;
- (7) The removal of a Minister from office by the Prime Minister.

**Section 56: Stability of the Law**

(a) This Basic Law may not be changed unless by a majority of the Knesset members; however, a provision prescribing that a Knesset decision must be adopted by a specified number of the Knesset members, will not be altered unless by at least the same amount of Knesset members; the required majority under this section will be required for decisions of the Knesset during the first reading, the second reading and the third reading; "change" for the purposes of this section means both specific and by implication.

(b) The provisions of this section shall not apply to Sections 57-63.

**PART IX: Miscellaneous**

**Section 57** {...}

**Section 58** {...}

**Section 59** {...}

**Section 60** {...}

**Section 61** {...}

**Section 62** {...}

**Section 63: Commencement and applicability**

- (a) The provision of this Basic Law will apply to the election of the Prime Minister and to the establishment of the Government beginning from the elections to the fourteenth Knesset.
- (b) Subject to the provisions of Subsection (a), this Basic Law shall come into force on the first day of service of the Prime Minister elected in accordance with the provisions of Subsection (a).

**Section 64: Transitional provisions**

- (a) On the day of the coming into force of this Basic Law, a state of emergency will be deemed to have been declared according to Section 49 (a) of this Basic Law.
- (b) Any legislation containing a provision making its continued force dependent on the continuation of the state of emergency as declared according to Section 9 of the Law and Order Ordinance 5708-1948, will remain in force for as long as a state of emergency exists, in accordance to Subsection (a).
- (c) Any legislation referring to the state of emergency as declared according to Section 9 of the Law and Order Ordinance 5708-1948, will be deemed as referring to a state of emergency declared according to Section 49 of this Basic Law.

**Section 65: Publication**

This law will come into force 30 days from the day of its adoption.

**BASIC LAW: THE STATE COMPTROLLER**

**Section 1: Essence**

The State Audit shall be implemented by the State Comptroller.

**Section 2: State Audit**

- (a) The Comptroller will audit the economy, the property, the finances, the obligations and the administration of the State, of Government Ministries, of all enterprises, institutions, or corporations of the State, of Local Authorities, and of bodies or other institutions which were defined by law as subject to audit by the State Comptroller.
- (b) The State Comptroller shall inspect the legality, integrity, managerial norms, efficiency and economy of the audited bodies, as well as any other matter which he deems necessary.

**Section 3: Duty to provide information**

A body subject to State Audit will upon request, immediately provide the State Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for audit purposes.

**Section 4: Comptroller as Commissioner for Complaints**

The State Comptroller will investigate complaints from the public about bodies and persons, as provided by law: in this capacity the State Comptroller shall

Art. 9. (I) No Jordanian shall be exiled from the territory of the Kingdom.

- (ii) No Jordanian shall be prevented from residing at any place, or be compelled to reside in any specified place, except in the circumstances prescribed by law.

Art. 10. Dwelling houses shall be inviolable and shall not be entered except in circumstances and manner prescribed by law.

Art. 11. No property of any person shall be expropriated except for purposes of public utility and in consideration of just compensation, as may be prescribed by law.

Art. 12. No loans shall be forcibly imposed and no property, movable or immovable, shall be confiscated, except in accordance with the law.

Art. 13. Compulsory labour shall not be imposed on any person, but any person may be required to do any work or to render any service in circumstances prescribed by law, as stated hereunder.

- (i) in a state of emergency, such as the state of war, the occurrence of a public danger or fire, flood, famine, earthquake, heavy epidemic amongst human beings or animals or animal diseases, insects or pests or any other similar event, or in any other circumstances which would endanger the safety of the population, in whole or in part.
- (ii) As a result of the conviction of the person concerned by a Court of law provided that the work is done and the service is rendered under the supervision of an official authority and provided further that no convicted person shall be hired to, or placed at the disposal of, any person company or public body.

Art. 14. The State shall safeguard the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such exercise is inconsistent with public order or decorum.

Art. 15

- (i) The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by words of mouth, in writing, or by means of photographic representation and other forms of expression, within the limits of the law.
- (ii) Freedom of the press and publications shall be ensured within the limits of the law.
- (iii) Newspapers shall not be suspended from publication nor their permits be withdrawn except in accordance with the provisions of the law.
- (iv) In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, pamphlets, books and broadcasts in matters affecting public safety or national defence may be imposed by law.
- (v) Control of the resources of newspapers shall be regulated by law.

Art. 16.

- (i) Jordanians shall have the right to hold meetings within the limits of the law.
- (ii) Jordanians are entitled to establish societies and political parties provided that the objects of such societies and parties are legitimate, their methods

are peaceful, and their by-laws are not inconsistent with the provisions of this Constitution.

- (iii) The establishment of societies and political parties and control of their resources shall be regulated by law.

Art. 17. Jordanians are entitled to address the public authorities on any personal matters affecting them, or on any matter relative to public affairs, in such a manner and under such conditions as may be prescribed by law.

Art. 18. All postal, telegraphic and telephonic communications shall be treated as secret, and as such shall not be subjected to censorship or suspension except in circumstances prescribed by law.

Art. 19. Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they will comply with the general provisions of the law and submit to the control of government in matters relating to their curricula and tendency.

Art. 20. Elementary education shall be compulsory for Jordanians and free of charge in government schools.

Art. 21.

- (i) Political refugees shall not be extradited on account of their political beliefs or for their defence of liberty.
- (ii) Extradition of ordinary criminals shall be regulated by international agreements and law.

Art. 22.

- (i) Every Jordanian shall be entitled to be appointed to public offices under such conditions as are prescribed by law or regulations.
- (ii) Appointment to any government office or to any institution attached to the Government, or to any municipal office, whether such appointment is permanent or temporary, shall be made on the basis of merits and qualifications.

Art. 23.

- (i) It is the right of every citizen to work, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its standard.
- (ii) The State shall protect labour and enact a legislation therefor based on the following principles:
- (a) Every workman shall receive wages commensurate with the quantity and quality of his work.
- (b) The number of hours of work per week shall be limited. Workmen shall be given weekly and annual days of rest with wages.
- (c) Special compensation shall be given to workmen supporting families and on retrenchment, illness, old-age and emergencies arising out of the nature of their work.
- (d) Special conditions shall be made for the employment of women and juveniles.
- (e) Factories and workshops shall be subject to health rules.
- (f) Free Trade unions shall be formed within the limits of law.

bear the title 'Commissioner for Complaints from the Public'.

**Section 5: Additional tasks**

The State Comptroller shall undertake additional tasks as provided by law.

**Section 6: Accountability to the Knesset**

In carrying out his functions, the State Comptroller shall be accountable only to the Knesset and not to the Cabinet.

**Section 7: Election, Term**

- (a) The State Comptroller shall be chosen by the Knesset in a secret ballot; the exact arrangements shall be set by law.
- (b) The term of office of the State Comptroller shall be five years.

**Section 8: Qualifications**

Any Israeli citizen, residing in Israel, shall be eligible to serve as State Comptroller; any additional qualifications may be determined by law; a person who has served two consecutive terms as State Comptroller may not be a candidate for election to a third consecutive term.

**Section 9: Pledge of allegiance**

The State Comptroller-elect shall make and sign before the Knesset the following declaration: *'I pledge allegiance to the State of Israel and to its laws, and will faithfully carry out my duties as State Comptroller'*.

**Section 10: Budget**

The budget of the State Comptroller's Office shall be determined by the Appropriations Committee of the Knesset, upon the recommendation of the State Comptroller, and will be published together with the State Budget.

**Section 11: Salary and emoluments**

The salary of the State Comptroller and other payments made to him during his term of office or subsequently, or to his survivors upon his demise, shall be determined by law or by a Knesset Resolution or by a duly authorized committee of the Knesset.

**Section 12: Contact with Knesset and issuance of reports**

- (a) The State Comptroller shall maintain contact with the Knesset, as determined by law.
- (b) The State Comptroller shall issue reports and opinions within the scope of his duties and shall publish them, subject to any restrictions determined by law.

**Section 13: Removal from office**

The State Comptroller shall not be removed from office except by a two-thirds majority of those Knesset members voting; arrangements for impeachment shall be determined by law.

**Section 14: Acting Comptroller**

If the State Comptroller is not able to fulfill his functions, an acting Comptroller shall be appointed, in a manner and for a period as determined by law.



*We, Talal, the First King of the Hashemite Kingdom of Jordan  
In Accordance with Article 25 of the Constitution and in pursuance  
of the resolution of the Senate and House of Deputies  
do hereby give my assent to this revised Constitution  
and command that it be put into effect*

**THE CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN**  
as amended through 1/8/1984

**CHAPTER ONE: The State and Form of Government**

Art. 1. The Hashemite Kingdom of Jordan is an independent Arab State. It is indivisible and no part of it may be ceded. The people of Jordan form part of the Arab nation. The form of Government shall be parliamentary with hereditary monarchy.

Art. 2. Islam shall be the religion of the State and the Arabic Language shall be its official language.

Art. 3. The City of Amman shall be the capital of the Kingdom. The capital may be transferred to another place by special Law.

Art. 4. The Jordan flag shall be of the following form and dimensions: "The length of the flag shall be double its breadth. It shall be divided horizontally into three parallel and equal stripes, the uppermost of which shall be black, the centre white and the lowest green. At the end of the flag-staff it shall have a red triangle, the base of which shall be equal to its breadth and the height equal to half its length. In the triangle there shall be a white seven-pointed star of such a size that it may be contained within a circle of which the diameter shall be one-fourteenth part of its length. It shall be so placed that its centre shall be at the intersection of the lines bisecting the angles of the triangle, and the axis through one of its points is parallel to the base of the triangle.

**CHAPTER TWO: Rights and Duties of Jordanians**

Art. 5. The Jordanian national shall be defined by Law.

Art. 6.

- (i) Jordanians shall be equal before the Law. There shall be no discrimination between them as regards their rights and duties, on grounds of race, language or religion.
- (ii) The Government shall ensure work and education, within the limits of its possibilities, and shall ensure a state of tranquillity and equal opportunities, to all Jordanians.

Art. 7. Personal freedom shall be safeguarded.

Art. 8. No person shall be detained or imprisoned except in accordance with the provisions of the law.

**CHAPTER THREE: POWERS OF THE STATE - GENERAL PROVISIONS**

Art. 24. (i) The nation is the source of all powers.  
(ii) The nation shall exercise its powers in the manner prescribed by this Constitution.

Art. 25. The Legislative Power shall be vested in the National Assembly and the King. The National Assembly shall consist of a Senate and a House of Deputies.

Art. 26. The Executive Power shall be vested in the King who shall exercise His powers through His Ministers in accordance with the provisions of this Constitution.

Art. 27. The Judicial Power shall be exercised by the different courts of law, and all judgements shall be given in accordance with the law and pronounced in the name of the King.

**CHAPTER FOUR: THE EXECUTIVE POWER****PART 1: The King and His Prerogatives**

Art. 28. The throne of the Hashemite Kingdom is limited by inheritance to the dynasty of King Abdullah Ibn Al-Hussein in a direct line through his male heirs as provided in the following provisions:

- (a)<sup>1</sup> The Royal prerogatives shall pass from the holder of the throne to his eldest son, and to the eldest son of that son and by similar process thereafter. Should the eldest son die before the throne devolves upon him, his existence of brothers of the deceased son, provided that the King may select one of his brothers as heir apparent. In the latter case, the right to inherit the throne from the holder of the throne shall pass to him.
- (b) Should the person entitled to the throne die without an heir, the throne shall pass to his eldest brother. In the event that the holder of the throne has no brothers, the throne shall pass to the eldest son of his eldest brother. Should his eldest brother has no son, the throne shall pass to the eldest son of his other brothers according to their seniority in age.
- (c) In the absence of any brothers or nephews, the throne shall pass to the uncles and their descendants according to the order prescribed in paragraph (b) above.
- (d) Should the last King die without any heir, in the manner prescribed above, the throne shall devolve upon the person whom the National Assembly shall select from amongst the descendants of the founder of the Arab Revolt, the late King Hussein Ibn Ali.
- (e) No person shall ascend the Throne unless he is a Moslem, mentally sound and born by a legitimate wife and of Moslem parents.
- (f) No person shall ascend the Throne who has been excluded from succession by a Royal Decree on ground of his unsuitability. Such exclusion shall not of itself include the descendants of such person provided that the Royal Decree of exclusion is signed by the Prime Minister and by four Mini-

<sup>1</sup> As amended in the Official Gazette No. 1831 of 1/4/1965

- sters at least of whom two shall be the Minister of Justice and Minister of Interior.
- (g) The King attains his age of majority upon the completion of his eighteenth year, according to the lunar calendar. If the Throne devolves upon a person who is under this age, the powers of the King shall be exercised by a Regent or Council of Regency, who shall be appointed by a Royal Decree by the reigning King, but if the King dies without making such nomination, the Council of Ministers shall appoint the Regent or Council of Regency.
- (h) In the event of the King becoming unable to exercise his powers through illness, His powers shall be exercised by a Regent or Council of Regency. Such Regent or Council of regency shall be appointed by a Royal Decree, and if the King is incapable of making such appointment, the appointment shall be made by the Council of Ministers.
- (i) Should the King desire to leave the country, he shall, before his departure, appoint, by a Royal Decree a Regent or Council of Regency to exercise his powers during his absence. The Regent or Council of Regency shall observe any conditions which may be prescribed in the Royal Decree. If the absence of the King is extended to more than four months and the House is not in session, the House shall be summoned immediately to consider the matter.
- (j) Before the Regent, or Viceroy, or any member of the Council of Regency or of the Throne assumes his office he shall take an oath, as prescribed in Article 29 hereof, before the Council of Ministers.
- (k) In the event of the death of the Regent, or Viceroy, or member of the Council of Regency or of the Throne, or should become incapable of performing his duties, the Council of Ministers shall appoint a suitable person to replace him.
- (l) A Regent, or Viceroy, or member of the Council of Regency or of the Throne must not be less than thirty years of age, according to the lunar calendar year, provided that any male person of the relatives of the King who has completed his eighteenth year of age, may be appointed to any such office.
- (m) In the event of the King being incapacitated by any mental illness, the Council of Ministers, on confirmation of his illness, shall immediately convene the National Assembly. Should the illness be definitely confirmed the National Assembly shall, by resolution, depose the King whereupon the Royal Prerogatives shall devolve upon the person entitled thereto after him according to the provisions of this Constitution. If the House of Deputies was dissolved at the time, or its term had expired and no new house of Deputies had been elected, the former House of Deputies shall be convened for the purpose.

Art. 29. The King shall, upon his accession to the Throne, take an oath, before the National Assembly which will be convened under the chairmanship of the Speaker of the Senate, to respect and observe the Constitution and be loyal to the nation.

Art. 30. The King is the head of the State and is immune from any liability and responsibility.

Art. 31. The King approves all Acts of Parliament and promulgates them. He shall direct the enactment of such regulations as may be necessary for the



enforcement of such Acts, provided that such Regulations are not inconsistent with the provisions thereof.

Art. 32. The King is the Supreme Commander of the Army, Naval and Air Forces.

Art. 33.<sup>2</sup>

- (i)<sup>3</sup> The King declares war, concludes peace and confirms treaties and agreements.
- (ii) Treaties and agreements which evolve financial commitments to the treasury or affect the general or personal rights of Jordanians shall not be enforceable unless they are sanctioned by the National Assembly. In no circumstances shall any secret conditions contained in any treaty or agreement be contradictory to the openly declared conditions.

Art. 34.

- (i) The King issues orders for the holding of elections to the House of Deputies in accordance with the provisions of the law.
- (ii) The King convenes the House of Deputies, opens it, adjourns it, and prorogues it in accordance with the provisions of the Constitution.
- (iii) The King may dissolve the House of Deputies.
- (iv)<sup>4</sup> The King may dissolve the House of Senate or he may suspend the membership of one of its members.

Art. 35. The King appoints the Prime Minister, dismisses him or accepts his resignation. Ministers are appointed, dismissed and their resignations accepted by the King on the recommendation of the Prime Minister.

Art. 36. The King appoints members of the Senate, and appoints the Speaker from amongst them and accepts their resignation.

Art. 37.

- (i) The King creates, grants and withdraws military and civil ranks, medals and honourable titles and may delegate this authority to any other person by special law.
- (ii) Currency shall be minted in the name of the King, in execution of the law.

Art. 38. The King has the right to grant a special pardon or remit any sentence, but any general pardon shall be determined by special law.

Art. 39. No death sentence shall be executed except after confirmation by the King. Every such sentence shall be placed before the King by the Council of Ministers accompanied by their opinion thereon.

Art. 40. The King shall exercise the powers vested in Him by Royal Decrees. Any such Decree shall be signed by the Prime Minister and the Minister or Ministers concerned. The King expresses his concurrence by placing his signature above the signatures of the other ministers.

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<sup>2</sup>

As amended in the Official Gazette No. 1380 of 4/5/1956

<sup>3</sup>

As amended in the Official Gazette No. 1396 of 1/9/1958

<sup>4</sup>

As amended in the Official Gazette No. 2532 of 10/11/1974

**PART TWO: Ministers**

Art. 41. There shall be constituted a Council of Ministers consisting of the Prime Minister, who shall be the President, and such number of Minister as may be needed and as the public interest may require.

Art. 42. No person shall be appointed as a minister unless he is a Jordanian.

Art. 43. The Prime Minister and Ministers shall, before assuming their duties, take the following oath, before the King: *"I swear by God, the Almighty, to be loyal to the King, uphold the Constitution, serve the nation and perform the duties entrusted to me with honesty."*

Art. 44. No Minister shall purchase or lease any Government property even if the sale or lease thereof has been offered in a public auction. He shall not, while holding his ministerial post, become a member of the board of directors of any company or take part in any financial transaction relating to, or receive a salary from, any company.

Art. 45.<sup>5</sup>

- (i) The Council of Ministers shall be entrusted with the responsibility of administering all affairs of the State, internal and external, with the exception of such matters which are or may be entrusted by this Constitution or by any other legislation to any person or<sup>6</sup> any other body.
- (ii) The duties of the Prime Minister, the Ministers and the Council of Ministers shall be prescribed by Regulations made by the Council of Ministers and confirmed by the King.

Art. 46. Any Minister may be entrusted with one or more Ministries as may be stated in the Order of Appointment.

Art. 47.

- (i) Every Minister shall be responsible for the conduct of all matters pertaining to his Ministry. He shall refer to the Prime Minister any matter not falling within his jurisdiction.
- (ii) The Prime Minister shall dispose of all matters within his powers and jurisdiction and shall refer other matters to the Council of Ministers for such decision as may be necessary.

Art. 48. The Prime Minister and Ministers shall sign all decisions taken by the Council of Ministers which shall be submitted to the King for approval where this Constitution, or any law, or Regulations enacted thereunder, so require. Such decisions shall be executed by the Minister and Ministers each within the limits of his jurisdiction.

Art. 49. Verbal or written orders of the King shall not release the Ministers from their responsibility.

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<sup>5</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

<sup>6</sup> As amended in the Official Gazette No. 1396 of 1/9/1958

Art. 50. In the event of the resignation or release of the Prime Minister from his office, all Ministers shall be considered to have automatically resigned or released from their offices, as the case may be.

Art. 51. The Prime Minister and Ministers shall be collectively responsible before the House of Deputies in respect of the general policy of the State. In addition, each Minister shall be responsible before the House of Deputies in respect of the actions of his Ministry.

Art. 52. The Prime Minister, or any Minister who is a member of either the House of Deputies or the Senate shall be entitled to vote in the House to which he belongs and to speak in both Houses. But Ministers who are not members of either House can speak in both Houses without the right to vote. Ministers or their Deputies in their absence, have the right of priority over all members in addressing the House of Deputies and the Senate. A Minister who receives salary as Minister shall not be entitled to receive, at the same time, any emoluments as member of either House.

Art. 53.<sup>7</sup>

- (i) A vote of confidence in the Council of Ministers or in any Minister may be cast by the House of Deputies.
- (ii) If the House of Deputies cast a vote of no confidence in the Council of Ministers by an absolute majority of all its members, the Council of Ministers must tender its resignation.
- (iii) If the vote of no confidence concerns an individual Minister, that minister alone must resign his office.

Art. 54.

- (i) A session to consider a vote of confidence in the Council of Ministers or in any individual Minister shall be held at the request of the Prime Minister or at a request signed by not less than ten Deputies.
- (ii)<sup>8</sup> A vote of confidence in the Council of Ministers or in any individual Minister may be postponed only for one period not exceeding ten days, either upon the request of the Minister concerned, or of the Council of Ministers. The House shall not be dissolved during this period.
- (iii)<sup>9</sup> Every newly formed Council of Ministers shall, within one month of its formation, in cases where the House of Deputies is in session, place before the House of Deputies a statement of its policy and ask for a vote of confidence on the basis of that statement. If the House of Deputies was not in session, at the time, or was dissolved, the Speech from the Throne shall be considered a statement of its policy for the purposes of this Article.

Art. 55. Minister shall be tried by a High Tribunal for offences which may be attributed to them in the course of the performance of their duties.

Art. 56. The House of Deputies is entitled to accuse Ministers, but a decision of accusation shall not be taken except by a majority of two-thirds of the members of the House. The House of Deputies shall appoint, from among its

<sup>7</sup> As amended in the Official Gazette No. 1179 of 17/4/1954

<sup>8</sup> As amended in the Official Gazette No. 1179 of 17/4/1954 and No. 1380 of 4/5/1958

<sup>9</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

members, Deputies who shall present the accusation to, and endorse it before, High Tribunal.

Art. 57.<sup>10</sup> The High Tribunal for the trial of Ministers shall consist of the Speaker of the Senate as President and eight members, three of whom shall be selected by ballot by the Senate from amongst its members and five members to be selected from amongst the judges of the highest Civil Court in order of seniority. In case of necessity, the number shall be completed from President of the lower Courts, in order of seniority also.

Art. 58. The High Tribunal shall apply the provisions of the Penal Code in force in respect of offences specified therein. A special law shall specify the offences for which Ministers shall be responsible in cases where such offences are not covered by the Penal Code.

Art. 59.<sup>11</sup> Judgements shall be given by the High Tribunal by a majority of six votes.

Art. 60. The High Tribunal shall make its own Rules of Procedure in trying Ministers until such time as a special law for this purpose is promulgated.

Art. 61. Any Minister accused by the House of Deputies shall be suspended from office until his case is determined by the High Tribunal. His resignation shall not prevent the taking of criminal proceedings against him, or the continuance of his trial.

## CHAPTER FIVE: THE LEGISLATIVE POWER

### The National Assembly

Art. 62. The National Assembly shall consist of two Houses: The Senate and the House of Deputies.

#### PART I: The Senate

Art. 63. The Senate, including the Speaker, shall consist of not more than one-half of the number of the members of the House of Deputies.

Art. 64. In addition to the requirements prescribed in Art. 75 of this Constitution, a Senator must have completed 40 calendar years of age and must belong to one of the following classes. Present and past Prime Ministers and Ministers, persons who had previously held the office of Ambassador, Minister Plenipotentiary, Speaker of the House of Deputies, President and Judges of the Court of Cession, and of the Civil and Shari'a Courts of Appeal, retired military officers of the rank of Lt. General and above, former Deputies who were elected at least twice as Deputies and other similar personalities who enjoy the confidence and trust of the people in view of the services they had rendered to the nation and country.

<sup>10</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

<sup>11</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

Art. 65.<sup>12</sup>

- (i) The term of office of Senator shall be for four years, and their appointment shall be renewed every four years. Senators whose term of office and expired may be re-appointed for a further term.
- (ii) The term of office of the Speaker of the Senate shall be for two years but he may be re-appointed for a further term.

Art. 66.

- (i) The Senate shall meet simultaneously with the House of Deputies and the sessions shall be the same for both Houses.
- (ii) If the House of Deputies is dissolved, the sessions of the Senate shall be suspended.

**PART II: The House of Deputies**

Art. 67. The House of Deputies shall consist of members, elected by secret ballot, in a general direct election, and in accordance with the provisions of an Electoral Law which shall ensure the following principles:

- (i) The validity of the elections.
- (ii) The right of candidates to supervise the process of election.
- (iii) The punishment of any person who may adversely influence the will of votes.

Art. 68.

- (i)<sup>13</sup> The term of office of the House of Deputies shall be for four calendar years commencing from the date of the announcement of the results of the general elections in the official Gazette. The King may, by a Royal Decree, prolong the term of the House for a period of not less than one year and not more than two years.
- (ii) A General election shall take place during the four months preceding the end of the term of the House. If, for some reasons, the election is delayed after the termination of the term of the House, the House shall remain in office until the election of a new House.

Art. 69.

- (i) The House of Deputies shall elect its Speaker at the beginning of each ordinary session by a secret ballot for a period of one calendar year, but he may be re-elected.
- (ii) If the House of Deputies holds an extraordinary session and has no Speaker, the House shall elect its Speaker whose term of office will terminate at the beginning of the ordinary session.

Art. 70. In addition to the requirements prescribed in Article 75 of this Constitution, a Deputy must have completed thirtieth calendar year of his age.

Art. 71. The House of Deputies shall have the right to decide on the validity of the election of its members. Any voter shall have the right to present a petition to the Secretariat of the House, within 15 days of the announcement of the results of the elections in his area, setting out the legal reasons for the

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<sup>12</sup> As amended in the Official Gazette No. 1234 of 16/10/1955

<sup>13</sup> As amended in the Official Gazette No. 1476 of 16/2/1960

elections in his area, setting out the legal reasons for invalidating the election of any Deputy. No election shall be considered invalid unless it has been declared as such by a majority of a two-third of the members of the House.

Art. 72. Any Deputy may resign his seat by notifying the Speaker of the House of Deputies in writing, and the Speaker shall place the resignation before the House for a decision as to whether the resignation should be accepted or refused.

Art. 73.

- (i) If the House of Deputies is dissolved, a general election must take place, and the new House assembled in an extraordinary session, not later than four months from the date of its dissolution. Such session shall be deemed to be an ordinary session within the meaning of Article 78 of this Constitution and shall be subject to the conditions prescribed therein for prolongation or adjournment.
- (ii) Should the election be not concluded at the end of the four months, the dissolved House shall have its full constitutional powers restored and assemble forthwith as if its dissolution had not taken place and shall remain in office until the election of a new House.
- (iii)<sup>14</sup> Such session shall not, at any event, continue after the 30th day of September and shall be prorogued on that date so that the House may be able to convene its ordinary session on the first day of October. If such extraordinary session is convened in the month of October or November, it shall be regarded as the first ordinary session of the House of Deputies.
- (iv)<sup>15</sup> Despite the contents of the two paras (1,2) of this Article, the King may postpone holding general elections for a period not exceeding one year in case there are compelling circumstances under which the Council of Ministers feels that the holding of elections is impossible.
- (v)<sup>16</sup> If the current compelling circumstances stated in item four of the article continued to persist, then the King upon a Cabinet decision can reconvene the dissolved House of Parliament. This means that the old House will continue to function in response to the pertaining Royal Decree. The House will exercise its full constitutional Powers and will be subject to all provisions stated in the Constitution including its duration and dissolution measures. The House's session will therefore be considered the first ordinary session whenever it takes place.
- (vi)<sup>17</sup> Upon a Cabinet decision general election can be held in half the constituencies despite the occupation. The King is empowered to call for elections in these constituencies. The newly elected Parliament members will then elect up to half the number of deputies whose election was rendered impossible due to the compelling circumstances. In electing these deputies, the Parliament should have at least three quarters of its members in session, and the candidate should receive the support of at least two-thirds of the members present in accordance with Art. 88 of the Constitution. Later the newly-elected deputies together with the old ones, can together elect the remaining number of deputies.

<sup>14</sup> As amended in the Official Gazette No. 1243 of 16/10/1955

<sup>15</sup> As amended in the Official Gazette No. 2523 of 10/11/1974 and as amended in its present form in the Official Gazette No. 2605 of 27/2/1976

<sup>16</sup> As amended in the Official Gazette No. 2605 of 27/2/1976

<sup>17</sup> As amended in the Official Gazette No.3201 of 9/1/1984

Art. 74.<sup>18</sup> If the House of Deputies was dissolved, for any reason, the new House shall not be dissolved for the same reason. A minister who intends to stand for nomination and election must resign fifteen days, at least, before the beginning of the nomination.

### PART III: PROVISIONS GOVERNING BOTH HOUSES OF PARLIAMENT

Art. 75.<sup>19</sup> (i) No person shall become a Senator or Deputy:

- (a) Who is not a Jordanian.
- (b) Who claims foreign nationality or protection.
- (c) Who was adjudged bankrupt and has not been legally discharged.
- (d) Who was interdicted for any reason and the interdiction has not been removed.
- (e) Who was sentenced to a term of imprisonment exceeding one year for a non-political offence and has not been pardoned.
- (f) Who has a material interest in any contract, other than a contract or lease of land and property, with any Department of Government provided that this provision shall not apply to any shareholder in a company of more than ten members.
- (g) Who is insane or imbecile.
- (h) Who is related to the King within a degree of consanguinity to be prescribed by special law.

(ii) Should any Senator or Deputy become disqualified during his term of office or should it appear after his election that he lacks one or more of the qualifications stated in the preceding paragraph, his membership shall, by a resolution of two-thirds of the House to which he belongs, be considered extinct and vacant, provided that such a resolution, if passed by the Senate, is submitted to the King for approval.

Art. 76. Subject to the provisions of Art. 52 of this Constitution, no person shall be allowed to be a member of either the House of Deputies or the Senate and a holder of a public office at the same time. Public office means every office whose holder receives his salary from public funds, and it includes municipal offices. Similarly, no person is allowed to be a member of both the House of Deputies and the Senate.

Art. 77. Subject to the provisions of this Constitution relating to the dissolution of the House of Deputies, the National Assembly shall hold one ordinary session during every year of its term.

Art. 78.<sup>20</sup>

- (i) The King shall summon the National Assembly to an ordinary session on the first day of October of each year or, if that day is an official holiday, on the first day following the official holiday, provided that the King may, by Royal Decree published in the Official Gazette postpone for a period not exceeding two months, the summoning of the Assembly to a date to be fixed by the Royal Decree.

<sup>18</sup>

<sup>19</sup> As amended in the Official Gazette No. 1179 of 17/4/1954

<sup>20</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

As amended in the Official Gazette No. 1179 of 17/4/1954

- (ii) If the National Assembly is not summoned in accordance with the preceding paragraph, it shall assemble of its own motion as if it was so summoned.
- (iii)<sup>21</sup> The ordinary session of the National Assembly shall begin on the date upon which it was summoned to meet in accordance with the two preceding paragraphs, and shall last for four months unless the House of Deputies is dissolved by the King before the expiration of that period. The session may be prolonged by the King for a further period not exceeding three months to allow for the dispatch of pending matters. At the expiration of the four months or any such prolongation thereof, the King shall prorogue the Assembly.

Art. 79. The King shall open the ordinary session of the National Assembly by a Speech from the Throne addressed to both the Senate and the House of Deputies. He may depute the Prime Minister or any of the Ministers to perform the opening ceremony and deliver the Speech from the Throne. The House of Deputies and the Senate shall each submit a petition which shall contain its reply thereto.

Art. 80. Every Senator and Deputy shall, before taking his seat, take an oath before his House as follows: "*I swear by the Almighty God to be loyal to the King and to the country and uphold the Constitution, serve the nation and truly perform the duties entrusted to me*".

Art. 81.

- (i) The King may, by Royal Decree, adjourn the sessions of the National Assembly not more than three times, or two times only if he had postponed the meeting of the National Assembly under paragraph (ii) of Art. 78, provided that during any one session the period of such postponement shall not exceed two months, in the aggregate. In computing the term of the session, the periods covered by any such adjournment shall not be taken into account.
- (ii) The Senate and the House of Deputies may adjourn their session from time to time in conformity with their own Standing Orders.

Art. 82.

- (i) The King may, whenever necessary, convene the National Assembly to meet in an extraordinary session for an unspecified period for the purpose of deciding matters to be specified in the Royal Decree, when the summons is issued. An extraordinary session shall be dissolved by a Royal Decree.
- (ii) The King may convene the National Assembly to meet in an extraordinary session at the request of an absolute majority of the Deputies. Such request shall be contained in a petition specifying the matters which it is desired to discuss.
- (iii) The National Assembly shall not discuss, in any extraordinary session, except such matters as are specified in the Royal Decree convening the session.

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<sup>21</sup> As amended in the Official Gazette No. 1243 of 16/10/1955



Art. 83. The Senate and the House of Deputies shall each make its Standing Orders for the regulation of its own proceedings and shall submit such Orders to the King for confirmation.

Art. 84.<sup>22</sup>

- (i) A meeting of the Senate or of the House of Deputies shall not be considered valid unless it is attended by two-thirds of the members of either House, and shall continue to be considered valid as long as an absolute majority of the members of either House is present.
- (ii) Decisions of both the Senate and the House of Deputies shall be taken by majority of votes of the members present, excluding the Speaker, who shall not vote except where it is provided otherwise in this Constitution. In the case of equality of votes the Speaker shall give a casting vote.
- (iii) If the voting is related to the Constitution, or is one of the confidence in the Council of Ministers, or in an individual Minister, the votes shall be taken by calling the names of members in a loud voice.

Art. 85. The sessions of both the Senate and the House of Deputies shall be held in public. Secret sessions may, however, be convened at the request of the Government or of five Senators or Deputies. If such a request is made the Senate or House of Deputies shall decide whether it should be accepted or rejected.

Art. 86.

- (i) No Senator or Deputy shall be detained or tried during the holding of the sessions of the National Assembly unless the Senate or the House of Deputies, as the case may be, decide by a majority resolution, that there is sufficient reason for his detention or trial or unless he was arrested in the course of committing a criminal offence. In the event of his arrest in this manner, the Senate or the House of Deputies, must be notified immediately.
- (ii) If a member is detained, for any reason, while the National Assembly is not sitting, the Prime Minister shall notify the Senate or the House of Deputies when it reassembles, of the proceedings which were taken against him, coupled with the necessary explanation.

Art. 87. Every Senator or Deputy shall have complete freedom of speech and expression of opinion within the limits of the Standing Orders of the Senate or House of Deputies, as the case may be, and shall not be answerable in respect of any vote he gave or opinion expressed, or speech made, by him during the meetings of the House.

Art. 88.<sup>23</sup> Where, for any reason, the place of a member of the House of Representatives in any constituency becomes vacant and there are compelling circumstances under which the Council of Ministers feels that the holding of a by-election to fill that place is impossible, the House of Representatives shall be an absolute majority of its members and within one month from the date of it being given notice of that, undertake the election to fill that place from among the inhabitants of that constituency in the manner which the

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<sup>22</sup> As amended in the Official Gazette No. 1179 of 17/4/1954

<sup>23</sup> As amended in the Official Gazette No. 2414 of 8/4/1973

House deems suitable of a member, to whom provisions of the Constitution apply.

Art. 89.

- (i) In addition to the circumstances under which the Senate and House of Deputies may assemble in a joint meeting as prescribed in Art.s 34,79 & 92 of this Constitution, both Houses shall also hold a joint meeting at the request of the Prime Minister.
- (ii) When the Senate and House of Deputies assemble in a joint meeting, the meeting shall be presided over by the Speaker of the Senate.
- (iii)<sup>24</sup> A joint meeting of the Senate and House of Deputies legally assembled shall not be considered valid unless an absolute majority of members of each House is present. Decisions at such a meeting shall be taken by a majority of the Senators and Deputies present, exclusive of the Speaker who, in case of equality of votes, shall have a casting vote.

Art. 90. No Senator or Deputy shall be removed from his office except by a decision of the House to which he belongs provided that, other than in the case of disqualification and combination between memberships prescribed in this Constitution and in the electoral law, the decision to remove a Senator or Deputy must be taken by a two-third majority of the House. If the decision of removal concerns a Senator, the decisions must be submitted to the King for approval.

Art. 91. The Prime Minister may place before the House of Deputies any draft law and the House of Deputies shall be entitled to accept, amend, or reject the draft but, in all cases, the House shall refer the draft to the Senate and it shall not be promulgated as law unless it is passed by both the Senate and the House of Deputies and confirmed by the King.

Art. 92. Should either the Senate or the House of Deputies twice reject any draft law and the other accept it, whether in a revised form or otherwise, both the Senate and the House shall assemble in a joint meeting under the Chairmanship of the Speaker of the Senate to discuss the disputed points, and the joint meeting shall adopt a decision by a two-third majority of the Senators and Deputies present. If the Draft law was rejected, as described above, it shall not be placed again before the House during the same session.

Art. 93.

- (i) Every Draft law passed by the Senate and the House of Deputies shall be submitted to the King for his assent.
- (ii) Any law shall become effective upon the King's assent after 30 days from the date of its publication in the Official Gazette unless it is specifically provided in that law that it shall come into force on any other specified date.
- (iii) If the King did not see fit to give his assent to any law. He may, within six months from the date on which the law was submitted to Him, return it to the House with a statement showing the reasons for withholding his assent.
- (iv) If any Draft law (other than the Constitution) is referred back to the House within the period specified in the preceding paragraph and is passed,

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<sup>24</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

for the second time, by two-thirds of the members of each of the Senate and the House of Deputies it must, in this case, be promulgated. If the law was not returned with the Royal assent within the period prescribed in paragraph (iii) above, it shall be considered as promulgated and effective. If any Draft law fails to obtain the two-thirds majority of votes it cannot be resubmitted during the same session, provided that the National Assembly may reconsider the Draft during the next ordinary session of the Assembly.

Art. 94.<sup>25</sup>

- (i) In cases where the National Assembly is not sitting, the Council of Ministers has with the assent of the King, the power to issue provisional laws covering matters which require necessary action and which could not be delayed or to approve urgent expenditure which cannot be delayed. Such laws, which should not contravene the provisions of the Constitution, shall have the force of law, provided that they be placed before the House at the beginning of its next session and the House may sanction such laws or amend them. In the event of the rejection of such provisional laws, the Council of Ministers shall with the sanction of the King, immediately declare their cancellation and from the date of declaration such provisional laws shall cease to be in force provided that such cancellation shall not affect any contract which may have been concluded or other rights which may have been acquired thereunder.
- (ii) Provisional laws shall have the same force and effect as the laws promulgated in accordance with Article 93 of this Constitution.

Art. 95.<sup>26</sup>

- (i) Any ten Senators or Deputies may propose any law. Such proposal shall be referred to the committee concerned in the House for its opinion. If the House is of the opinion that the proposal be accepted it shall refer it to the Government for drafting it in the form of law, and submission to the House either during the same session or in the following session.
- (ii) Any law proposed by Senators or Deputies under the preceding paragraph and rejected by either House, shall not be presented, for a second time, during the same session.

Art. 96. Any Senator or Deputy may address questions to the Ministers concerning any general matters, as prescribed in the Standing Orders of the Senate or the House, as the case may be. Any such question shall not be debated before the lapse of eight days from the date of its receipt by the Minister, unless the case is of an urgent nature and the Minister agrees to shorten this period.

**CHAPTER SIX: THE JUDICIARY**

Art. 97. Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.

Art. 98. Judges of the Civil and Shari'a Courts shall be appointed and dismissed by a Royal Decree in accordance with the provisions of the law.

<sup>25</sup>

<sup>26</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

As amended in the Official Gazette No. 1380 of 4/5/1958

Art. 99. The courts shall be divided into three categories:

- (i) Civil Courts.
- (ii) Religious Courts.
- (iii) Special Courts.

Art. 100. The establishment of the different courts, the definition of their categories and their divisions, the limitation of their jurisdiction and their administration shall be determined by a special law which shall provide for the establishment of a High Court of Justice.

Art. 101.

- (i) Courts shall be open to all and are free from any interference in their affairs.
- (ii) The sittings of the courts shall be public unless the court considers that it should sit *in camera* in the interest of public order or decorum.

Art. 102.<sup>27</sup> The Civil Courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by, and against, the Government, except in matters which, by the provisions of the Constitutions<sup>28</sup>, or of any Law of the time being in force, fall within the jurisdiction of Religious Courts or Special Courts.

Art. 103.

- (i) The Civil Courts shall exercise their jurisdiction in civil and criminal matters in accordance with the law for the time being in force in the Kingdom provided that, in matters affecting the personal status of foreigners, or in matters of a civil and commercial nature in which it is customary by international usage to apply the law of another country, that law shall be applied in a manner to be prescribed by law.
- (ii) Matters of personal status are those matters which are defined by law and are within the exclusive jurisdiction of the Shari'a Courts where the parties are Moslems.

Art. 104. The Religious Courts shall be divided into:

- (i) The Shari'a Courts.
- (ii) The Tribunals of other Religious Communities.

Art. 105. The Shari'a Courts shall have exclusive jurisdiction in the following matters in accordance with its special laws:

- (i) Matters of Personal status of Moslems.
- (ii) Cases concerning blood money (*diyeh*) where the two parties are Moslems or where one of the parties is not a Moslem and the two parties consent to the jurisdiction of the Shari'a Courts.

Art. 106. The Shari'a Courts shall apply in its proceedings the provisions of the Shari'a Law.

Art. 107. The regulation of the affairs of Moslem trusts (*Wakfs*) and the administration of their financial affairs and other related matters shall be defined by a special law.

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<sup>27</sup>

<sup>28</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

As amended in the Official Gazette No. 1396 of 1/9/1958

Art. 108. The tribunals of Religious Communities are the tribunals of the non-Moslem religious tribunals which were or will be recognised by the Government as being established in the Hashemite Kingdom of Jordan.

Art. 109.

- (i) Tribunals of Religious Communities shall be established in accordance with a law to be enacted concerning them. Such law shall define the jurisdiction of such tribunals in matters of personal status and trusts (wakf) constituted for the benefit of the community concerned. Matters of personal status of any such community shall be the same matters as are, in the case of Moslems, within the jurisdiction of the Shari'a Courts.
- (ii) Such laws shall determine the procedure to be followed by the tribunals of the Religious Communities.

Art. 110. Special Courts shall exercise jurisdiction in accordance with the provisions of the law constituting them.

**CHAPTER SEVEN: FINANCIAL MATTERS**

Art. 111. No tax or duty shall be levied except by law. Taxes and duties shall not include the various kinds of fees which the Treasury charges in respect of services rendered to members of the public by Government Departments or in consideration of benefits accruing to them from State Domain. In levying taxes, the Government shall be guided by the principle of progressive taxation, coupled with the insurance of equality and social justice provided that taxation shall not exceed the capacity of taxpayers or exceed the State's requirements for funds.

Art. 112.

- (i) The Draft law conveying revenue and expenditure shall be submitted to the National Assembly for debate in accordance with the provisions of this Constitution one month at least before the beginning of the financial year.
- (ii) Voting in respect of the budget shall be taken on each head separately.
- (iii) No sum of the expenditure part of the General Budget shall be transferred from one head to another except by law.
- (iv) The National Assembly, when debating the General Budget Draft law or the provisional laws relating thereto, may reduce the expenditures under the different heads according to what it considers is in the public interest but shall not increase, such expenditure either by amendment or by submitting a separate proposal, provided that the National Assembly may after the debate, propose laws for the creation of new expenditure.
- (v) During the debate of the General Budget, no proposal shall be accepted for the repeal of an existing tax or the creation of a new tax or reducing existing taxes which are levied by financial laws in force and no proposal shall be accepted for amending expenditure or revenue fixed by contract.
- (vi) The estimate of national revenue and expenditure for every financial year shall be approved by the General Budget law, provided that the law may provide for the allocation of any special sums for a period exceeding one year.

Art. 113.<sup>29</sup> If it was not possible to enact the General Budget law prior to the beginning of the new financial year, expenditure shall continue by monthly appropriations at the rate of 1/12th of each month of the previous year.

Art. 114. The Council of Ministers may, with approval of the King, make regulations for the control of appropriations and expenditure of public funds, and the organization of Governments stores.

Art. 115. All receipts from taxes and other sources of Government revenue shall be paid into the Treasury and shall be included in the Government Budget save where otherwise provided by law. No part of the funds of the Treasury shall be appropriated or expended for any purpose whatever unless sanctioned by law.

Art. 116. The Civil List of the King shall be paid from the General revenue, and shall be fixed in the General Budget law.

Art. 117. Any concession granting a right for the exploitation of mines, minerals or public utilities must be sanctioned by law.

Art. 118. No person shall be exempted from payment of any taxes or duties in circumstances other than those prescribed by law.

Art. 119. An Audit Office shall be constituted by law to audit the State's revenue and the manner of expenditure.

- (i) The Audit Office shall submit to the House of Deputies, at the beginning of every ordinary session, or whenever the House so demands, a general report embodying its views and comments and indicating any irregularities committed and the responsibility arising therefrom.
- (ii) The law shall make provision for the immunity of the Head of the Audit Office.

#### CHAPTER EIGHT: GENERAL MATTERS

Art. 120. The administrative divisions of the Hashemite Kingdom of Jordan, the establishment of the Government departments, their classification, designation, and programme of operations and the manner of their appointment of civil servants, their dismissal, discipline, and definition of their jurisdiction and specialization shall be governed by Regulations to be issued by the Council of Ministers, with the approval of the King.

Art. 121. Municipal and local council affairs shall be administered by municipal or local councils in accordance with special laws.

Art. 122. The High Tribunal provided for in Article 57 shall have the right to interpret the provisions of the Constitutions either at the request of the Council of Ministers or by a decision taken by any House of the National Assembly, by an absolute majority. Such interpretation shall be implemented upon its publication in the Official Gazette.

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<sup>29</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

Art. 123.

- (i) The Special Tribunal (Diwan Khas) may interpret the text of any law which has not been interpreted by the Courts at the request of the Prime Minister.
- (ii) The Special Tribunal (Diwan Khas) shall be constituted of the president of the highest Civil Court as Chairman, two of its judges and another senior administrative official who shall be appointed by the Council of Ministers as members. It shall also include a member, delegated by the Minister, from among the senior officials of the Ministry concerned.
- (iii)<sup>30</sup> The Special Tribunal (Diwan Khas) shall give its decisions by majority of votes.
- (iv) Decisions given by the Special Tribunal (Diwan Khas) and published in the Official Gazette shall have the force of law.
- (v) All other matters concerning the interpretation of law shall be decided as they arise by the courts of law in the ordinary way.

Art. 124. In the event of an emergency necessitating the defence of the realm, a law which shall be cited as the Defence law shall be enacted giving power to any person, specified therein, to take such actions and measures, as may be necessary, including the suspension of the operation of the ordinary laws of the State, with a view to ensuring the defence of the Realm. The Defence law shall come into force upon its proclamation by a Royal Decree based on a decision of the Council of Ministers.

Art. 125.

- (i) In the event of an emergency of a serious nature to the extent that action under the preceding Article of this Constitution would be considered insufficient for the defence of the Kingdom, the King may, by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in all or any part of the Kingdom.
- (ii) When martial law is declared the King may, by a Royal Decree, issue such instructions as may be necessary for the defence of the Kingdom, notwithstanding the provisions of any law in force. Persons acting under such instructions, shall not incur any legal liability for all acts done by them under the provisions of any law such until they are released from that responsibility by special law to be enacted for the purpose.

Art. 126.

- (i) The procedure prescribed in this Constitution with regard to draft laws shall apply to any Draft the amendment of this Constitution, provided that any such amendment is passed by a two-third majority of members of both the Senate and the House of Deputies separately. In the event of a joint meeting of the Senate and the House of Deputies, in accordance with Art. 92 of this Constitution, the amendment must be passed by a two-third majority of members of both houses provided that, in each case, the amendment shall not come into force unless approved by the King.
- (ii) No amendment of the Constitution affecting the rights of the King and His heirs be passed during a period of Regency.

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<sup>30</sup> As amended in the Official Gazette No. 1380 of 4/5/1958

Art. 127. The duties of the army shall be restricted to the defence of the Realm and its safety.

- (i) Recruitment to the Army, its organization and the rights and duties of its personnel shall be defined by law.
- (ii) The organization of the police and gendarmerie and their powers and jurisdiction shall be defined by law.

#### **CHAPTER NINE: ENFORCEMENT AND REPEAL OF LAWS**

Art. 128. All Laws and Regulations and other existing legislation in force in the Hashemite Kingdom of Jordan at the date of the enforcement of this Constitution shall continue to be in force until they are repealed or amended by legislation.

Art. 129.

- (i) The Jordan Constitution issued on the 7 December 1946, and all amendments thereto, are hereby repealed.
- (ii) The Palestine Order-in-Council 1922, and all amendments thereto are hereby repealed.
- (iii) The repeals referred to in the preceding two paragraphs shall not affect the validity of any Law or Regulation made or act done in virtue thereof, prior to the coming into force of the provisions of this Constitution.

Art. 130. The provisions of this Constitution shall come into force on the date of its publication in the Official Gazette.

Art. 131. The Council of Ministers shall be charged with the execution of the provisions of this Constitution.

1/1/52

Talal





## THE CONSTITUTION OF THE STATE OF KUWAIT

In the name of Allah, the Beneficent, the Merciful,

We, ABDULLAH al-SALIM al-SABAH,  
AMIR of the State of Kuwait.

*Being desirous of consummating the means of democratic rule for our dear Country; and,  
Having faith in the role of this Country in the furtherance of Arab nationalism and the promotion of world peace and human civilisation; and,  
Striving towards a better future in which the Country enjoys greater prosperity and higher international standing, and in which also the citizens are provided with more political freedom, equality and social justice; a future which upholds the traditions inherent in the Arab nature by enhancing the dignity of the individual, safeguarding public interest and applying consultative rule yet maintaining the unity and stability of the Country; and,  
Having considered Law Number 1 of 1962 concerning the system of Government during the period of transition; and,  
Upon the resolution of the Constituent Assembly;  
Do hereby approve this Constitution and promulgate it.*

### **PART I: THE STATE AND THE SYSTEM OF GOVERNMENT**

Art.1: Kuwait is an Arab State, independent and fully sovereign. Neither its sovereignty nor any part of its territory may be relinquished. The people of Kuwait is a part of the Arab Nation.

Art.2: The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation.

Art.3: The official language of the State is Arabic.

Art.4: Kuwait is a hereditary Emirate, the succession to which shall be in the descendants of the late Mubarak al-Sabah. The Heir Apparent shall be designated within one year, at the latest, from the date of accession of the Amir. His designation shall be effected by an Amiri Order upon the nomination of the Amir and the approval of the National Assembly which shall be signified by a majority vote of its members in a special sitting. In case no designation is achieved in accordance with the foregoing procedure, the Amir shall nominate at least three of the descendants of the late Mubarak al-Sabah of whom the National Assembly shall pledge allegiance to one as Heir Apparent. The Heir Apparent shall have attained his majority, be of sound mind and a legitimate son of Muslim parents.

A special law promulgated within one year from the date of coming into force of this Constitution shall lay down the other rules of succession in the Amirate. The said law shall be of a constitutional nature and therefore shall be capable of amendment only by the procedure prescribed for amendment of the Constitution.

Art.5: The flag, emblem, badges, decorations and National Anthem of the State shall be specified by law.

Art.6: The System of Government in Kuwait shall be democratic, under which sovereignty resides in the people, the source of all powers. Sovereignty shall be exercised in the manner specified in this Constitution.

**PART II: FUNDAMENTAL CONSTITUENTS OF THE KUWAIT SOCIETY**

Art.7: Justice, Liberty and Equality are the pillars of Society; cooperation and mutual help are the firmest bonds between citizens.

Art.8: The State safeguards the pillars of Society and ensures, security, tranquility and equal opportunities for citizens.

Art.9: The family is the corner-stone of Society. It is founded on religion, morality and patriotism. Law shall preserve the integrity of the family, strengthen its ties and protect under its auspices motherhood and childhood.

Art.10: The State cares for the young and protects them from exploitation and from moral, physical and spiritual neglect.

Art.11: The State ensures aid for citizens in old age, sickness or inability to work. It also provides them with services of social security, social aid and medical care.

Art.12: The State safeguards the heritage of Islam and of the Arabs and contributes to the furtherance of human civilisation.

Art.13: Education is a fundamental requisite for the progress of society, assured and promoted by the State.

Art.14: The State shall promote science, letters and the arts and encourage scientific research therein.

Art.15: The State cares for public health and for means of prevention and treatment of diseases and epidemics.

Art.16: Property, capital and work are fundamental constituents of the social structure of the State and of the national wealth. They are all individual rights with a social function as regulated by law.

Art. 17: Public property is inviolable and its protection is the duty of every citizen.

Art.18: Private property is inviolable. No one shall be prevented from disposing of his property except within the limits of law. No property shall be expropriated except for the public benefit in the circumstances and manner specified by law, and on condition that just compensation is paid. Inheritance is a right governed by the Islamic Sharia.

Art.19: General confiscation of the property of any person shall be prohibited. Confiscation of particular property as a penalty may not be inflicted except by a court judgment in the circumstances specified by law.

Art.20: The national economy shall be based on social justice. It is founded on fair cooperation between public and private activities. Its aim shall be economic development, increase of productivity, improvement of the standard of living and achievement of prosperity for citizens, all within the limits of law.

Art.21: Natural resources and all revenues therefrom are the property of the State. It shall ensure their preservation and proper exploitation due regard being given to the requirements of State security and the national economy.

Art.22: Relations between employers and employees and between landlords and tenants shall be regulated by law on economic principles, due regard being given to the rules of social justice.

Art.23: The State shall encourage both cooperative activities and savings, and supervise the system of credit.

Art.24: Social justice shall be the basis of taxes and public imposts.

Art.25: The State shall ensure the solidarity of society in shouldering burdens resulting from public disasters and calamities and provide compensation for war damages or injuries received by any person as a result of the discharge of his military duties.

Art.26: Public office is a national service entrusted to those who hold it. Public officials, in the exercise of their duties, shall aim at the public interest. Aliens may not hold public offices except in the cases specified by law.

### **PART III: PUBLIC RIGHTS AND DUTIES**

Art. 27: Kuwait nationality shall be defined by law. No deprivation or withdrawal of nationality may be effected except within the limits prescribed by law.

Art. 28: No Kuwaiti may be deported from Kuwait or prevented from returning thereto.

Art. 29: All people are equal in human dignity, and in public and duties before the law, without distinction as to race, origin, language or religion.

Art. 30: Personal liberty is guaranteed.

Art. 31: No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment.

Art.32: No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offenses committed after the relevant law has come into force.

Art.33: Penalty is personal.

**Art.34:** An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured. The infliction of physical or moral injury on an accused person is prohibited.

**Art.35:** Freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals.

**Art.36:** Freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise, in accordance with the conditions and procedures specified by law.

**Art.37:** Freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specified by law.

**Art.38:** Places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law.

**Art.39:** Freedom of communication by post, telegraph and telephone and the secrecy thereof shall be guaranteed; accordingly, censorship of communications and disclosure of their contents shall not be permitted except in the circumstances and manner specified by law.

**Art.40:** Education is a right for Kuwaitis, guaranteed by the State in accordance with law and within the limits of public policy and morals. Education in its preliminary stages shall be compulsory and free in accordance with law. Law shall lay down the necessary plan to eliminate illiteracy. The State shall devote particular care to the physical, moral and mental development of youth.

**Art.41:** Every Kuwaiti has the right to work and to choose the type of his work. Work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavour to make it available to citizens and to make its terms equitable.

**Art.42:** There shall be no forced labour except in the cases specified by law for national emergency and with just remuneration.

**Art.43:** Freedom to form associations and unions on a national basis and be peaceful means shall be guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join by association or union.

**Art.44:** Individuals shall have the right of private assembly without permission or prior notification, and the police may not attend such private meetings. Public meetings, processions and gatherings shall be permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals.

Art.45: Every individual shall have the right to address the public authorities in writing over his signature. Only duly constituted organisations and bodies corporate shall have the right to address the authorities collectively.

Art.46: Extradition of political refugees is prohibited.

Art.47: National defence is a sacred duty, and military service is an honour for citizens which shall be regulated by law.

Art.48: Payment of taxes and public imposts is a duty in accordance with law which shall regulate exemption of small incomes from taxes in such a way as to maintain the minimum standard of living.

Art.49: Observance of public order and respect for public morals are a duty incumbent upon all inhabitants of Kuwait.

#### **PART IV: POWERS**

##### **Chapter I - General Provisions**

Art.50: The system of Government is based on the principle of separation of powers functioning in co-operation with each other in accordance with the provisions of the Constitution. None of these powers may relinquish all or part of its competence specified in this Constitution.

Art.51: Legislative power shall be vested in the Amir and the National Assembly in accordance with the Constitution.

Art.52: Executive power shall be vested in the Amir, the Cabinet and the Ministers, in the manner specified by the Constitution.

Art.53: Judicial power shall be vested in the Courts, which shall exercise it in the name of the Amir within the limits of the Constitution.

##### **Chapter II - The Head of State**

Art.54: The Amir is the head of the State. His person shall be immune and inviolable.

Art.55: The Amir shall exercise his powers through his Ministers.

Art.56: The Amir shall, after the traditional consultations, appoint the Prime Minister and relieve him of office. The Amir shall also appoint Ministers and relieve them of office upon the recommendation of the Prime Minister. Ministers shall be appointed from amongst the members of the National Assembly and from others. The number of Ministers in all shall not exceed one-third of the number of the members of the National Assembly.

Art.57: The Cabinet shall be re-constituted in the manner specified in the preceding Article at the beginning of every legislative term of the National Assembly.

Art.58: The Prime Minister and the Ministers shall be collectively responsible

to the Amir for the general policy of the State. Every Minister shall also be individually responsible to the Amir for the affairs of his ministry.

Art.59: The Law referred to in Art.4 of this Constitution shall specify the conditions under which the Amir shall exercise his constitutional powers.

Art.60: Before assuming his powers the Amir shall take the following oath at a special sitting of the National Assembly: *"I swear by Almighty God to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people and to safeguard the independence and territorial integrity of the Country"*.

Art.61: In the event of his absence outside the Country and the inability of the Heir Apparent to act as Deputy for him, the Amir shall appoint, by an Amiri Order, a Deputy who shall exercise his powers during his absence. The said Amiri Order may include a specified arrangement for the exercise of the said powers on behalf of the Amir, or a limitation of their scope.

Art.62: The Amir's Deputy shall satisfy the qualifications laid down in Art.82 of this Constitution. If he is a Minister or a member of the National Assembly he shall not take part in the ministerial functions or in the work of the Assembly during the period he is acting as Deputy for the Amir.

Art.63: Before assuming his powers the Amir's Deputy shall, at a special sitting of the National Assembly, take the oath mentioned in Art.60 of this Constitution with the following phrase added thereto: *"and be loyal to the Amir."* In case the National Assembly is not in session, the Oath shall be taken before the Amir.

Art.64: The provisions of Art.131 of this Constitution shall apply to the Amir's Deputy.

Art.65: The Amir shall have the right to initiate, sanction and promulgate laws. Promulgation of laws shall take place within 30 days from the date of their submission by the National Assembly to the Amir. This period shall be reduced to seven days in case of urgency. Such urgency shall be decided upon by a majority vote of the members constituting the National Assembly. Official holidays shall not be counted in computing the promulgation period. If the period of promulgation expires without the Head of State demanding reconsiderations, the bill shall be considered as having been sanctioned and shall be promulgated.

Art.66: Reference of a bill for reconsideration shall be by a decree stating the grounds therefore. If the National Assembly confirms the bill by a two-thirds majority vote of its members the Amir shall sanction and promulgate the bill within 30 days from its submission to him. If the bill does not receive the said majority, it shall not be reconsidered during the same session. If the national Assembly, in another session, confirms the same bill by a majority vote of its members, the Amir shall sanction and promulgate the bill as law within 30 days from its submission to him.

Art.67: The Amir is the Supreme Commander of the Armed Forces. He appoints and dismisses officers in accordance with law.

Art.68: The Amir shall declare defensive war by decree. Offensive war is prohibited.

Art.69: The Amir shall proclaim Martial Law in the cases of necessity determined by law and in accordance with the procedure specified therein. The proclamation of Martial Law shall be by decree. Such decree shall be referred to the National Assembly within the 15 days following its issue, for a decision on the future of Martial Law. If the proclamation takes place during the period the National Assembly is dissolved it shall be referred to the new Assembly at its first sitting. Martial Law may not continue unless a decision to that effect is made by a majority vote of the members constituting the Assembly. In all cases the matter shall be referred to the National Assembly in accordance with the foregoing procedure, every three months.

Art.70: The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with the appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the Official Gazette. However, treaties of peace and alliance; treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens; treaties of commerce, navigation and residence; and treaties which entail additional expenditure not provided for in the budget, or which involve amendment of the laws of Kuwait; shall come into force only when made by a law. In no case may treaties include secret provisions contradicting those declared.

Art.71: Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved, the Amir may issue decrees in respect thereof which shall have the force of law, provided that they shall not be contrary to the Constitution or to the appropriations included in the budget law.

Such decrees shall be referred to the National Assembly within the 15 days following their issue if the Assembly is in being. If it is dissolved or its legislative term has expired such decrees shall be referred to the next Assembly at its first sitting. If they are not thus referred they shall retrospectively cease to have the force of law, without the necessity of any decision to that effect. If they are referred and the Assembly does not confirm them, they shall retrospectively cease to have the force of law, unless the Assembly approves their validity for the preceding period or settles in some other way the effects arising therefrom.

Art.72: The Amir shall, by decree, issue the regulations necessary for the execution of laws without amending or suspending such laws or making any exemption from their execution. A law may prescribe a less formal instrument than a decree for the issue of the regulation necessary for its execution.

Art.73: The Amir shall, by decree, issue regulations for public order and health, and regulations necessary for the organisation of public services and administration, not conflicting with any law.

Art.74: The Amir shall appoint and dismiss civil and military officials and diplomatic representatives to foreign countries in accordance with law. He shall also accept credentials of the representatives of foreign countries.

Art.75: The Amir may, by decree, grant a pardon or commute a sentence. However, general amnesty shall not be granted except by a law and then only in respect of offences committed prior to the proposal of the amnesty.

Art.76: The Amir shall confer Orders of Honour in accordance with law.

Art.77: Coins shall be minted in the name of the Amir in accordance with law.

Art.78: Upon the accession of the Head of State his annual emoluments shall be fixed by a law for the duration of his reign.

### **Chapter III - Legislative Power**

Art.79: No law may be promulgated unless it has been passed by the National Assembly and sanctioned by the Amir.

Art.80: The National Assembly shall be composed of 50 members elected directly by universal suffrage and secret ballot in accordance with the provisions prescribed by the electoral law.

Ministers who are not elected members of the National Assembly shall be considered ex-officio members thereof.

Art.81: Electoral constituencies shall be determined by law.

Art.82: A member of the National Assembly shall:

- (a) be a Kuwaiti by origin in accordance with law.
- (b) be qualified as an elector in accordance with the electoral law.
- (c) be not less than thirty calendar years of age on the day of election.
- (d) be able to read and write Arabic well.

Art.83: The term of the National Assembly shall be four calendar years commencing with the day of its first sitting. Elections for the new Assembly shall take place within the 60 days preceding the expiry of the said term, due regard being given to the provisions of Art. 107. Members whose term of office expires may be re-elected. The term of the Assembly may not be extended except for necessity in time of war and by a law.

Art.84: If, for any reason, a seat in the National Assembly becomes vacant before the end of the term, the vacancy shall be filled by election within two months from the date on which the Assembly declares the vacancy. The mandate of the new member shall last until the end of that of his predecessor. If the vacancy occurs within six months prior to the expiry of the legislative term of the Assembly no successor shall be elected.

Art.85: The National Assembly shall have an annual session of not less than eight months. The said session may not be prorogued before the budget is approved.

Art.86: The Assembly shall start its ordinary session during the month of October of every year upon a convocation by the Amir. If the decree of convocation is not issued before the first of the said month, the time for the meeting shall be deemed to be 9 a.m. on the third Saturday of that month. If such day happens to be an official holiday, the Assembly shall meet on the morning of



the first day thereafter.

Art.87: Notwithstanding the provisions of the preceding two Articles the Amir shall summon the National Assembly to hold its first meeting within two weeks of the end of the general election. If the decree of convocation is not issued within the said period, the Assembly shall be deemed to have been convoked for the morning of the day following these two weeks, due regard being given to the relevant provision of the preceding Article. If the date of the meeting of the Assembly falls after the annual date mentioned in Art.86 of the Constitution, the term of the session specified in Art.85 shall be reduced by the difference between the said two dates.

Art.88: The National Assembly shall, by decree, be called to an extraordinary session if the Amir deems it necessary, or upon the demand of the majority of the members of the Assembly. In an extraordinary session the Assembly may not consider matters other than those for which it has been convened except with the consent of the Cabinet.

Art.89: The Amir shall announce the prorogation of ordinary and extraordinary sessions.

Art.90: Every meeting held by the Assembly at a time or place other than that assigned for its meeting shall be invalid, and resolutions passed thereat shall, by virtue of law, be void.

Art.91: Before assuming his duties in the Assembly or in its committees, a member of the National Assembly shall take the following oath before the Assembly in a public sitting: *"I swear by Almighty God to be faithful to the Country and to the Amir, to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people and to discharge my duties honestly and truthfully."*

Art. 92: The National Assembly shall elect at its first sitting and for the duration of its term a President and a Deputy President from amongst its members. If either office becomes vacant the Assembly shall elect a successor for the remainder of its term.

In all cases election shall be by an absolute majority vote of the members present. If this majority vote is not attained in the first ballot, another election shall be held between the two candidates receiving the highest number of votes. If more than one candidate receives an equal number of votes in the second place, all such candidates shall participate in the second ballot. In this case the candidate who receives the greatest number of votes shall be elected. If there is a tie in this last ballot, the choice shall be by lot. The oldest member shall preside over the first sitting until the President is elected.

Art.93: The Assembly shall form within the first week of its annual session, the committees necessary for its functions. These committees may discharge their duties during the recess of the Assembly with a view to submitting their recommendations to it when it meets.

Art.94: Sittings of the National Assembly shall be public, though they may be held in secret upon the request of the Government, the President of the Assembly or ten of its members. The debate on such request shall be held in se-

cret.

Art.95: The National Assembly shall decide upon the validity of the election of its members. No election may be declared invalid except by a majority vote of the members constituting the Assembly. This jurisdiction may, by law, be entrusted to a judicial body.

Art.96: The National Assembly shall be the competent authority to accept resignation of its members.

Art.97: For a meeting of the National Assembly to be valid more than half of its members must be present. Resolutions shall be passed by an absolute majority vote of the members present, except in cases where a special majority is required. When votes are equally divided, the motion shall be deemed to be rejected.

Art.98: Immediately upon its formation, every Cabinet shall present its programme to the National Assembly. The Assembly may make comments with regard to such a programme.

Art.99: Every member of the National Assembly may put to the Prime Minister and to Ministers questions with a view to clarifying matters falling within their competence. The questions alone shall have the right to comment once upon the answer.

Art.100: Every member of the National Assembly may address to the Prime Minister and to Ministers interpellations with regard to matters falling within their competence. The debate on such an interpellation shall not take place until at least 8 days have elapsed after its presentation, except in case of urgency and with the consent of the Minister concerned. Subject to the provisions of Articles 101 and 102 of the Constitution, an interpellation may lead to the question of no-confidence being put to the Assembly.

Art.101: Every Minister shall be responsible to the National Assembly for the affairs of his ministry. If the Assembly passes a vote of no-confidence against a Minister, he shall be considered to have resigned his office as from the date of the vote of no-confidence and shall immediately submit his formal resignation. The question of confidence in a Minister may not be raised except upon his request or upon a demand signed by ten members, following a debate on an interpellation addressed to him. The Assembly may not make its decision upon such a request before the lapse of seven days from the presentation thereof. Withdrawal of confidence from a Minister shall be by a majority vote of the members constituting the Assembly excluding Ministers. Ministers shall not participate in the vote of confidence.

Art.102: The Prime Minister shall not hold any portfolio; nor shall the question of confidence in him be raised before the National Assembly. Nevertheless, if the National Assembly decides, in the manner specified in the preceding Article, that it cannot cooperate with the Prime Minister, the matter shall be submitted to the Head of State. In such a case the Amir may either relieve the Prime Minister of office and appoint a new Cabinet or dissolve the National Assembly. In the event of dissolution, if the new Assembly decides by the above mentioned majority vote that it cannot cooperate with the said

Prime Minister, he shall be considered to have resigned as from the date of the decision of the Assembly in this respect, and a new Cabinet shall be formed.

Art.103: If, for any reason, the Prime Minister or a Minister vacates his office, he shall continue to discharge the urgent business thereof until his successor is appointed.

Art.104: The Amir shall open the annual session of the National Assembly whereupon he shall deliver an Amiri Speech reviewing the situation of the country and the important public matters which happened during the preceding year, and outlining the projects and reforms the Government plans to undertake during the coming year. The Amir may depute the Prime Minister to open the Assembly or to deliver the Amiri Speech.

Art.105: The National Assembly shall choose, from amongst its members, a committee to draft the reply to the Amiri Speech which will embody the comments and wishes of the Assembly. After the said reply has been approved by the Assembly, it shall be submitted to the Amir.

Art.106: The Amir may, by a decree, adjourn the meeting of the National Assembly for a period not exceeding one month. Adjournment may be repeated during the same session with the consent of the Assembly and then once only. A period of adjournment shall not be counted in computing the duration of the session.

Art.107: The Amir may dissolve the National Assembly by a decree in which the reasons for dissolution shall be indicated. However, dissolution of the Assembly may not be repeated for the same reasons. In the event of dissolution, elections for the new Assembly shall be held within a period not exceeding two months from the date of dissolution. If the elections are not held within the said period the dissolved Assembly shall be restored to its full constitutional authority and shall meet immediately as if the dissolution had not taken place. The Assembly shall then continue functioning until the new Assembly is elected.

Art.108: A member of the Assembly represents the whole nation. He shall safeguard the public interest and shall not be subject to any authority in the discharge of his duties in the Assembly or in its committees.

Art.109: A member of the Assembly shall have the right to initiate bills. No bill initiated by a member and rejected by the National Assembly may be reintroduced during the same session.

Art.110: A member of the National Assembly shall be free to express any views or opinions in the Assembly or in its committees. Under no circumstances shall he be held liable in respect thereof.

Art.111: Except in cases of flagrante delicto, no measures of inquiry, search, arrest, detention or any other penal measure may be taken against a member while the Assembly is in session, except with the authorisation of the Assembly. The Assembly shall be notified of any penal measure that may be taken during its session in accordance with the foregoing provision. The Assembly shall always at its first meeting be notified of any such measure taken against any

of its members while it was not sitting. In all cases, if the Assembly does not give a decision regarding a request for authorisation within one month from the date of its receipt, permission shall be deemed to have been given.

Art.112: Upon a request signed by five members, any subject of general interest may be put to the National Assembly for discussion with a view to securing clarification of the Government's policy and to exchanging views thereon. All other members shall also have the right to participate in the discussion.

Art.113: The National Assembly may express to the Government wishes regarding public matters. If the Government cannot comply with these wishes, it shall state to the Assembly the reasons therefore. The Assembly may comment once on the Government's statement.

Art.114: The National Assembly shall at all times have the right to set up committees of inquiry or to delegate one or more of its members to investigate any matter within its competence. Ministers and all Government officials must produce testimonials, documents and statements requested from them.

Art.115: The Assembly shall set up, among its annual standing committees, a special committee to deal with petitions and complaints submitted to the Assembly by citizens. The committee shall seek explanation thereon from the competent authorities and shall inform the person concerned of the result. A member of the National Assembly may not interfere with the work of either the Judicial or the Executive Power.

Art.116: The Prime Minister and Ministers shall be given the floor whenever they ask for it. They may call for assistance upon any senior officials or depute them to speak on their behalf. The Assembly may ask for a Minister to be present whenever a matter relating to his ministry is discussed. The Cabinet shall be represented in the sittings of the Assembly by the Prime Minister or by some Ministers.

Art.117: The National Assembly shall lay down its standing orders which shall include the procedure of the Assembly and its committees, and the rules pertaining to discussion, voting, questions, interpellation and all other functions prescribed in the Constitution. The standing orders shall prescribe the sanctions to be imposed on any member who violate order or absents himself from the meetings of the Assembly or the committees without a legitimate excuse.

Art.118: The maintenance of order in the National Assembly shall be the responsibility of its President. The Assembly shall have a special guard under the authority of the President of the Assembly. No armed forces may enter the Assembly or be stationed close to its gates unless so requested by the President.

Art.119: The remuneration of the President of the National Assembly, the Deputy President and the Members shall be fixed by law. In the event of a modification of the said remuneration, such modification shall not take effect until the next legislative term.

Art.120: Membership of the National Assembly shall be incompatible with public office except in the cases where compatibility is permitted in accordance

with the Constitution. In such cases the right to the remuneration for membership and the right to the salary of the public office shall not be cumulated. The law shall specify other cases of incompatibility.

Art.121: During his mandate a member of the National Assembly shall not be appointed on the board of directors of a company, nor shall he participate in concessions granted by the Government or by public bodies. Further, during the said mandate, he shall not buy or rent any property of the State, nor shall he let, sell or barter any of his property to the Government, except by public auction or tender, or in compliance with the system of compulsory acquisition.

Art.122: During their mandate, members of the National Assembly with the exception of those occupying a public office not incompatible with the membership of the National Assembly, may not be awarded decorations.

#### **Chapter IV - The Executive Power**

##### ***Section I - The Cabinet***

Art.123: The Council of Ministers shall have control over the departments of the State. It shall formulate the general policy of the Government, pursue its execution and supervise the conduct of work in Government departments.

Art.124: A law shall determine the remuneration of the Prime Minister and the Ministers. All other provisions regarding Ministers shall apply to the Prime Minister unless otherwise stated.

Art.125: A Minister shall satisfy the qualifications laid down in Art. 82 of this Constitution.

Art.126: Before assuming office the Prime Minister and Ministers shall take before the Amir the Oath specified in Art. 91 of this Constitution.

Art.127: The Prime Minister shall preside over the meetings of the Council of Ministers and supervise the coordination of work among the various ministries.

Art.128: Deliberations of the Council of Ministers shall be secret. Resolutions shall be passed only when the majority of its members are present and with the approval of the majority of those present. In case of an equal division of votes the side on which the Prime Minister has voted shall prevail. Unless they resign, the minority shall abide by the opinion of the majority. Resolutions of the Council of Ministers shall be submitted to the Amir for approval in cases where the issue of a decree is required.

Art.129: The resignation of the Prime Minister or his removal from office shall involve the resignation or removal of all other Ministers.

Art.130: Every Minister shall supervise the affairs of his ministry and shall execute therein the general policy of the Government. He shall also formulate directive for the ministry and supervise their execution.

Art.131: While in office, a Minister shall not hold any other public office or practice, even indirectly, any profession or undertake any industrial, commer-

cial or financial business. Further, he shall not participate in any concession granted by the Government or by public bodies or cumulate the ministerial post with membership of the board of directors of any company. Further, during the said period, a Minister shall not buy or take on hire any property of the State even by public auction, nor shall he let, sell or barter any of his property to the Government.

Art.132: A special law shall define the offences which may be committed by Ministers in the performance of their duties, and shall specify the procedure for their indictment and trial and the competent authority for the said trial, without affecting the application of other laws to their ordinary acts or offences and to the civil liability arising therefrom.

Art.133: Law shall regulate general and municipal self-governing bodies in such a way as to ensure their independence under the direction and supervision of the Government.

#### ***Section II - Financial Affairs***

Art.134: No general tax may be established, amended or abolished except by a law. No one may be exempted, wholly or partially, from the payment of such taxes except in the cases specified by law. No one may be required to pay any other tax, fee or imposition except within the limits of law.

Art.135: Law shall prescribe rules for the collection of public funds and the procedure for their expenditure.

Art.136: Public loans shall be concluded by a law. The Government may grant or guarantee a loan by a law, or within the limits of the funds appropriated for the said purpose in the budget.

Art.137: General and local self-governing bodies may grant or guarantee loans according to law.

Art.138: Law shall lay down rules for the protection of State properties, their administration, the conditions of their disposal, and the limits within which any of these properties may be relinquished.

Art.139: The financial year shall be fixed by law.

Art.140: The Government shall draw up the annual budget, comprising the revenue and expenditure of the State, and submit it to the National Assembly, for examination and approval, at least two months before the end of each current financial year.

Art.141: The budget shall be discussed in the National Assembly part by part. None of the public revenues may be allocated for a specific purpose except by law.

Art.142: Law may appropriate specific funds for more than one year if the nature of the expenditure so requires, provided that each budget shall include the funds allocated for that year, or alternatively, an extraordinary budget covering more than one financial year shall be drawn up.

Art.143: The budget law may not include any provisions establishing a new tax, increasing an existing tax, amending an existing law, or evading the issue of a special law on a matter in respect of which the Constitution provides that a law should be issued.

Art.144: The budget shall be issued by a law.

Art.145: If the budget law has not been promulgated before the beginning of the financial year, the preceding budget shall be applied until the new one is issued and revenues shall be collected and disbursements made in accordance with laws in force at the end of the preceding year. However, if the National Assembly has approved one or more parts of the new budget, they shall be put into effect.

Art.146: Any expenditure not included in the budget, or in excess of the budget appropriations, as well as the transfer of any fund from one part of the budget to another, shall be effected by law.

Art.147: In no case shall the maximum estimate of expenditure, included in the budget law or the laws amending it, be exceeded.

Art.148: Law shall specify the general budget, both independent and annexed, to which the provisions regarding the budget of the State shall be applied.

Art.149: The final accounts of the financial administration of the State for the preceding year shall be submitted, within four months following the end of the said year, to the National Assembly for consideration and approval.

Art.150: The Government shall submit to the National Assembly, at least once during ordinary session, a statement upon the financial position of the State.

Art.151: A financial control and audit commission shall be established by a law, which shall ensure its independence. The commission shall be attached to the National Assembly and shall assist the Government and the National Assembly in controlling the collection of the State revenues and the disbursement of its expenditures within the limits of the budget. The commission shall submit to both the Government and the National Assembly and annual report on its activities and its observations.

Art.152: No concession for exploitation of either a natural resource or a public service may be granted except by a law and for a limited period. In this respect the preparatory measures shall facilitate the operations of prospecting and exploration and ensure publicity and competition.

Art.153: No monopoly shall be granted except by a law and for a limited period.

Art.154: Law shall regulate currency and banking and determine standards, weights and measures.

Art.155: Law shall regulate salaries, pensions, compensation, subsidies and gratuities which are a charge on the State treasury.

Art.156: Law shall lay down provisions relating to the budget and the final accounts of local bodies and authorities which have a public legal personality.

***Section III - Military Affairs***

Art.157: Peace is the aim of the State, and the safeguard of the integrity of the Country, which is part of the integrity of the Greater Arab World, is a trust devolving upon every citizen.

Art.158: Military service shall be regulated by law.

Art.159: The State alone shall establish armed forces and public security bodies, and that in accordance with law.

Art.160: Mobilisation, general or partial, shall be regulated by law.

Art.161: A Supreme Defence Council shall be set up to conduct affairs relating to defence, to the safeguard of the integrity of the Country and to the supervision of the armed forces, in accordance with law.

**Chapter V: Judicial Power**

Art.162: The honour of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties.

Art.163: In administering justice judges shall not be subject to any authority. No interference whatsoever shall be allowed with the conduct of justice. Law shall guarantee the independence of the Judiciary and shall state the guarantees and provisions relating to judges and the conditions of their irremovability.

Art.164: Law shall regulate the Courts of various kinds and degrees and specify their functions and jurisdiction. Except when Martial Law is in force Military Courts shall have jurisdiction only over military offences committed by members of the armed and security forces within the limits specified by law.

Art.165: Sittings of the Courts shall be public save in exceptional cases prescribed by law.

Art.166: The right of recourse to the Courts is guaranteed to all people. Law shall prescribe the procedure and manner necessary for the exercise of this right.

Art.167: The Public Prosecution Office shall conduct penal charges on behalf of society. It shall supervise the affairs of judicial police, the enforcement of penal law, the pursuit of offenders and the execution of judgement. Law shall regulate this body, lay down its duties, and define the conditions and guarantees for those who assume its functions. As an exception, law may entrust to the public security authorities the conduct of prosecutions in misdemeanours in accordance with the manner prescribed by law.

Art.168: The Judiciary shall have a Supreme Council which shall be regulated, and its duties defined, by law.



Art.169: Law shall regulate the settlement of administrative suits by means of a special Chamber or Court, and shall prescribe its organisation and the manner of assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law.

Art.170: Law shall organise the body which shall render legal advice to ministries and public departments and shall draft bills and regulations. Law shall also regulate the representation of the State and other public bodies before the Courts.

Art.171: A Council of State may be established by a law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting bills and regulations, mentioned in the preceding two Articles.

Art.172: Law shall prescribe the method of resolving conflicts of jurisdiction or of judgements between the various kinds of Courts.

Art.173: Law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure. Law shall ensure that right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body. If the said body decides that a law or a regulation is unconstitutional it shall be considered null and void.

#### **PART V: GENERAL AND TRANSITIONAL PROVISIONS**

Art.174: Either the Amir or one-third of the members of the National Assembly shall have the right to propose the revision of this Constitution by amending or deleting one or more of its provisions or by adding new provisions. If the Amir and the majority of the members constituting the National Assembly approve the principle of revision and its subject matter, the Assembly shall debate the bill article by article. Approval by a two-thirds majority vote of the members constituting the Assembly shall be required for the bill to be passed. The revision shall come into force only after being sanctioned and promulgated by the Amir regardless of the provisions of Art. 65 and 66 of this Constitution. If the principle of revision or its subject matter is rejected, it shall not be presented again before the lapse of one year from the rejection. No amendment to this Constitution may be proposed before the lapse of five years from its coming into force.

Art.175: The provisions relating to the Amiri System in Kuwait and the principles of liberty and equality, provided for in this Constitution, may not be proposed for revision except in relation to the title of the Amirate or to increase the guarantees of liberty and equality.

Art.176: The powers of the Amir, specified in this Constitution, may not be proposed for revision when a Deputy Amir is acting for him.

Art.177: The application of this Constitution shall not affect treaties and conventions previously concluded by Kuwait with other States and international organisations.

Art.178: Laws shall be published in the Official Gazette within two weeks of their promulgation and shall come into force one month after their publication. The latter period may be extended or reduced for any law by a special provision included in it.

Art.179: Laws shall apply to that which takes place after the date of their coming into force, and thus shall have no effect in respect of that which has taken place before such date. However, in other than penal matters, a law may, with the approval of a majority vote of the members constituting the National Assembly, prescribe otherwise.

Art.180: All provisions of laws, regulations, decrees, orders and decisions, in effect upon the coming of this Constitution into force, shall continue to be applicable unless amended or repealed in accordance with the procedure prescribed in this Constitution, provided that they are not contrary to any of its provisions.

Art.181: No provision of this Constitution may be suspended except when Martial Law is in force and within the limits specified by the law. Under no circumstances shall the meetings of the National Assembly be suspended, nor shall the immunities of its members be interfered with, during such period.

Art.182: This Constitution shall be published in the Official Gazette and shall come into force on the date of the meeting of the National Assembly which shall not be later than January 1963.

Art.183: Law Number I of 1962 concerning the system of Government during the period of transition shall continue to be in force, and the present members of the Constituent Assembly shall continue in the exercise of their duties specified in the said law, until the meeting of the National Assembly.

*Abdullah al-Salim al-Sabah*  
*AMIR OF THE STATE OF KUWAIT*



**LEBANON**

*The Amended Lebanese Constitution, Promulgated on May 23, 1926;  
as Amended by the Constitution Laws of October 17, 1927; May 8, 1929;  
November 9 and December 7, 1943; and January 21, 1947*

**PART I: FUNDAMENTAL PROVISIONS****CHAPTER I: THE STATE AND ITS TERRITORY**

Art. 1: (As amended November 9, 1943). Lebanon is an independent indivisible, unitary, and entirely sovereign state. Its frontiers are formed by the present boundary line: North: from the mouth of the An Nahr El Kabir (Great River) along a line following its course to a point of its confluence with Wadi Khalid its tributary at the height of Jisr (Bridge) El Qamar. East: The summit line separating Wadi Khalid from Wadi El Assi (orontes) and crossing the villages of Mu'assara, Harbi'ana, Heit, Abbish, Fissan to the height of the two villages Brifa and Matriba; this line follows the northern boundaries of the Casa (subprefecture) of Baalbek in a northwesterly and southeasterly direction, thence along the eastern boundaries of the Casas of Baalbek, Baga, Hassbaya and Rashaya. South: The southern boundaries of the Casas of Sour (Tyre) and Maydjayoun. West: The Mediterranean.

Art. 2: No part of Lebanese territory may be alienated or ceded.

Art. 3: The boundaries of the administrative areas may not be modified except by law.

Art. 4: Grand Lebanon is a Republic; its capital is Beirut.

Art. 5: (As amended December 7, 1943). The Lebanese flag is made of red, white and red horizontal stripes, with the cedar in green in the center of the white stripe. The size of the white stripe is equal to the size of the two red stripes together. The cedar is in the middle, its apex touching the red upper stripe and its base touching the lower red stripe. The size of the cedar shall be equal to one third of the size of the white stripe.

**CHAPTER II: THE LEBANESE: THEIR RIGHTS AND OBLIGATIONS**

Art. 6: Lebanese nationality and the manner in which it is acquired, retained and lost shall be determined in accordance with the law.

Art. 7: All Lebanese are equal before the law. They enjoy civil and political rights and shall be liable to public charges and obligations without any distinction.

Art. 8: Personal freedom shall be guaranteed the protected. No person may be arrested or kept in custody except in accordance with the law. No offense may be established or penalty imposed except in accordance with the law.

Art. 9: Freedom of conscience shall be absolute. The State, acknowledging the Most High, shall respect all religions and creeds and shall guarantee the free

exercise of all forms of worship under its protection provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population shall be respected in all the various religious communities.

Art. 10: There shall be no interference with public instruction as long as it is not contrary to public order and morals and does not affect the dignity of any of the religions. The communities shall be entitled to maintain their own schools, provided that they conform to the general state requirements relating to public instruction.

Art. 11: (As amended November 9, 1943). Arabic is the official national language. The cases in which French may be used shall be determined by law.

Art. 12: Every Lebanese shall have the right to public employment without distinction except on the basis of merit and competence according to the conditions established by law. There shall be a special statute which will protect the right of employees in the departments to which they belong.

Art. 13: Freedom of speech and writing, the freedom of the Press, freedom of assembly and freedom of association shall be guaranteed within the limits laid down by the law.

Art. 14: The place of residence shall be inviolable. No one may enter except in the circumstances and ways prescribed by law.

Art. 15: Rights of ownership shall be protected by law. No one's property may be expropriated except on grounds of public utility and under circumstances defined by law and after just compensation has been paid beforehand.

## **PART II: POWERS**

### **CHAPTER I: GENERAL PROVISIONS**

Art. 16: (As amended October 17, 1927). The legislative power shall be entrusted to a single body: the Chamber of Deputies.

Art. 17: The executive power shall be entrusted to the President of the Republic, by whom it shall be exercised with the assistance of the Ministers, in accordance with the provisions of the present Constitution.

Art. 18: (As amended October 17, 1927). The President of the Republic and the Chamber of Deputies shall have the right to introduce laws.

Art. 19: (As amended October 17, 1927). No law may be promulgated if it has not been adopted by the Chamber.

Art. 20: The judicial power shall be entrusted to the courts in their various instances and jurisdictions within the limits of a statute established by law and shall provide protection to judges and litigants. The law shall determine the judicial guarantees and limits. The judges are independent in the exercise of their functions and the decisions and judgements of all courts shall be rendered and

executed in the name of the Lebanese people.

Art. 21: Every Lebanese citizen who has completed his twenty-first year shall be an elector provided he fulfills the conditions laid down by the electoral law.

#### **CHAPTER II: LEGISLATIVE POWER**

Art. 22: (Abrogated on October 17, 1927).

Art. 23: (Abrogated on October 17, 1927).

Art. 24: (As amended January 21, 1947). Should the Chamber of Deputies be dissolved, the instrument ordering dissolution must call upon the electors to take part in new elections, which must be held in accordance with Art. 24 and within a period not exceeding three months.

Art. 25: (As amended January 21, 1947). Should the Chamber of Deputies be dissolved, the instrument ordering dissolution must call upon the electors to take part in new elections, which must be held in accordance with Art. 24 and within a period not exceeding three months.

#### **CHAPTER III: GENERAL PROVISIONS**

Art. 26: (As amended October 17, 1927). The Government and the Chamber of Deputies shall be located in Beirut.

Art. 27: (As amended October 17, 1927 and January 21, 1947). A member of the Chamber shall represent the whole nation. No restriction or condition may be imposed upon his mandate by his electors.

Art. 28: (As amended October 17, 1927 and May 8, 1969). A Deputy may at the same time discharge the functions of Minister. Ministers may be selected either from among the members of the Chamber or from persons outside the Chamber.

Art. 29: (As amended October 17, 1927). The circumstances under which persons disqualified from becoming Deputies shall be determined by law.

Art. 30: (As amended January 21, 1947). The Chamber of Deputies alone shall be competent to decide on the validity of their mandates. No mandate may be invalidated except by a majority of two-thirds of the votes of the entire membership.

Art. 31: (As amended October 17, 1927). Any meeting of the Chamber outside the regular period of sessions fixed by law, shall be considered unlawful and null and void.

Art. 32: (As amended October 17, 1927). The Chamber shall hold two ordinary sessions each year. The first shall open on the first Tuesday following March 15th and shall terminate at the end of the month of May. The second shall open on the first Tuesday following October 15th. It shall be reserved to the discussion and adoption of the budget. It shall last until the end of the year.

Art. 33: (As amended October 17, 1927). The ordinary sessions shall begin and end on the dates fixed in Art.32. The President of the Republic may convene the Chamber in extraordinary session. The date of the opening and termination of extraordinary sessions shall be fixed by Decree. The agenda shall be fixed by Decree. The President of the Republic shall be required to summon the Chamber of Deputies at the request of an absolute majority of its total membership.

Art. 34: (As amended October 17,1927). The Chamber shall not be validly constituted unless the majority of its lawful members are present. Decisions shall be taken by a majority vote. Should the votes be equal, the question under discussion shall be terminated.

Art. 35: (As amended October 17,1927). The sessions of the Chamber shall be public. However, at the request of the Government or of five of its members, the Chamber may meet in private and decide later whether the resumption of the same discussion shall be continued in public.

Art. 36: Votes shall be given verbally or by the members rising or remaining in their seats, except in the case of elections, when a secret vote shall be taken. In the case of all draft laws and when the question of confidence is raised, the vote shall always be taken by roll-call and verbally.

Art. 37: (As amended on May 8, 1929). Every Deputy is entitled during ordinary and extraordinary sessions to raise questions of no-confidence. A motion of this kind may not be discussed and voted upon until at least five days after it is submitted to the Assembly Secretariat and communicated to the Ministers concerned.

Art. 38: (As amended October 17, 1927). No bill which has been rejected by the Chamber may be re-introduced during the same session.

Art. 39: (As amended October 17,1927). No member of the Chamber may be prosecuted because of ideas and opinions expressed during his mandate.

Art. 40: (As amended October 17, 1927). During the session, no member of the Chamber may be prosecuted or arrested for a criminal offense without the authorization of the Chamber, unless he is caught in the act.

Art. 41: (As amended October 17,1927 and January 21, 1947). In the event of a vacancy occurring in the Chamber, the seat shall be filled within two months. The new member's term of office shall terminate with the expiration of his predecessor's term of office. The vacancy shall not be filled if the mandate of the Chamber has less than six months to run.

Art. 42: (As amended October 17,1927). General elections for the renewal of the Chamber shall take place within the 60 days preceding the expiration of their mandate.

Art. 43: (As amended October 17, 1927). The Chamber shall draw up its own internal rules or procedure.

Art. 44: (As amended January 21, 1947). Every time a new Chamber is elected and at the opening of the October session, the Chamber, under the presidency of its oldest member, and the two youngest members acting as secretaries, shall elect separately, by secret ballot and by an absolute majority of the votes cast, a President, Vice-President and two secretaries. At the third ballot, a relative majority shall be sufficient. Should the votes be equal, the oldest candidates shall be considered elected.

Art. 45: (As amended October 17, 1927). Members of the Chamber shall only vote if they are present at the meeting; voting by proxy shall not be allowed.

Art. 46: (As amended October 17, 1927). The Chamber alone has the right to maintain order at its meetings through its President.

Art. 47: (As amended October 17, 1927). All petitions to the Chamber must be made and submitted in writing. They may not be presented verbally or at the bar of the Chamber.

Art. 48: (As amended October 17, 1927). The remuneration of members of the Chamber shall be determined by law.

#### CHAPTER IV: THE EXECUTIVE POWER

Art. 49: (As amended May 8, 1929 and January 21, 1947). The President of the Republic shall be elected by the Chamber of Deputies by secret ballot and by a two-thirds majority of the votes. After the first ballot, an absolute majority shall be sufficient. His term of office shall be six years. He may be re-elected only after an interval of six years. No person shall be eligible for the office of the President of the Republic unless he fulfills the conditions of the eligibility for the Chamber of Deputies.

Art. 50: Upon assuming office, the President of the Republic shall take an oath of fidelity before Parliament to the Lebanese Nation and the Constitution, in the following terms: *"I swear by Almighty God to observe the Constitution and laws of the Lebanese People and to maintain the independence of Lebanon and its territorial integrity."*

Art. 51: (As amended October 17, 1927). The President of the Republic shall promulgate laws after they have been adopted by the Chamber. He shall assure their execution, but he may not modify the actual laws or set aside their provisions. He shall have the right to pardon. However, amnesties may not be granted except by law.

Art. 52: (As amended November 9, 1943). The President of the Republic shall negotiate and ratify international treaties and make them known to the Chamber whenever the interest and safety of the State permit. However, treaties involving a charge upon the finances of the State, commercial treaties and, in general, treaties which cannot be denounced at the expiration of each year shall not be considered ratified until they have been approved by the Chamber.

Art. 53: (As amended October 17, 1927 and January 21, 1947). The President of the Republic shall appoint and dismiss Ministers, from among whom he shall select a Prime Minister, he shall appoint officials to state posts, except

where the law determines other methods of appointment. He shall preside over national ceremonies.

Art. 54: Every instrument issued by the President of the Republic with the exception of those relating to the appointment and dismissal of Ministers, must be countersigned by the Minister or Ministers concerned.

Art. 55: (As amended May 8, 1929). The President of the Republic may, with the approval of the Cabinet, dissolve the Chamber of Deputies by decree before the legal expiration of its mandate. In that case, the electoral bodies shall meet as provided for in Art. 25, and the new Chamber shall be convened within 15 days after the results of the elections have been proclaimed.

Art. 56: (As amended October 17, 1927). The President of the Republic shall promulgate laws within one month of their presentation to the government. Laws which have been declared urgent to the Chamber must be promulgated by him within five days.

Art. 57: (As amended October 17, 1927). The President of the Republic has the right to request, not more than once, reconstruction of a law and this request may not be refused. When the President of the Republic makes use of this right, he shall not be required to promulgate a law unless it has been adopted by the Chamber, after a second discussion, by an absolute majority of the lawful members of that Assembly.

Art. 58: (As amended October 17, 1927). By means of a decree, issued with the approval of the Cabinet, the President of the Republic may put into force any bill which has previously been declared to be urgent by the Government in the order for its transmission issued with the Cabinet's approval, and on which the Chamber has not given a decision within 40 days of its communication to the Assembly.

Art. 59: (As amended October 17, 1927). The President of the Republic may adjourn the Chamber for a period not exceeding one month. He may not do so twice during the same session.

Art. 60: (As amended January 21, 1947). The President of the Republic may not be called to account for acts performed by him in the discharge of his duties except in the case of violation of the Constitution or high treason. However, his responsibility in respect of offenses under the ordinary law shall be subject to the ordinary law. He may not be charged with these offenses or with violating the Constitution or high treason, except by a decision adopted by a two-thirds majority of the total membership of the Chamber of Deputies; and he shall be tried by the High Court provided for in Art. 80. The functions of the Public Prosecutor at the High Court shall be entrusted to a judge appointed by the High Court in a plenary session.

Art. 61: Should the President of the Republic be impeached, he shall be suspended from his functions and the Presidency shall be vacant until the High Court has rendered its decision.

Art. 62: Should the Presidency of the Republic be vacant for any reason whatsoever, the executive power shall be temporarily exercised by the Cabinet.



Art. 63: The salary of the President of the Republic shall be fixed by law. It may not be increased or reduced during the President's term of office.

Art. 64: The Ministers shall direct the services of the State and they shall be responsible for the application of the laws and regulations within their respective departments.

Art. 65: No person may be a Minister who is not a Lebanese.

Art. 66: (As amended October 27, 1927). Ministers shall be collectively responsible to the Chamber for the general policy of the Government, and individually responsible for their personal actions. The Government's general program shall be drawn up and put before the Chamber by the Prime Minister or by a Minister acting on his behalf.

Art. 67: (As amended October 17, 1927). Ministers may attend the Chamber whenever they wish and shall have the right to be heard whenever requested to speak. They may be assisted by whomever they select from among the officials of their Departments.

Art. 68: (As amended October 17, 1927). When, in accordance with Art. 37, the Chamber declares that a Minister no longer possesses its confidence, that Minister shall be required to resign.

Art. 69: (Abrogated May 8, 1929).

Art. 70: The Chamber of Deputies shall have the right to arraign Ministers for high treason or for grave dereliction of their duty. The decision to arraign a Minister may only be taken by a majority of two-thirds of the members of the whole Assembly. The civil responsibility of Ministers shall be determined by a special law.

Art. 71: A Minister who is arraigned shall be tried by the High Court.

Art. 72: A Minister shall cease his official work as soon as a decision has been made concerning his impeachment, and if he resigns, his resignation shall not prevent proceedings being taken or continued against him.

### **PART III**

#### **(a) ELECTION OF THE PRESIDENT OF THE REPUBLIC**

Art. 73: (As amended October 17, 1927). One month at least and two months at most before the expiry of the term of office of the President of the Republic, the Chamber shall be summoned by its President to assemble for the purpose of electing the new President of the Republic. Should it not be thus summoned, the Chamber shall meet of its own accord on the tenth day preceding the expiry of the President's term of office.

Art. 74: (As amended October 17, 1927). Should the Presidency become vacant through the death or resignation of the President, or for any other cause, the Assembly shall meet immediately and of its own accord to elect a new

President. If the Chamber is dissolved at the time the vacancy occurs, the electoral bodies shall be convened without delay and, as soon as the elections have taken place, the Chamber shall meet by virtue of the law.

Art. 75: (As amended October 17, 1927). When the Chamber meets to elect the President of the Republic, it shall be considered an electoral body and not a deliberative Assembly. It shall proceed immediately without delay or discussion, to elect the Head of the State.

#### **(b) AMENDMENT OF THE CONSTITUTION**

Art. 76: (As amended October 17, 1927). The Constitution may be revised on the initiative of the President of the Republic. The Government then shall submit to the Assembly a draft constitutional law.

Art. 77: (As amended October 17, 1927). The Constitution may likewise be revised on the initiative of the Chamber of Deputies. The right shall be exercised as follows:

During an ordinary session and on the proposal of at least ten of its members, the Chamber may recommend, by a two-thirds majority of its lawful members, the revision of the Constitution provided the Articles and questions referred to in the recommendation shall be specifically enumerated and defined. The President of the Chamber shall transmit the recommendation to the Government, requesting it to prepare a draft constitutional law. Should the Government approve the recommendation of the Chamber, it shall prepare the respective draft law and submit it to the Chamber within four months; if the Government does not agree with the Chamber, it shall return the decision to the latter for further discussion. Should the Chamber maintain its recommendation by a majority of three-fourths of its lawful members, the President of the Republic may either accede to the Chamber's request, or issue an order for its dissolution, and proceed to new elections within three months. Should the new Chamber decide that revision is necessary, the Government shall be obliged to carry out the recommendation and submit the draft law within a period of four months.

#### **(c) PROCEDURE OF THE ASSEMBLY**

Art. 78: (As amended October 17, 1927). When a draft constitutional law is submitted to the Chamber, it shall, until a final vote is taken, confine itself to revision. It may only discuss and vote on Articles and questions specifically enumerated and defined in the draft submitted to it.

Art. 79: (As amended October 17, 1927). When a draft constitutional law is submitted to the Chamber, it cannot discuss it or vote upon it, except when a majority of two-thirds of the lawful members of the Chamber are present. Voting shall also be by the same majority.

The President of the Republic shall be required to promulgate the law of the constitutional amendment under the same conditions and in the same form as ordinary laws. He shall have the right to request a further discussion of the law within the time fixed for promulgation and the decision shall be taken by a two-third majority.

## PART IV: MISCELLANEOUS PROVISIONS

## A - THE HIGH COURT

Art. 80: (As amended October 17, 1927). The High Court shall consist of seven deputies selected by the Chamber of Deputies and one Lebanese magistrate in order of rank or, should their ranks be equal, in order of seniority, under the presidency of the magistrate of highest rank. The sentences of the High Court shall be rendered by a majority of votes. The procedure to be followed by this Court shall be determined by law.

## B - FINANCES

Art. 81: (As amended January 21, 1947). Taxes shall be established for purposes of community utility. Taxes may only be levied in the Lebanese Republic in accordance with a uniform law which shall apply to the whole territory without exception.

Art. 82: No tax may be modified or removed except by virtue of a law.

Art. 83: Each year at the beginning of the October session the Chamber of Deputies shall submit to the Government the general budget estimates of State revenue and expenditures for the following year. The budget shall be voted upon Article by Article.

Art. 84: (As amended October 17, 1927). During the discussion of the budget involving the opening of supplementary or extraordinary credits, the Chamber shall not increase the credits proposed in the draft laws, either by amendment or by independent proposal; however, after the close of that discussion the Chamber may propose additional draft laws involving further expenditures.

Art. 85: (As amended January 21, 1947). No extraordinary credit may be opened except by a special law. Nevertheless, should urgent circumstances arise making an expenditure necessary the President may, by Decree adopted with the approval of the Council of Ministers, open supplementary credits or effect any transfers of credits. These credits may not exceed 15,000 pounds per item. The Decrees thus decreed shall be submitted to the Chamber for approval at the first ordinary session.

Art. 86: (As amended October 17, 1927). If the Chamber has not given a final decision on the budget estimates before the session devoted to the examination of the budget, the President shall immediately convene an extraordinary session which shall extend through January for the purpose of continuing the discussion on the budget; if at the end of this session the budget has not been finally voted, the President of the Republic may, by a decree adopted with the approval of the Council of Ministers, give effect to the budget estimates they were submitted to the Chamber. The President may not exercise this right unless the budget estimates were submitted to the Chamber at least fifteen days before the commencement of the session. Notwithstanding, during this extraordinary session, contributions, taxes, and other revenues shall continue to be collected as before. The budget estimates for the previous year shall be adopted as the basis. To this shall be added the supplementary estimates.

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Art. 88: No public  
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**PART V:**

**PROVISIONS RELATING TO THE MANDATE  
AND THE LEAGUE OF NATIONS**

**POWER**

Art.s 90 to 92: (A  
Art. 93: (Abrogate  
Art. 94 : (Abrogat

dated November 9, 1943).  
January 21, 1947).  
November 9, 1943).

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**VI: FINAL AND TRANSITORY PROVISIO**

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Art. 95: (As am  
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Art.s 96 to 100: (

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Art. 101: As fro  
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## SAUDI ARABIA

Saudi Press Agency (SPA) - Daily English Service (Sunday March 1, 1992)

Riyadh, March 1 - Saudi Arabia had never in its long history had a constitutional authentication

SPA - King Fahd Ibn Abdulaziz affirmed that he did not know what is called 'The Constitutional Vacuum' and said the announcement of the provincial system is just an authentication of something which had already been in existence.

King Fahd said that Saudi Arabia has never had a 'constitutional vacuum' throughout its history. The system is just an authentication of something which had already been in existence.

In a speech at the three systems, King Fahd said the guiding principle of legislation and administration has never been referred to as a guiding principle.

King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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"As such the council and the vacuum." King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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"The pillar of the basic system is the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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"Relations between citizens and authorities have been based on firm ground and deep-rooted justice, mutual respect and allegiance stemming from deep-rooted conviction." King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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"There is no difference between a ruler and a subject. All are equal before the law of Allah. All are equal in their love to this country and their keenness over its ties. The relationship between the ruler and the subject is governed by the Sharia laws." King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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"The basic system of government has been inspired by the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

King Fahd said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia. He said that the three systems of government are based on the Islamic Sharia and the Islamic Sharia.

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tative council system, it has been bas eir lord, and establish regular prayer, wh nsultation, who spend out of what we b ahd quoted the Holy Quran.

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King Fahd said long ago. Durin formulas, and t whenever the ne

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e shura council is and different nen of thought

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"These systems group of expert kingdom in the Is ... "The system: traditions and ad ... "We are conf to the state in the Saudi citizen,

ve been drawn after a deliberate and nd take into consideration the distinguo ic world, its traditions, values, social an anated from our reality, in harmony wit nce to our religion." t that the systems, with the grace of C achievement of the well-being, progres country and his Islamic and Arab nation

ugh study by a d status of the ltural fabric." ur customs and

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is the main pillar of the development a pare no effort to achieve his happiness

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s country looks oncentrates on e foreign policy countries, and his world."

King Fahd high and develop the pilgrims.

ed the strenuous efforts made by the ki holy mosques and to extend every pos:

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King Fahd said t walks of life. "I ned in the holy constitution is th

kingdom has, throughout its history, adh is a way of life and we shall not part w ok of God, King Fahd Said, and added ly book and the sunnah of the prophet (

d to Islam in all what is containe the kingdom's JH)."

Rulers and ul in the kingdom have been and are still operating, and the people have l and are still in cohesion and forge c eration with their rulers.

King Fahd said Saudi community is enjoying security, ility and welfare.

The Saudi me ch noted the kingdom's Islamic and A role and its keen- ness to main the solidarity and unity of Muslims an rabs. "Events and facts verified the trueness of the kingdom's stands and e fulfillment of its obligations to ds the Islamic and Arab nation as well e s other internatio- nal obligation King Fahd Said the kingdom will remain mitted to its Isla- mic way of l and will cooperate with any one who wi d well-being to Is- lam and Muslim

He also reaff d the Kingdom's keenness to spread n and wished the Saudi people d the Islamic and Arab national much gress, well-being, happiness and sperity.

Riyadh, March SPA - the basic system of the consult e council and the provincial sys was announced here last night by custh n of the two holy mosques King hd ibn Abdulaziz at an extraordinary ses of the council of ministers.

"While taking account the public interest and develop mts in all spheres, l, King Fahd Abdulaziz Al-Saud, the King of the King n of Saudi Arabia, order the follo y:"

Firstly: Issu e of the basic system as in the attached mula. Secondly: Work ll continue by all ongoing regulations, ins tions and resolu- tions is implemented until ame nents take place Thirdly: This tem should be published in the official g te.

*In the name of ah, the most merciful and beneficent.*

**CHAPTER ONE: The General Principle:**

Art. 1: The ki om of Saudi Arabia is an Arab and Islami v Sovereign state. Its religion is Islam nd its constitution, the holy Quran and t prophet's sunnah. Its language is bic, and the capital, Riyadh.

Art. 2: The ivalds of the state Arab Eid Al-Fitr and Eid Adha, and its ca- lendar is the h alendars.

Art. 3: The Fla f the state is as follows: A- its color is en, B- Its width is ual to the third of its length. C- It will car "La Allah Illah Allah Wa Mohammed Ras Allah', and its will never be u led.

Art. 4: The e lem of the state is two intersected sw s and a palm tree. The system de mines the national anthem and the meda

**THE SECOND CHAPTER:**

- Art. 5:  
A- The system of the kingdom of Saudi Arabia is a monarchy  
B- Its rule will be confined to the sons of the kingdom's founder Abdul-Aziz  
Ibn Abdel-Razman Al-Faisal Al-Saud and grandsons. The most suitable of  
them will be enthroned to rule under the guidance of the Holy Quran and  
the prophet's sunnah.  
C- The King will choose his Crown Prince and also relieve him from duty by  
royal decree.  
D- The Crown Prince will perform the duties delegated to him by the king.  
E- When the King dies, the Crown Prince succeeds him until his thronement.
- Art. 6: The citizen will take allegiance before the monarch in accordance with the Holy Quran and the prophet's sunnah.
- Art. 7: The rule of the kingdom depends on the Holy Quran and the prophet's sunnah.
- Art. 8: The rule of the kingdom is based on justice, consultation and equality in accordance with the Islamic Sharia.

**The Constitutes of Saudi Society:**

- Art. 9: The family is the nucleus of Saudi society, and its members are raised on the basis of Islamic creed and obedience to the Almighty God, prophet and rulers, respect for the system, love of the homeland and pride of its history.
- Art. 10: The state is keen on enhancing relations among members of the family, preserving Islamic values and taking care of all members, enabling them to develop their skills.
- Art. 11: Saudi society is based on dependence on almighty God and cooperation.
- Art. 12: The state is keen on enhancing national duty and preventing all kinds of seditions.
- Art. 13: Educational aims at the implantation of the Islamic creed in new generations and the development of their skills so as to enable them to contribute to the building of the society.

**THE THIRD CHAPTER: The Economic Principles**

- Art. 14: All the wealth inside the ground or on its surface in the territorial waters or in the land and sea-range as well as all resources of this wealth is owned by the state. The system will be shown by the system. The state shows means for the exploitation of the wealth, its protection and development in a manner that serves the interests of the state, and its security and economic stability.
- Art. 15: There will be no concessions or investment for exploitation of the resources of the country, except those allowed according to the system.



<u>Art. 16:</u> The State should protect public properties, and citizens and residents should preserve them.	ate should protect public properties, and preserve them.	citizens and resi-
<u>Art. 17:</u> Ownership, capital and work are basic constitutional system.	hip, capital and work are basic constitutional system.	of the kingdom's
<u>Art. 18:</u> The State allows the freedom of personal property which may only be expropriated for the public's sake after compensation.	e allows the freedom of personal property which may only be expropriated for the public's sake after compensation.	which may only be
<u>Art. 19:</u> Confiscation of public properties is prohibited. Confiscation is only according to the judicial verdict.	tion of public properties is prohibited. Confiscation is only according to the judicial verdict.	scation is only ac-
<u>Art. 20:</u> Taxes and fees are only levied when there is a need for that on just bases. They are lawfully levied, amended or canceled in accordance to the system.	nd fees are only levied when there is a need for that on just bases. They are lawfully levied, amended or canceled in accordance to the system.	ed for that on just ce to the system.
<u>Art. 21:</u> Zakat (tax) is to be collected and spent according to the Sharia teachings.	ms) is to be collected and spent according to the Sharia teachings.	o the Sharia tea-
<u>Art. 22:</u> Economic and social development is carried out through a scientific and just plan.	ic and social development is carried out through a scientific and just plan.	ght of a scientific

**THE FIFTH CHAPTER: Duties and Rights**

<u>Art. 23:</u> The State protects the Islamic creed, carries out its duty towards the Islam call.	protects the Islamic creed, carries out its duty towards the Islam call.	Sharia and under-
<u>Art. 24:</u> The State services the two holy mosques and ensures the security and safety of their visitors so as to enable them to perform their rituals in comfort and ease.	te services the two holy mosques and ensures the security and safety of their visitors so as to enable them to perform their rituals in comfort and ease.	ures the security eir rituals in com-
<u>Art. 25:</u> The State is keen on the realization of the Islamic solidarity and unity and, at the same time, enhances its relations with friendly states.	te is keen on the realization of the Islamic solidarity and unity and, at the same time, enhances its relations with friendly states.	s of the Arab and me, enhances its
<u>Art. 26:</u> The State protects the rights of the people in accordance with the Islamic Sharia.	te protects the rights of the people in accordance with the Islamic Sharia.	with the Islamic
<u>Art. 27:</u> The State ensures the rights of the citizens and families in case of emergency, disease, disability and again, supports the social insurance system, and encourages enterprises establishments and individuals to contribute to charitable works.	te ensures the rights of the citizens and families in case of emergency, disease, disability and again, supports the social insurance system, and encourages enterprises establishments and individuals to contribute to charitable works.	r families in case al insurance sys- ute to charitable
<u>Art. 28:</u> The State helps all able-bodied people to obtain their work and enacts laws to protect the worker and the owner of the work.	e helps all able-bodied people to obtain their work and enacts laws to protect the worker and the owner of the work.	and enacts laws
<u>Art. 29:</u> The State takes care of sciences, arts, and cultural research, preserves the Arab and Islamic heritage, and contributes to human civilization.	takes care of sciences, arts, and cultural research, preserves the Arab and Islamic heritage, and contributes to human civilization.	ncourages scien- ontributes to the
<u>Art. 30:</u> The State makes education available and adheres to the principle of illiteracy eradication.	makes education available and adheres to the principle of illiteracy eradication.	he principle of il-

- Art. 31: The state es care of public health and makes heal are available.
- Art. 32: The state orks toward protecting and improving the vironment, as well as keeping it n being harmed.
- Art. 33: The state tablishes the armed forces and enables n to take their responsibility tow s the defence of the Islamic creed, t wo Holy Mos- ques, the society the homeland.
- Art. 34: Defense the Islamic creed, society, and the hom id are the res- ponsibility of all. 1 system clarifies the rules of military serv
- Art. 35: The syste clarifies the rules of Saudi Arabian natio y.
- Art. 36: The sta ensures the security of all citizens and dents, and no- body has the rig o harass, arrest or imprison anyone exce nder the rules of the system.
- Art. 37: Nobody i owed to enter houses without the perm on of their ow- ners, and nobod as the right to search them unless in ac lance with the system.
- Art. 38: The pe y is personal, and no crime or penalty ss in line with the Sharia text he regulations and no penalty except in ordance to the regulations.
- Art. 39: The info tion and publication media should expre n a good man- ner, abiding by regulations of the state, and contribute ne culturing of- porting its unity. All that leads to seditio nd disunity, or undermines the e's security and public relations, or insu he dignity and rights of the peop The regulations will clarify this.
- Art. 40: Nobody the right to confiscate, delay or listen ir cables, postal items, or telepho calls and other means of telecommunica unless accor- ding to the regula s set by the system.
- Art. 41: The resi ts in the kingdom of Saudi Arabia will ac e to its regula- tions, and they uld respect the values, traditions and fe ds of Saudi so- ciety.
- Art. 42: The stat ves political asylum if the public interest cessitates this. The regulations international agreements will clarify the cedures pertai- ning to the extrac n of criminals.
- Art. 43: The co l of the King and the council of the Crow 'rince are open for all citizens, ar everyone has the right to clarify his probl

**TF** IXTH CHAPTER: The State's Authorities

Art. 44: The au thority, the exe- cutive authority rities of the state comprise the judicial- rities cooperat- te in performing the organizational authority. All these a- nce of all these authorities, and the King is the ref

- Art. 45: The force of ifta in the kingdom of Saudi Arabia and the prophetic sunna, and the system clarifies the hierarchy of the senior Ulama, the administration of scientific researches and ifta and their responsibilities.
- Art. 46: The judicial authority is an independent organ and nobody has authority over the judges except the authority of the Islamic Sharia.
- Art. 47: All people, either citizens or residents in the kingdom, are entitled to file suits on an equal basis. The system will clarify the required legal procedures.
- Art. 48: The system of judges which is applied to all cases is, Sharia rule according to the teachings of the Holy Quran and Sunnah, the regulations issued by the ruler provided that they do not contradict the Holy Quran and Sunnah.
- Art. 49: In litigation of what has been stipulated in Art. 5, the courts will be specialized for the settlement of disputes.
- Art. 50: The King or whomsoever he may deputize will be concerned about the implementation of the Judicial rulers.
- Art. 51: The system will determine the formation of the judicial council and its specializations as well as the organization and specializations of various courts.
- Art. 52: Judges will be appointed and relieved of their duties according to a proposal by the supreme judicial council according to the system's regulations.
- Art. 53: The board of grievance will determine the organization and specializations of the grievance courts.
- Art. 54: The department of investigations will determine the organization and specializations of the investigations and public prosecution.
- Art. 55: The King will rule the nation according to the provisions of Islam and supervision of the Sharia (Islamic Laws), the state defense of the country and general policy and supervision of the performance of the nation.
- Art. 56: The King acts as prime minister and is assisted in his duties by members of the council of ministers, according to the rulings of this and other systems. The system of the council of ministers will determine the authorities of the council, in connection with internal and external affairs, the organization of their work. It will also determine the qualities that must be found in ministers, the authorities of their affairs. The system will also determine the method of questioning them and the specializations of the council of ministers which will be modified according to the needs of the nation.
- Art. 57:  
A- The King will appoint deputy prime ministers and cabinet ministers and relieve them of their duties by a royal decree.

- B- The Deputy the King for general policy.  
C- The King has the right to dissolve the council of ministers and restructure it.
- Art. 58: The King will appoint ministers, deputy ministers and according to the rulings of the system. Ministers and heads of independent authorities are responsible for the prime minister.
- Art. 59: The King will determine the rulings of civil services, rewards, compensations, privileges and retirement pensions, including salaries.
- Art. 60: The King is the supreme commander of all armed forces, and he appoints officers and directs their service according to the system.
- Art. 61: The King has the right to declare a state of emergency, general recruitment and when the system will determine relevant rulings.
- Art. 62: If a danger threatens the safety of the kingdom or the state institutions' performance of their duties, the King has the right to take the necessary speedy measures to face the danger. If these measures should be continuous, the King decides that they would make the necessary decisions.
- Art. 63: The King will receive heads of state, appoint his representatives in other countries and accept accreditation of the representatives of other countries in the kingdom.
- Art. 64: The King will award medals according to the relevant clauses of the system.
- Art. 65: The King has the right to delegate some authorities to the Crown Prince.
- Art. 66: In case of his travel abroad, the King will issue a royal decree to deputize the Crown Prince in running the affairs of the state and look after the state as stated in the Royal decree.
- Art. 67: The organizational authority will draw up systems and regulations to realize interests, eliminate corruption in the affairs of the state, according to the rulings of Islamic Sharia, and practice its specializations according to the systems of the councils of ministers and shura.
- Art. 68: The system of the Shura council will determine the method of its formation, the method of practicing its specializations and the selection of its members. The King has the right to dissolve the Shura council and restructure it.
- Art. 69: The King has the right to call the council of ministers and Shura for a joint meeting and invite whoever he wishes to attend this meeting and discuss whatever issues that are raised.

Art. 70: System of treaties, international agreements and decrees will be issued and modified by Royal decrees. Privileges will be issued by Royal decrees.

Art. 71: System of laws will be published in the official gazette as of the date of their publication, unless another date is mentioned. Decrees will be published in the official gazette as of the date of their publication, unless another date is mentioned.

**SECTION 7: Financial Affairs:**

Art. 72: The Council of Ministers will determine the rulings of state revenues and their delivery to the state treasury. Council of Ministers will determine the rulings of state revenues and their delivery to the state treasury.

Art. 73: No objection should be made to the payment of state funds from the state treasury except in accordance with the provisions of the budget. When the budget office for paying such funds, a Royal decree must be issued for their payment. State treasury expenditures must be in accordance with the provisions of the budget. When the budget office for paying such funds, a Royal decree must be issued.

Art. 74: The assets of the state should not be sold, rented or dealt with except in accordance with this system. Assets of the state should not be sold, rented or dealt with except in accordance with this system.

Art. 75: The Council of Ministers will determine the rulings of monetary standards, measures and weights. Council of Ministers will determine the rulings of monetary standards, measures and weights.

Art. 76: The Council of Ministers will determine the state's fiscal year and will include and estimate of expenditures and revenues. It will be issued at least one month before the beginning of the fiscal year. Should emergency reasons arise and prevent the issuance of the budget of the new fiscal year, the budget of the previous fiscal year should be followed until a new one has been issued. Council of Ministers will determine the state's fiscal year and will include and estimate of expenditures and revenues. It will be issued at least one month before the beginning of the fiscal year. Should emergency reasons arise and prevent the issuance of the budget of the new fiscal year, the budget of the previous fiscal year should be followed until a new one has been issued.

Art. 77: The Council of Ministers will prepare the state's financial accounts for the ending fiscal year and submit it to the prime minister. Council of Ministers will prepare the state's financial accounts for the ending fiscal year and submit it to the prime minister.

Art. 78: The budget and final accounts of authorities of government will be subject to the rulings of the state budget and its account. Budget and final accounts of authorities of government will be subject to the rulings of the state budget and its account.

**SECTION 8: Control Authorities:**

Art. 79: All revenues, expenditures and fixed and mobile assets of the state will be controlled and made sure they are well-utilized and reported on this control system. An annual report will be submitted to the Prime Minister. The system will determine the relevant authorities and its specializations. All revenues, expenditures and fixed and mobile assets of the state will be controlled and made sure they are well-utilized and reported on this control system. An annual report will be submitted to the Prime Minister. The system will determine the relevant authorities and its specializations.

Art. 80: Government authorities will be controlled to ensure the application of systems. Financial and administrative violations will be investigated, and an annual report on them will be submitted to the Prime Minister. The system will determine the relevant authorities and its specializations. Government authorities will be controlled to ensure the application of systems. Financial and administrative violations will be investigated, and an annual report on them will be submitted to the Prime Minister. The system will determine the relevant authorities and its specializations.

**SECTION 9: General Rulings:**

Art. 81: The implementation of this system does not violate the treaties and agreements the Kingdom is committed to with other countries or international organizations. Implementation of this system does not violate the treaties and agreements the Kingdom is committed to with other countries or international organizations.

Art. 13: Governo  
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governors should run their governorates  
lizations outlined in the 7th article wit  
of this article. They will control the wo  
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rvice and other governorate affairs, ac  
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Art. 14: Every r  
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of its branches in the province with an ac  
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Art. 15: Each pr  
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Art. 16: The prov  
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B- The vice-gov  
C- The deputy g  
D- The heads o  
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E- At least 10  
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e council will comprise:  
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rnor of the province and governors of th  
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according to the recommendation of the  
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Art. 17: Membr  
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Art. 18: A mem  
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Art. 19: A pro  
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eone the member cannot testify for or if  
who has a personal interest.

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Art. 20: If an a  
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Art. 21: In circ  
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Art. 22: In cas  
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rt. 16 of this system.

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r's term as sta-

- Art. 23: The province council will study all elements aimed at upgrading services in the province and perform the following duties:
- A- Determining the needs of the province and suggesting to include them in the state development plan.
  - B- Determining useful projects according to their priorities and proposing their approval in the annual state budget.
  - C- Studying the organizational plans of the province's cities and villages and following up their implementation after approving them.
  - D- Following up the implementation of clauses of the development plan and budget related to the province.
- Art. 24: The province council will propose any useful work for the citizens of the province and encourage citizens to participate in it. It also submit a report on it to the minister of interior.
- Art. 25: The province council will be prevented from proposing into any issue different from specializations named in this system. Its solutions on such issues would null and void, and the minister of interior should issue a decision to this effect.
- Art. 26: The province council will hold an ordinary session every 3 months at the invitation of its chairman. The chairman can call an extraordinary meeting if the need for it arises. The council session will include one sitting or sittings according to the chairman's decision. The session shall be terminated before probing all issues on the agenda.
- Art. 27: After the meetings of the province council members mentioned in items "C" and "D" of the system. They shall attend in person or send their deputies. As for the members mentioned in item "E", the absence of a member during the sessions without an accepted excuse obligate him to relieve him of his duties. In that case this member should not be appointed before at least two years relieving him of his duties.
- Art. 28: The resolutions of the province council will not be considered effective unless at least two-thirds of the members attend. Resolutions will be issued by absolute majority of votes. Should both sides get the same number of votes, the chairman votes wings.
- Art. 29: The province council can have special committees when needed, to study any issue related to its specialization. It can also use experienced, specialized personnel for this purpose and call anybody to spend the meetings and participate in discussions without voting.
- Art. 30: The minister of interior can call the province council to meet under his chairmanship in any place he sees fit, and he can chair the meeting that the council attends.
- Art. 31: The province council can meet only by the call of the chairman, his deputy or by an order of the minister of interior.
- Art. 32: The province council chairman has to submit a copy of the resolutions to the minister of interior.

Art. 33: The p  
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Art. 34: Ministri-  
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ministry or authority decides not to im  
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authority, the issue should be raised to t  
submit to the prime minister.

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Art. 35: Every m  
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Art. 36: Each  
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Art. 37: The cou  
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Art. 38: The co  
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Art. 39: The pr  
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Art. 40: The m  
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Riyadh, March 1974  
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PA - custodian of the two holy mosques  
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g Fahd Ibn Ab-  
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Referring to the  
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Firstly: issuing o

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Secondly: this sy

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Thirdly: All regula

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months from

Fifthly: this sys:

should be published in the official gazet

*In the Name of G*

*most gracious, most merciful:*



*The system of Majlis Al-Shura (Consultative Council):*

- Art. 1: In line with the almighty God's saying - "It is Pa deal gently with them, wert thou severe ten away. From about thee, so pass ove for (God's) givenness for them, and consult them in a when thou taken a decision they trust in God. "Those who arken to their lord and establish regul mutual consultation, who spend out them for sus nce." And in line w the tradition of the messenger of Allah ( consulting his mpanions and persuasion of the nation hi The consult e council has been set up to unde compliance of this system and the basic system of the book of d and the tradition of his messenger, p the brotherhood cooperation for righteousness.
- Art. 2: The nsultative council is tightly linked to a cepts, and s tly adheres to the sources of Islamic le of the coun would devote themselves to serve the con erve the ur of the people, the entity of the state a nation.
- Art. 3: The nsultative council consists of a speaker 60 well-educated, qualified mem rs to be selected by the King. The n s and duties of the members and air affairs would be identified by a Royal ee.
- Art. 4: A mem of the consultative council should be: A- A Saudi n nal in terms of origin and by birth, B- He should famous for being well-qualified and of a nd reputation. C- He should be less than 30 years old.
- Art. 5: A me er of the shura council has the right to a / for exemption to the speaker a n turn the speaker should submit the ma to the king.
- Art. 6: If a mber of the shura council neglects hi ties, investigation should be cor ted against him, and he should be tried accordance to rules and procedur to be issued by a Royal decree.
- Art. 7: If, for reason, a seat of a member of the shur uncil fails vacant, the King will r e an alternative by a Royal decree.
- Art. 8: A m er of the shura council should not expl he membership to serve his own rest.
- Art. 9: Mem hip of the shura council should not be ed with any other private or pub ob unless the King sees a need for this.
- Art. 10: Spe r of the shura council could appoint his ty and the secre- tary-general c ne council. Their resignation will be de ined by Royal de- crees. Their s es, rights and duties and various affairs ould be determined by a Royal de .

Art. 11: Speaker, take the following oath: *"I swear to God Almighty that I will never uncover a secret of the state, I will preserve its regulations, and I will perform my duties with truth, honesty, justice and fairness."*

Art. 12: The city of Mecca shall be the headquarters of the council but the council may hold a meeting at any other place inside the Kingdom if approved by the King.

Art. 13: The term of the council shall be four years (Hijri) from the date set in the Royal decree on the formation of the council. The new council shall be formed at least two months ahead of the term finishers before the formation of a new council. If the old one should perish, its duties until a new one is formed. It should be noted that the number of the new council shall be half the members of the council.

Art. 14: The King shall deliver an annual speech before the council of the domestic and foreign policies of the state.

Art. 15: The shura council gives its opinion of general national issues handed to it from the president of the council of ministers or the following issues:

- A- Discussing the general economic and social development and giving an opinion on
- B- Studying the system, rules and regulations, treaties, international agreements, and making suggestions that may pertain to this.
- C- Interpreting the laws and regulations.
- D- Discussing the reports presented to them by ministers and government agencies, and making suggestions that may pertain to this.

Art. 16: The shura council meeting will not be considered valid unless at least two-thirds of the members are present, including the president. The decisions will not be considered valid unless the majority of the council members are present.

Art. 17: Resolutions of the shura council would be submitted to the council of ministers for approval. If the two councils are identical, a Royal approval will be issued. If they differ, then the King would undertake a final decision.

Art. 18: Regulations, international agreements and conventions, international agreements and international agreements can only be issued and approved by Royal decrees after being reviewed by the shura council.

Art. 19: It is up to the shura council to assign specialized committees of its members to practice its specializations, and it has the right to assign specialized committees of its members to discuss items on its agenda.

members and secretary-general of the shura council before undertaking their work in the Kingdom. *"I shall be faithful to my religion, I shall not uncover a secret of the state, I will preserve its regulations, and I will perform my duties with truth, honesty, justice and fairness."*

yadh will be the headquarters of the council but the council may hold a meeting at any other place inside the Kingdom if approved by the King.

the Shura council will be four years (Hijri) from the date set in the Royal decree on the formation of the council. The new council shall be formed at least two months ahead of the term finishers before the formation of a new council. If the old one should perish, its duties until a new one is formed. It should be noted that the number of the new council shall be half the members of the council.

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- A- Discussing the general economic and social development and giving an opinion on
- B- Studying the system, rules and regulations, treaties, international agreements, and making suggestions that may pertain to this.
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- D- Discussing the reports presented to them by ministers and government agencies, and making suggestions that may pertain to this.

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o the shura council to assign specialized committees of its members to practice its specializations, and it has the right to assign specialized committees of its members to discuss items on its agenda.

council should be formed by the King. *"I swear to God Almighty that I will never uncover a secret of the state, I will preserve its regulations, and I will perform my duties with truth, honesty, justice and fairness."*

ative council may hold a meeting at any other place inside the Kingdom if approved by the King.

alendar) as of the date set in the Royal decree on the formation of the council. The new council shall be formed at least two months ahead of the term finishers before the formation of a new council. If the old one should perish, its duties until a new one is formed. It should be noted that the number of the new council shall be half the members of the council.

shura, should deliver an annual speech before the council of the domestic and foreign policies of the state.

olicies that are handed to it from the president of the council of ministers or the following issues:

- A- Discussing the general economic and social development and giving an opinion on
- B- Studying the system, rules and regulations, treaties, international agreements, and making suggestions that may pertain to this.
- C- Interpreting the laws and regulations.
- D- Discussing the reports presented to them by ministers and government agencies, and making suggestions that may pertain to this.

icial unless at least two-thirds of the members are present, including the president. The decisions will not be considered valid unless the majority of the council members are present.

he prime minister, who would submit the resolutions of the shura council to the council of ministers for approval. If the two councils are identical, a Royal approval will be issued. If they differ, then the King would undertake a final decision.

oncessions can only be issued and approved by Royal decrees after being reviewed by the shura council.

nmittes of its members to practice its specializations, and it has the right to assign specialized committees of its members to discuss items on its agenda.

<u>Art. 20:</u> The non-members	ouncil's affiliated committees could seek ees suitable after the approval of the sp	help of whichever ar of the council.
<u>Art. 21:</u> A g comprising th council.	eral commission should be set up for eaker, his deputy and heads of specializ	ie council of shura committees of the
<u>Art. 22:</u> Spe. me minister i the council is to discuss but	of the shura council should submit an a ny official has to attend the council's e discussing related matters, and the official the right to vote.	cations to the pri- ions provided that ould have the right
<u>Art. 23:</u> Ever pose a new the matter to sal to the King	oup of ten members of the shura coun system or the amendment of an implement e speakers of the council who, in turn, si	s the right to prop- one and to submit d raise the propo-
<u>Art. 24:</u> The prime minister statements wh	eaker of the shura council must submit r providing the council with governm the council sees necessary to accelerat	application to the al documents and . functions.
<u>Art. 25:</u> Civil bodies unless t	rvice regulations are applied to the pers internal regulations stipulates otherwise.	sl of the council's
<u>Art. 26:</u> The unless otherwi: cial budget ra les issued by a	ployees of the council are subject to civ indicated in the by-laws. The shura coun d by the King and should be spent with val decree.	ervice regulations ould have a spe- gulations and ru-
<u>Art. 27:</u> Organ account w decree.	ion of financial affairs of the council, fir l be done in line with special rules to be	ial control and fi- tified by a Royal
<u>Art. 29:</u> The ir of its speaker a council, manag method of vot ters that woul could be able t rests of the ki Royal decree.	nal regulation of the shura council shoul his deputy, the council's secretary-gene: ent of the session, work process, func . discussion of regulations, answering r provide control and perfection inside t exercise its duties in a manner that woul om and its people, and such regulation v	ganize the duties the bodies of the s of committees, ; besides all mat- council so that it ve the best inte- ld be issued by a
<u>Art. 30:</u> The a thod it had been	ndment of this system would not be ma- sued.	cept in the me-
<u>Riyadh, March 1 aziz issued a R tinue to act as (</u>	<u>A -custodian of the two holy mosques k l decree under which prince Abdullah Ibn vrn Prince, deputy premier and head of t</u>	<u>Fahd Ibn Abdul- dulaziz will con- tional guard.</u>
The decree was of government i	sed on paragraph "D" of the 5th Article ed under the Royal decree No. A/90 da	he basic system 70/8/1412H.



THE CONSTITUTION OF THE SYRIAN ARAB REPUBLIC  
of March 13, 1973

PREAMBLE

The Arab nation when it was a unit its civilizing role re nation's unity, o tion has withstoc tation, and back and return to the rated nations, its gress. With the gle has been ex to achieve liberati

The Arab masse their sacrifices, l ced phase in the and exploitation l order to achieve t

In the Syrian Ar after independen their big victory dership of the Sc ment to serve the ciety.

The Socialist Ar which gives Ara list with the socie tions for a futu enable it to carry the peoples. Thre ractive moveme corrective move reflection of the priate atmosphere interest of our l federation of Ar prominently in t struggle against movements, and against dominati

Under the aegis the road leading Under the leade ve front with de

able to perform a great role in building nation. When the ties of its national co ed and the waves of colonial conquest s oied its territory and plundered its resour ese challenges and rejected the reality dness out of its faith in its ability to sur na of history in order to play, together v stinctive role in the construction of c e of the first half of this century, the Ar ding and assuming greater importance in rom direct colonialism.

id not regard independence as their g as a means to consolidate their struggle. ntinuing battle against the forces of imp r the leadership of their patriotic and pro Arab nation's goals of unity, freedom, ar

region the masses of our people contin through their progressive march they we setting off the revolution of 8 March 19 t Arab Ba'ath Party, which has made a uggle for the construction of the United

Ba'ath Party is the first movement in t ity its sound revolutionary meaning, con struggle, and represents the Arab nation at will bind the Arab nation with its glo is role in achieving victory for the caus the party's militant struggle, the 16 No esponded to our people's demands an t was an important qualitative developr ty's spirit, principles and objectives. It or the fulfilment of a number of signific masses, primarily the emergence of the Republics in response to the call for u Arab conscience, which was buttresse perialism and Zionism, regionalist dis-pu hich was confirmed by the contempora nd exploitation.

he corrective movement an important s the consolidation of national unity for o of the socialist Arab Ba'ath Party a nati ped conceptions emerged in such a man

ian civilization on weakened, ered the Arab . Our Arab na- vision, exploi- unt this reality the other libe- ation and pro- eople's strug- ious countries

and the end of l as an advan- ilism, Zionism, ssive forces in ocialism.

l their struggle ble to achieve under the lea- ority an instru- ialist Arab so-

Arab homeland ts the nationa- will and aspira- s past and will freedom of all ber 1970 cor- spirations. This t and a faithful ted the appro- projects in the ite of the Con- which figures the joint Arab and separatist Arab revolution

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## CHAPTER 1: BASIC PRINCIPLES

### Part 1. Political Principles

#### Art. 1:

- (1) The Syrian  
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the Arab Republic
- (2) The Syrian
- (3) The people  
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#### Art. 2:

- (1) The govern

Arab Republic is a democratic, popular, so  
of its territory can be ceded. It is a member  
olitics.  
b region is a part of the Arab homeland.  
the Syrian Arab region are a part of the  
gle to achieve the Arab nation's compre

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Arab nation. They  
sive unity.

ital system of the Syrian Arab region is a

ublican system.

(2) Sovereignty is vested in the people, who will exercise it in accordance with this Constitution.

Art. 3:

(1) The religion of the President of the Republic shall be Islam.  
 (2) Islamic jurisprudence is a main source of legislation.

Art. 4: The Arabic language shall be the official language.

Art. 5: The state capital is Damascus.

Art. 6: The state emblem, and the national anthem shall be the flag, emblem, and the national anthem of the Union of the Arab Republics.

Art. 7: The constitutional oath shall be the following: "I swear by God the Almighty to sincerely reserve the republican, democratic, and popular system, respect the constitution and the laws, watch over the interests of the people of the homeland, and work and struggle for the realization of the Arab nation's unity, freedom and socialism."

Art. 8: The leading party in the society and the state shall be the Socialist Arab Ba'th Party. It shall lead a patriotic and progressive front, utilizing the resources of the people's masses and place them at the service of the Arab nation's goals.

Art. 9: Popular organizations and cooperative associations which include the people's forces working for the development of society and for the realization of the interests of its members.

Art. 10: People's councils are establishments elected in a democratic way at which the citizen shall exercise their rights in administering the state and leading the society.

Art. 11: The armed forces and other defense organizations shall be responsible for the defense of the homeland's territory and for the protection of the revolution's objectives, freedom, and socialism.

Art. 12: The state shall be at the people's service. Its establishments shall seek to protect the fundamental rights of the citizens and develop their lives. It shall also seek to buttress the political organizations in order to bring about self-development.

**Part 2. Economic Principles**Art. 13:

(1) The state economy is a planned socialist economy which seeks to end all forms of exploitation.  
 (2) The region's economic planning shall serve in achieving economic integration in the Arab homeland.

Art. 14: The law regulates ownership, which is of three kinds:

(1) Public ownership includes natural resources, public utilities, and the nationalized institutions and establishments, as well as institutions and establishments.

lishments up by the state. The state undertakes exploit and to su-  
 pervise th Administration of this property in the inter of the entire peo-  
 ple. It is th ity of the citizens to protect this propert  
 (2) Collective nership includes the property belongin popular and pro-  
 fessional o nizations and to production units, coope es, and other so-  
 cial establi ents. The law guarantees its protection support.  
 (3) Individual nership includes property belonging to individuals. The law  
 defines its cial task in serving the national econo within the frame-  
 work of t development plan. This property should be used in ways  
 contrary to e people's interests.

**Art. 15:**

(1) Individual nership shall not be expropriated exce for public interest  
 and in retu or just compensation in accordance with : law.  
 (2) The public ure of funds is permissible.  
 (3) Private seiz cannot be effected except through a ju il decision.  
 (4) Private sei e decreed by law is permissible in retur or just compensa-  
 tion.

**Art. 16:** The la defines the maximum limit of agricultural nership in a man-  
 ner that will gu ntee the protection of the farmer and of agricultural wor-  
 ker against exp ation and will guarantee increase in proc ion.

**Art. 17:** The ri of inheritance is guaranteed in accordan with the law.

**Art. 18.** Savin s a national duty protected, encouraged organized by the  
 state.

**Art. 19:** Taxe all be imposed on equitable and progres bases which will  
 achieve the pri bles of equality and social justice.

**Art. 20:** The loitation of private and joint economic fu tations shall seek  
 to meet the s il needs, increase the national income, a chieve the peop-

**Part 3. Educational and Cultural Principi**

**Art. 21:** The e ational and cultural system aims at crea a socialist natio-  
 nalist Arab ge ation which is scientifically minded and ch is attached to  
 its history and nd, proud of its heritage, and imbued wi he spirit of strug-  
 gle to achiev s nation's objectives of unity, freedom socialism, and to  
 serve humanit d its progress.

**Art. 22:** The icational system shall guarantee the peo s continuous pro-  
 gress and ad itself to the ever-developing social, econ c and cultural re-  
 quirements of people.

**Art. 23:**

(1) The nation t socialist education is the base for build the unified soci-  
 alist Arab se ty. It seeks to strengthen moral values, chieve the higher  
 ideals of Arab nation, to develop the society, and serve the causes  
 of humani The state undertakes to encourage an protect this edu-  
 cation.

- (2) The encouragement of artistic talents and abilities is one of the bases of the progress and development of society, artistic creation is based on close contact with the people's life. The state undertakes to foster the artistic talents and abilities of all the citizens.
- (3) Physical education is a foundation for the building of a physically, mentally, and morally strong generation. The state encourages this.

Art. 24:

- (1) Science, scientific research, and all scientific achievements are basic elements for the progress of the socialist Arab society. Conducted by the state.
- (2) The state shall protect the rights of authors and inventors who serve the people's interests.

**Part 4. Freedoms, Rights and Public Duties**Art. 25:

- (1) Freedom is a sacred right. The state protects the personal freedom of the citizens and safeguards their dignity and security.
- (2) The supremacy of law is a fundamental principle in the society and the state.
- (3) The citizens are equal before the law in their rights and duties.
- (4) The state insures the principle of equal opportunities for citizens.

Art. 26: Every citizen has the right to participate in the political, economic, social, and cultural life. The law regulates this participation.

Art. 27: Citizens exercise their rights and enjoy their freedoms in accordance with the law.

Art. 28:

- (1) Every defendant is presumed innocent until proved guilty by a final judicial decision.
- (2) No one shall be kept under surveillance or detained except in accordance with the law.
- (3) No one shall be tortured physically or mentally or be treated in a humiliating manner. The law defines the punishment of whoever commits such an act.
- (4) The right of accusation, contest, and defense before the judiciary is safeguarded by the law.

Art. 29: What constitutes a crime or penalty can only be determined by law.

Art. 30: Laws are binding only following the date of their enactment and cannot be retroactive except other than penal cases, the contrary may be stipulated.

Art. 31: Homes are inviolable. They may not be entered or searched except under conditions stipulated by law.

Art. 32: The privacy of postal correspondence and telegraphic contacts is guaranteed by law.



Art. 33:

(1) A citizen may not be deported from the homeland.  
 (2) Every citizen has the right to move within the state's territory unless forbidden to do so by a judicial sentence or in implementation of public health and safety measures.

Art. 34: Political principles or their

refugees cannot be extradited because of their political principles or their principles of freedom.

Art. 35:

(1) The freedom of faith is guaranteed. The state respects all religions.  
 (2) The state guarantees the freedom to hold any religious activities provided they do not disturb public order.

Art. 36:

(1) Work is a right and duty of every citizen. The state undertakes to provide work for all citizens.  
 (2) Every citizen has the right to earn his wage according to the nature and yield of his work. The state must guarantee this.  
 (3) The state regulates working hours, guarantees social security, and regulates rests and various compensations and rewards for workers.

Art. 37: Elementary compulsory and secondary education must be consistent

with a right guaranteed by the state. Elementary education is free. The state undertakes to extend compulsory education to other levels and to supervise and guide the requirements of society and of production.

Art. 38: Every citizen has the right to freely and openly express his views, in writing, and through all the other means of expression. He also has the right to participate in supervision and constructive criticism in a manner that will safeguard the soundness of the domestic and international structure and will strengthen the socialist system. The state guarantees the freedom of publication in accordance with the law.

citizens have the right to meet and to demonstrate peacefully within the principles of the constitution. The law regulates the exercise of this right.

Art. 39: The citizens have the right to meet and to demonstrate peacefully within the principles of the constitution. The law regulates the exercise of this right.

citizens have the right to meet and to demonstrate peacefully within the principles of the constitution. The law regulates the exercise of this right.

Art. 40:

(1) All citizens are dutybound to carry out their sacred duty to defend the homeland's security, to respect its Constitution and socialist system.  
 (2) Military service is compulsory and is regulated by law.

Art. 41: The payment of taxes and public expenses is regulated in accordance with the law.

ment of taxes and public expenses is regulated in accordance with the law.

Art. 42: It is the duty of every citizen to preserve national security and to protect state secrets.

It is the duty of every citizen to preserve national security and to protect state secrets.

Art. 43: The law regulates Syrian Arab citizenship and guarantees special facilities for the Syrian Arab expatriates and their sons and for the citizens of the Arab countries.

regulates Syrian Arab citizenship and guarantees special facilities for the Syrian Arab expatriates and their sons and for the citizens of the Arab countries.

Art. 44:

- (1) The family is the basic unit of society and is protected by the state and encourages marriage and will eliminate factors hampering marriage. The state provides care to adolescents and youths in special circumstances to develop their faculties.
- (2) The state protects and socializes orphans, infants, and the disabled with the suitable circumstances.

the state.  
to the material  
of mothers and  
provides them

Art. 45: The state shall guarantee for women all opportunities to fully and effectively participate in the political, social, and economic life. The state must remove the restrictions that prevent women in building the socialist Arab society.

shall guarantee for women all opportunities to fully and effectively participate in the political, social, and economic life. The state must remove the restrictions that prevent women in building the socialist Arab society.

enabling them  
political, and economic  
women's development

Art. 46:

- (1) The state protects every citizen and his family in cases of illness, disability, orphanhood and old age.
- (2) The state protects the citizen's health and provides the necessary treatment, and medication.

emergency, illness,  
and old age.  
with the means

Art. 47: The state guarantees cultural, social, and health services and undertakes to provide these services to the village in order to raise its standard.

guarantees cultural, social, and health services and undertakes to provide these services to the village in order to raise its standard.

services. It especially  
to raise its standard.

Art. 48: The professional organizations, their relations,

sectors have the right to establish unions and production cooperatives. The framework of the organizations, and the scope of their work shall be defined by law.

social, professional,  
of the organization  
defined by law.

Art. 49: The professional organizations shall effectively participate in the various sectors and courts defined by law to realize the following:

- (1) Building the socialist Arab society and defending the system of the socialist economy.
- (2) Planning and development of work conditions, safety, health, culture, and lives of the organization member.
- (3) Development of scientific and technical progress and production.
- (4) Achievement of the means of production of the machinery of government.
- (5) Popular supervision of the machinery of government.

in the various

all other affairs

development of

**CHAPTER 2: POWERS OF THE STATE****Part 1. Legislative Power**Art. 50:

- (1) The People's Assembly will assume legislative power in the manner defined in this Constitution.
- (2) The members of the People's Assembly shall be elected by direct, and universal ballot in accordance with the provisions of the election law.

the manner defined

general, secret,  
of the election

Art. 51: The People's Assembly shall be elected for 4 years beginning on the first day of its first session. This term can be extended by law in the state of war.

People's Assembly shall be elected for 4 years beginning on the first day of its first session. This term can be extended by law in the state of war.

beginning on the  
day in the state of

- Art. 52: A member of the People's Assembly represents the whole people. His mandate may not be limited by any restrictions or conditions. He must exercise his mandate guided by his honor and conscience.
- Art. 53: The members of the People's Assembly shall define the electoral districts and their number, provided that at least one of them shall be a worker and peasant. The law shall define the terms: worker and peasant.
- Art. 54: Voters are citizens at least 18 years old who are registered in the civil status register and who meet the conditions specified in the election law.
- Art. 55: The law shall make provisions for elections and procedures that must be met by members of the People's Assembly. It shall define the conditions for the election of the People's Assembly.
- Art. 56: State workers, including public sector workers, may be elected members of the People's Assembly. Except in the case of a member who may take a leave in order to join the army, his position shall be reserved for him and the period of leave shall be regarded as active duty.
- Art. 57: The election law must include provisions guaranteeing: (1) Freedom of election. (2) The right of candidates to watch over the voting. (3) Punishment of those who tamper with the will of the voters. The integrity of the voting process shall be guaranteed.
- Art. 58: (1) The election shall be held within 90 days following the expiration of the People's Assembly's term. (2) The People's Assembly shall reconvene in accordance with the law if no election is held. It shall convene after the expiration of 90 days and until a new Assembly is elected.
- Art. 59: If a seat comes vacant for any reason, a member shall be elected to fill this seat within 30 days after the vacancy, provided the remaining period of the member's term is not less than 6 months. Membership of the new member shall end with the expiration of the Assembly's term. The election law shall define the conditions for membership vacancies.
- Art. 60: (1) The People's Assembly shall be invited to meet by a decree of the President of the Republic within 15 days beginning on the date of the announcement of the result of the election. The Assembly shall convene on the 16th day if no decree is issued by the President. (2) At its first meeting, the Assembly shall elect its President and the members of its Executive Committee.
- Art. 61: The People's Assembly shall be convened in three ordinary sessions annually. It may also be convened in extraordinary sessions. The law shall set the dates and periods of the sessions. The Assembly shall be invited to meet at extraordinary sessions by the decision of the President.

President of the Republic, or at the request of one-third of the members of the Assembly, at the written request of the President of the Republic, or at the request of one-third of the members of the Assembly.	President of the Assembly.
<u>Art. 62:</u> The President of the Republic shall rule on the validity of the laws if challenged in light of investigations conducted by the Constitutional Court within one month of the Assembly's notification of the Court's verdict. A member's membership in the Assembly shall be invalidated only by majority vote of its members.	membership of the President of the Republic shall be invalidated by the Supreme Constitutional Court upon notification of the Court's verdict. A member's membership in the Assembly shall be invalidated only by majority vote of its members.
<u>Art. 63:</u> Before assuming office, each member of the Assembly shall take before the President of the Republic the oath specified in Article 7 of the Constitution.	Before assuming office, each member of the Assembly shall take before the President of the Republic the oath specified in Article 7 of the Constitution.
<u>Art. 64:</u> The conditions of service, emoluments and allowances for the members of the Assembly shall be defined by law.	The conditions of service, emoluments and allowances for the members of the Assembly shall be defined by law.
<u>Art. 65:</u> The President of the Republic shall regulate the mode of work and the manner of carrying out its internal organization to regulate the mode of work and the manner of carrying out its internal organization.	The President of the Republic shall regulate the mode of work and the manner of carrying out its internal organization to regulate the mode of work and the manner of carrying out its internal organization.
<u>Art. 66:</u> Members of the Assembly are not accountable before any court for any opinions or views they express, in voting sessions, or in the activities of the various committees.	Members of the Assembly are not accountable before any court for any opinions or views they express, in voting sessions, or in the activities of the various committees.
<u>Art. 67:</u> Members of the Assembly enjoy immunity through the term of the session. They cannot be apprehended in the act of committing a crime, nor can any penal measure be taken against any member without the advance permission of the Assembly. When the Assembly is not in session, permission must be obtained from the President of the Assembly. As soon as it convenes, the Assembly shall be notified of the measures taken.	Members of the Assembly enjoy immunity through the term of the session. They cannot be apprehended in the act of committing a crime, nor can any penal measure be taken against any member without the advance permission of the Assembly. When the Assembly is not in session, permission must be obtained from the President of the Assembly. As soon as it convenes, the Assembly shall be notified of the measures taken.
<u>Art. 68:</u> (1) An Assembly member may not take advantage of his membership in any activities which are incompatible with membership in the Assembly. (2) The law shall define the activities which are incompatible with membership in the Assembly.	(1) An Assembly member may not take advantage of his membership in any activities which are incompatible with membership in the Assembly. (2) The law shall define the activities which are incompatible with membership in the Assembly.
<u>Art. 69:</u> (1) The President of the Republic shall represent the People's Assembly and shall speak on its behalf. (2) The President of the Republic shall have a special guard which will protect the orders of the Assembly. No other armed forces shall enter the Assembly building without permission of the President of the Assembly.	(1) The President of the Republic shall represent the People's Assembly and shall speak on its behalf. (2) The President of the Republic shall have a special guard which will protect the orders of the Assembly. No other armed forces shall enter the Assembly building without permission of the President of the Assembly.
<u>Art. 70:</u> The members of the Assembly shall have the right to propose bills and to address questions and inquiries to the cabinet or any member of the President's internal organization.	The members of the Assembly shall have the right to propose bills and to address questions and inquiries to the cabinet or any member of the President's internal organization.
<u>Art. 71:</u> The President of the Republic will assume the following functions: (1) Nomination and approval of the laws. (2) Approval of the cabinet policy. (3) Debate of the general budget and development plans. (4) Approval of international treaties and agreements concerning peace and alliance treaties, all treaties connected with state security - not connected with the state.	The President of the Republic will assume the following functions: (1) Nomination and approval of the laws. (2) Approval of the cabinet policy. (3) Debate of the general budget and development plans. (4) Approval of international treaties and agreements concerning peace and alliance treaties, all treaties connected with state security - not connected with the state.

<p>rights of companies tail expenditure, and the laws in new legislation (6) Approval of (7) Acceptance (8) Withholding</p>	<p>sovereignty or agreements which grant or establish, as well as treaties and articles of the state treasury not included in laws and agreements which run counter to the provisions of the law or treaties and agreements which require to be implemented. General amnesty. rejecting the resignation of a member of the cabinet or a Minister.</p>	<p>provisions to foreign governments which enter the treasury's budget. The provisions of the law on the promulgation of laws by the Assembly.</p>
<p><u>Art. 72:</u> Confidence in the cabinet or of a minister in accordance with the majority of the members of the Assembly. In the event of the resignation of the President of the Republic, the President must also resign.</p>	<p>Confidence may not be withheld without the intervention of the Assembly. A request for withholding confidence in the cabinet or a minister must be submitted by at least one-fifth of the members of the Assembly. In the event of a request for withholding confidence in the Minister, the Minister must submit the cabinet's resignation to the President of the Republic. A minister from whom confidence is withheld must resign.</p>	<p>Confidence in the cabinet will be made in accordance with the majority of the members of the Assembly. In the event of the resignation of the President of the Republic, the President must also resign.</p>
<p><u>Art. 73:</u> The Assembly will collect information of its jurisdiction.</p>	<p>The Assembly will form provisional committees to collect information and to find facts on the subjects concerning its jurisdiction.</p>	<p>The Assembly will form provisional committees in its members to collect information and to find facts on the subjects concerning its jurisdiction.</p>
<p><u>Art. 74:</u> The budget before the beginning of the fiscal year is approved by the Assembly.</p>	<p>The budget should be submitted to the Assembly before the beginning of the fiscal year. The budget will not be in force unless it is approved by the Assembly.</p>	<p>The budget should be submitted to the Assembly before the beginning of the fiscal year. The budget will not be in force unless it is approved by the Assembly.</p>
<p><u>Art. 75:</u> Voting on the budget will be by chapter.</p>	<p>Voting on the budget will be chapter by chapter. The method of preparing the budget will be defined by law.</p>	<p>Voting on the budget will be chapter by chapter. The method of preparing the budget will be defined by law.</p>
<p><u>Art. 76:</u> Every fiscal year will be defined by law.</p>	<p>Every fiscal year has one budget and the beginning of the fiscal year will be defined by law.</p>	<p>Every fiscal year has one budget and the beginning of the fiscal year will be defined by law.</p>
<p><u>Art. 77:</u> If the new fiscal year is not approved by the Assembly, the previous fiscal year will remain in force until approval of the new fiscal year. Revenues will be obtained in accordance with the law still in force.</p>	<p>If the Assembly fails to approve the budget before the beginning of the new fiscal year, the previous fiscal year will remain in force until approval of the new fiscal year. Revenues will be obtained in accordance with the law still in force.</p>	<p>If the Assembly fails to approve the budget before the beginning of the new fiscal year, the previous fiscal year will remain in force until approval of the new fiscal year. Revenues will be obtained in accordance with the law still in force.</p>
<p><u>Art. 78:</u> No change with provisions of the law.</p>	<p>No change in the budget's chapters is permissible without the approval of the law.</p>	<p>No change in the budget's chapters is permissible without the approval of the law.</p>
<p><u>Art. 79:</u> During the study of the budget, the Assembly has no right to increase the revenues and expenditures.</p>	<p>During the study of the budget, the Assembly has no right to increase the revenues and expenditures.</p>	<p>During the study of the budget, the Assembly has no right to increase the revenues and expenditures.</p>
<p><u>Art. 80:</u> After approval of the budget, the Assembly can approve laws on new revenues and expenditures.</p>	<p>After approval of the budget, the Assembly can approve laws on new revenues and expenditures.</p>	<p>After approval of the budget, the Assembly can approve laws on new revenues and expenditures.</p>
<p><u>Art. 81:</u> It is not permissible to impose taxes, to modify taxes, or to cancel taxes except by law.</p>	<p>It is not permissible to impose taxes, to modify taxes, or to cancel taxes except by law.</p>	<p>It is not permissible to impose taxes, to modify taxes, or to cancel taxes except by law.</p>
<p><u>Art. 82:</u> Final accounts for the fiscal year shall be submitted to the Assembly within 2 years of the end of that year. The settlement of the accounts should be</p>	<p>Final accounts for the fiscal year shall be submitted to the Assembly within 2 years of the end of that year. The settlement of the accounts should be</p>	<p>Final accounts for the fiscal year shall be submitted to the Assembly within 2 years of the end of that year. The settlement of the accounts should be</p>

made by law. It shall be applied to the budget, subject to approval.

## Part 2. The Executive Authority

### 1. The President of the Republic

Art. 83: A candidate for the presidency must be an Arab Syrian, enjoying his civil and political rights, and the over 40 years of age.

Art. 84: Upon the proposal of the Arab Socialist Ba'ath Party the Assembly will propose the order for election of the President. The candidates will be proposed to the citizens for referendum; (1) the referendum will take place upon the request of the President of the Assembly; (2) the referendum will be elected before termination of the term of the President not more than 60 days; (3) the new President becomes President of the Republic if he obtains an absolute majority of total votes. If he fails to obtain this majority, the Assembly will name another candidate. The same procedures will be followed on the next election, provided this takes place within 1 month from the time the results of the first plebiscite were announced.

Art. 85: The President of the Republic shall be elected for 7 years according to the Christian calendar, beginning at the date of the expiration of the term of the incumbent President.

Art. 86: If any temporary incapacity prevents the President from carrying out his duties, the Vice President shall take his place.

Art. 87: If the President of the Republic wishes to resign, he must submit his resignation to the Assembly.

Art. 88: The Vice President of the Republic or the Vice President shall carry out the President's duties if the President is unable to do so. If the incapacity is permanent or in case of death or resignation, a referendum shall be held to place to elect a new President in accordance with the provisions of Article 83 of this Constitution, within a period not exceeding 90 days. If the Assembly is dissolved or if its term is due to expire in more than 90 days, the Vice President shall carry out the President's duties until the new Assembly convenes.

Art. 89: If the President becomes vacant and there is no Vice President, the Prime Minister shall exercise all the President's powers until a new President is elected by means of referendum within 90 days.

Art. 90: Before assuming his post, the President shall take the constitutional oath before the People's Assembly in accordance with Article 7 of the Constitution.

Art. 91: The President shall not be held responsible for his actions except in the case of high treason. A referendum shall be held in accordance with a proposal by at least one-third of the members of the Assembly.

<p>bers of the thirds major place only b</p>	<p>ople's Assembly and an Assembly dec in an open vote at a special secret ses the Supreme Constitutional Court.</p>	<p>n adopted by a two- n. His trial shall take</p>
<p><u>Art. 92:</u> The of the Republ</p>	<p>otocol, privileges and compensation of ti shall be established by law.</p>	<p>ost of the President</p>
<p><u>Art. 93:</u> (1) The Pre orderly fu (2) The Pres of the pe</p>	<p>ent of the Republic shall insure respect fu ioning of public authorities, and the pres nt of the Republic shall exercise execu : within the limits defined in this Constit</p>	<p>ie Constitution, the ation of the state. authority on behalf n.</p>
<p><u>Art. 94:</u> The binet, lay dov</p>	<p>esident of the Republic shall, through co he state's general policy and supervise</p>	<p>tation with the ca- mplementation.</p>
<p><u>Art. 95:</u> The dents and d. point the Pri accept their n</p>	<p>esident of the Republic shall appoint o ate some of his duties to them. The F Minister and his deputies and the minist nations, and dismiss them from their po:</p>	<p>or more Vice Presi- dent shall also ap- and their deputies,</p>
<p><u>Art. 96:</u> Befo: tutional oath Republic.</p>	<p>ssuming their posts, the Vice Presidents cified in Art.7 of this Constitution befor</p>	<p>ll take the Consti- e President of the</p>
<p><u>Art. 97:</u> The Chairmanship.</p>	<p>esident of the Republic can call a cabi can also request reports from the minist</p>	<p>meeting under his</p>
<p><u>Art. 98:</u> The the People's, reasons for t If the Assembl</p>	<p>esident of the Republic shall promulgate 1 mbly, he may veto these laws through objection, within a month after their rec: ain approves them by Republic shall iss</p>	<p>aws approved by cision, giving the by the President. nem.</p>
<p><u>Art. 99:</u> The F in accordance</p>	<p>ident of the Republic shall issue decrees the legislation in effect.</p>	<p>isions and order</p>
<p><u>Art. 100:</u> The tion and conclu</p>	<p>esident of the Republic can declare war e peace following the approval by the Peop</p>	<p>general mobiliza- s Assembly.</p>
<p><u>Art. 101:</u> The emergency in th</p>	<p>esident of the Republic can declare and nanner stated in the law.</p>	<p>ninate a state of</p>
<p><u>Art. 102:</u> The missions to fo foreign diplomat</p>	<p>esident of the Republic shall accredit the n governments and accept the accredita missions to him.</p>	<p>ds of diplomatic of the heads of</p>
<p><u>Art. 103:</u> The my and the ar exercising this a</p>	<p>esident of the Republic is the supreme cc l forces. He issues all the necessary dec rity. He can delegate some of his autho</p>	<p>ander of the ar- ns and orders in</p>
<p><u>Art. 104:</u> The P and agreements</p>	<p>esident of the Republic shall ratify and abol ccordance with the provisions of the Co</p>	<p>internal treaties tution.</p>

<u>Middle Eastern Constitutions:</u>	<u>SYRIA</u>
<u>Art. 105:</u> The President of the Republic can issue amnesty and pardon decisions.	instatement
<u>Art. 106:</u> The President of the Republic can bestow decorations and medals.	
<u>Art. 107:</u> (1) The President of the Republic can dissolve the People's Assembly and call for new elections within 60 days from the date of the dissolution. (2) He may not dissolve the People's Assembly more than once for the same reason.	only through the President within 60 days from the date of the dissolution for the same reason.
<u>Art. 108:</u> (1) The President of the Republic can call on the People's Assembly to convene an extraordinary session. (2) He can also address the Assembly through messages and decrees before the session.	bly to convene an extraordinary session. He can also address the Assembly through messages and decrees before the session.
<u>Art. 109:</u> The President of the Republic shall appoint and terminate military and civilian officials in accordance with the law.	of military officials in accordance with the law.
<u>Art. 110:</u> The President of the Republic may draft projects of laws and submit them to the Assembly for approval.	of laws and submit them to the Assembly for approval.
<u>Art. 111:</u> (1) The President of the Republic shall assume legislative authority when the People's Assembly is not in session, provided that all the legislation issued by him is referred to the People's Assembly in its first session. (2) The President of the Republic can assume legislative authority even when the Assembly is in session if it is extremely necessary in order to safeguard the country's national security, or the requirements of international security, provided that the legislation issued by him is referred to the People's Assembly in its next session. (3) The People's Assembly can abolish or amend the legislation issued by the President in paragraph 1, or by law by a two-thirds majority, provided their number is not less than one-third of the members of the Assembly, or abolition will have an absolute majority and provided that the amendment will not have a retroactive effect. If the Assembly does not abolish or amend the legislation within 60 days from the date of its promulgation, then it is considered legally approved. (4) The President of the Republic shall assume legislative authority in the interim period between two assemblies. Legislation issued by him shall not be referred to the People's Assembly and its amendments or abrogation shall be the same as provided for in paragraph 1.	authority when the People's Assembly is not in session, provided that all the legislation issued by him is referred to the People's Assembly in its first session. The President can assume legislative authority even when the Assembly is in session if it is extremely necessary in order to safeguard the country's national security, or the requirements of international security, provided that the legislation issued by him is referred to the People's Assembly in its next session. The People's Assembly can abolish or amend the legislation issued by the President in paragraph 1, or by law by a two-thirds majority, provided their number is not less than one-third of the members of the Assembly, or abolition will have an absolute majority and provided that the amendment will not have a retroactive effect. If the Assembly does not abolish or amend the legislation within 60 days from the date of its promulgation, then it is considered legally approved. The President of the Republic shall assume legislative authority in the interim period between two assemblies. Legislation issued by him shall not be referred to the People's Assembly and its amendments or abrogation shall be the same as provided for in paragraph 1.
<u>Art. 112:</u> The President of the Republic can hold public referenda on important issues affecting the country's highest interests. The referenda shall be binding and effective on the date of their promulgation. The President shall announce the results of the referenda.	on important issues affecting the country's highest interests. The referenda shall be binding and effective on the date of their promulgation. The President shall announce the results of the referenda.
<u>Art. 113:</u> In case of a grave danger or situation threatening the safety and independence of the homeland or obstructing national unity or state institutions	national unity or state institutions



from carrying out their constitutional responsibilities, the President of the Republic can take immediate measures necessitated by the circumstances.

Art. 114: The President of the Republic can form special committees. The powers and jurisdiction of these bodies shall be specified in the decisions forming them.

## 2. The Council of Ministers

### Art. 115:

- (1) The cabinet is the state's highest executive and administrative body. It consists of the President of the Council of Ministers and his deputies, and the ministers. They shall supervise the execution of the laws and regulations and the work of the state machinery and institutions.
- (2) The President of the Council of Ministers supervises the activities of the ministers.
- (3) The compensation and allowances of the President of the Council of Ministers, his deputies, the ministers, and their deputies shall be fixed by law.

Art. 116: The President of the Council of Ministers, his deputies and the ministers shall take the constitutional oath, on before the President of the Republic, before they assume their responsibilities, whenever a new cabinet is formed. In the case of a cabinet reshuffle only the new ministers shall take the oath.

Art. 117: The President of the Council of Ministers and his deputies are responsible before the President of the Republic.

### Art. 118:

- (1) Upon its formation, the cabinet shall submit a statement to the People's Assembly of its general policy and programs of action.
- (2) The Cabinet shall submit annual statements to the People's Assembly on the progress of the development plans and production.

Art. 119: The Minister is the highest administrative authority in his ministry. He shall carry out the state's general policy where it concerns his ministry.

Art. 120: While in office, the ministers are not permitted to be members of the Board of Directors of any private company, act as its agent in a commercial or industrial transaction, or undertake any liberal profession. While in office, the ministers are not permitted to be directly or indirectly involved in the contracts, orders, or indirectly involved in the contracts, orders, or works carried out by the state ministries, departments, or establishments, or by public sector companies.

Art. 121: The law defines the civil and penal responsibilities of the ministers.

Art. 122: On the expiration of the term of the President of the Republic or in the case of his permanent inability to discharge his duties, the cabinet shall continue to manage the affairs of the state until the new President names a new cabinet.

Art. 123: The P  
for whatever cri  
dance with provis

dent of the Republic has a right to refer  
he commits while in his post or beca  
of the Constitution and the law.

minister to trial  
of it, in accor-

Art. 124: An acc  
issued and until  
against him. His  
trial. The trial and

d minister shall be suspended as soon as  
court arrives at a decision regarding th  
signation or dismissal does not prevent  
procedures shall be in accordance with

indictment is  
charges brought  
mitting him to  
law.

Art. 125: Cabinet

d People's Assembly membership may b

combined.

Art. 126: The p  
deputy ministers.

isions applicable to the ministers are als

applicable to the

Art. 127: The ca

t shall have the following jurisdictions:

- (1) Participation  
out the state
- (2) Steering, co  
the state's p
- (3) Drawing up t
- (4) Preparing dra
- (5) Preparing th  
tional resour  
create the na
- (6) Contracting  
Constitution.
- (7) Concluding  
the Constitu
- (8) Following u  
and safegua
- (9) Issuing admi  
regulations,

n the President of the Republic in drawi  
general policy.

ating, and following up the work of th  
departments and establishments.

state's general budget project.

aws.

development plan, developing production  
and everything that will strengthen th  
ial income.

granting loans in accordance with th

ements and treaties in accordance wit

the enforcement of the laws, preserving t  
the rights of the citizens and the state  
ative and executive decisions in accord  
supervising their implementation.

up and carrying

ministers and all

d exploiting na-  
conomy and in-

rovisions of the

e provisions of

state's security,  
terest.

with laws and

Art. 128: In a  
ministers shall c  
are not in conf  
Constitutions.

on to the cabinet's jurisdictions, the Pri  
large the duties mentioned in valid legis  
with the jurisdictions given to other stat

Minister and the  
n provided they  
thorities by this

### **Part 3. The Local People's Councils**

Art. 129:

- (1) The Local  
the adminis
- (2) The admin  
of the law.

le's Councils are bodies which exercise  
ve units in accordance with the law.

tive units shall be defined in accordance

ir powers within

h the provisions

Art. 130: The  
the method o  
bers, and all rel

shall define the jurisdictions of The Loc  
acting and forming them, the rights and  
nt regulations.

ople's Councils,  
es of their mem-

**CHAPTER 3: THE JUDICIAL AUTHOR****Part 1. Court Judges and Public Prosecu**

Art. 131: The judicial authority is independent. The President of the Republic shall guarantee the Council of the Judiciary.

Art. 132: The President of the Republic shall preside over the Higher Council of the Judiciary. The law shall prescribe the method of its constitution, its jurisdiction as well as its internal operating procedures.

Art. 133:  
(1) Judges are independent. They are subject to no authority except that of the law.  
(2) The honor, conscience, and impartiality of judges are guarantees of public rights and freedoms.

Art. 134: Sentences shall be issued in the name of the Arab people of Syria.

Art. 135: The law shall organize the judicial system along with its categories, types and grades of judges. It shall also define the regulations pertaining to the jurisdiction in the different courts.

Art. 136: The law shall define the terms of appointment, promotion, transfer, discipline, and removal of judges.

Art. 137: The public prosecution is a single juridical institution headed by the Minister of Justice. The law shall organize its functions and jurisdictions.

Art. 138: The Council of State shall exercise administrative jurisdiction. The law shall prescribe the terms of appointment, promotion, discipline and removal of its judges.

**Part 2. The Supreme Constitutional Cou**

Art. 139: The Supreme Constitutional Court is composed of five members, of whom one will be the President, and all of whom shall be appointed by the President of the Republic by decree.

Art. 140: It is not permissible to combine the membership of the Supreme Constitutional Court with a ministerial post or membership in the People's Assembly. The law shall prescribe other functions which may not be combined with court membership.

Art. 141: The term of membership of the Supreme Constitutional Court shall be 4 years subject to renewal.

Art. 142: Members of the Supreme Constitutional Court shall not be dismissed from court membership except in accordance with the provisions of the law.

Art. 143: Before assuming their duty, the President and members of the Supreme Constitutional Court shall take the following oath before the President of the Republic and in the presence of the speaker of the People's Assembly:

"I swear by the mighty to respect the country's Constitution and laws and to carry out my duty with impartiality and loyalty."

**Art. 144:** The Supreme Constitutional Court shall determine the validity of the special appeals regarding the election of the members of the People's Assembly and shall submit to it a report on its findings.

**Art. 145:** The Supreme Constitutional Court shall look into the constitutionality of laws in accordance with the following:

- (1) Should the President of the Republic or a quarter of the People's Assembly members challenge the constitutionality of a law before its promulgation, the court shall be suspended until a decision on it is filed within 15 days from the date the appeal is filed with it. If of an urgent nature, the Supreme Constitutional Court must make a decision on it within 7 days.
- (2) Should a quarter of the People's Assembly members object to the constitutionality of a legislative decree within 15 days of the date the Supreme Constitutional Court receives it, the court shall decide on it from the date the objection was filed with it.
- (3) Should the Supreme Constitutional Court decide that a law or a decree is contrary to the Constitution, whatever is contrary to the text of the Constitution shall be considered null and void with retroactive effect and shall have no consequences.

**Art. 146:** The Supreme Constitutional Court shall have no right to look into laws which the President of the Republic submits to public referendum and are approved by the people.

**Art. 147:** The Supreme Constitutional Court shall, at the request of the President, give its opinion on the constitutionality and legal validity of draft decrees.

**Art. 148:** The law shall determine the procedure of hearing matters coming under the jurisdiction of the Supreme Constitutional Court. It shall also define the court staff, the qualifications of its members, and their salaries, and shall prescribe the rules, and prescriptive periods, and responsibilities.

### Part 3. Amending the Constitution

**Art. 149:**

- (1) The President of the Republic as well as a two-thirds majority of the People's Assembly members have a right to propose amending the Constitution.
- (2) The amendment proposal shall include the provisions to be amended and the reasons for the amendment.
- (3) Upon receipt of the proposal, the People's Assembly shall set up a special committee to investigate it.
- (4) The Assembly shall discuss the amendment proposal, and if approved by a two-thirds majority of its members the amendment shall be considered final. It will then be submitted to the President of the Republic for approval. If approved by the President of the Republic, it will then be included in the text of the Constitution.

CHAPTER 4: GENERAL AND TRANSITORY PROVISIONS

Art. 150: The preamble of this Constitution shall be considered an integral part of it.

Art. 151: The Constitution may not be amended before the lapse of 18 months from the date it comes into effect.

Art. 152: The Supreme Constitutional Court is formed by the general body of the Court of Appeals. The jurisdiction of the Court shall be to examine appeals regarding the validity of the election of the members of the People's Assembly after such appeals are referred to it by the President of the Assembly. The court shall submit to the President of the Assembly a report of its findings.

Art. 153: Legislation in effect and issued before the promulgation of this Constitution shall remain in effect until it is amended so as to be compatible with its provisions.

Art. 154: The term of the incumbent President of the Republic shall expire after the lapse of 7 years of the Christian Era from the date of the announcement of the election as President of the Syrian Arab Republic.

Art. 155: Elections for the first People's Assembly shall be held under this Constitution within 90 days from the date it is declared approved by a public referendum.

Art. 156: The President of the Republic shall publish the Constitution in the Official Gazette (*al-jarida ar-rasmia*) and it shall be considered in effect from the date of its approval by a public referendum.

President of the People's Assembly: Fahmi al-Yusufi.  
President of the Republic: Hafez Al-Assad.





<p>mination of / and other Cruel conventions and authorities sha</p>	<p>forms of Racial Discrimination the Conven human or Degrading Treatment and Pun enants which secure such rights and f here to the said international agreement</p>	<p>n against Torture d and other Con- foms. Palestinian</p>
<p><b>Art. 9:</b> Every p</p>	<p>n has the right to life.</p>	
<p><b>Art. 10:</b> Wom without any dis</p>	<p>and men shall have equal fundamental nination.</p>	<p>nts and freedoms</p>
<p><b>Art. 11:</b> All p to torture or t ular, no perso tific experimer obtained as a treatment.</p>	<p>ons are equal in human dignity. No perso tuel, inhuman or degrading treatment or all be subjected without his free consent on. No effect shall be given to any stat ult or under the threat of torture, cruel, in</p>	<p>hall be subjected ishment. In parti- medical or scien- ent or confession nan or degrading</p>
<p><b>Art. 12:</b> Every minate himself</p>	<p>son shall have the right to participate in public office in accordance with the law.</p>	<p>lic life and to no-</p>
<p><b>Art. 13:</b> Every son, shall be deprived of his l cedures as are</p>	<p>erson has the right to liberty and securi jected to arbitrary arrest or detention. N ed by law for the respect of the rig blished by law.</p>	<p>f person. No per- son shall be de- te with such pro-</p>
<p><b>Art. 14:</b> Every and expression form of art or r restrictions im others, the pro or morals.</p>	<p>erson shall have the right to freedom of nd publication of his opinion either orally hugh any other forum of expression, subj ed by law for the respect of the rig tion of national security or of public ord</p>	<p>ught, conscience writing or in the to observance of or reputations of of public health</p>
<p><b>Art. 15:</b> The that their aim bed in this Ban ner. The law sh</p>	<p>edom of formation of political parties is ( nd activities do not conflict with the bas .law and that they conduct their activitie set out the rules governing the formation</p>	<p>anteed provided principles prescri- a peaceful man- political parties.</p>
<p><b>Art. 16:</b> Subje of the press, press is prohib or termination t</p>	<p>o the provisions of Article 14 of this Bas ting, publication and media is guarantee d, and no newspaper shall be subject to hgh governmental or administrative actio</p>	<p>aw, the freedom ensorship of the ning, suspension</p>
<p><b>Art. 17:</b> No p his privacy, fa nor or reputat tacks.</p>	<p>on shall be subject to arbitrary or unlaw f, home or correspondence, or to unlaw f. The law shall protection against suc tacks.</p>	<p>nterference with tacks on his ho- terference or at-</p>
<p><b>Art. 18:</b> Secu ted except in the law.</p>	<p>of the home is guaranteed; it may not b suance of a reasoned judicial order and</p>	<p>ntered or inspec- accordance with</p>
<p><b>Art. 19:</b> Every shall be prohib</p>	<p>son is entitled to own private property, in l except in accordance with the law an</p>	<p>ference in which the public inte-</p>

rest. Private propert  
consideration of  
down in the law.

ty may not be expropriated except for  
r compensation and in accordance with  
ublic interest in  
procedure laid

**Art. 20:** Freedom  
rules and extent  
rest.

economic activity is guaranteed. The la  
supervision in pursuance of the requirem  
s of public intere

**Art. 21:** The fa  
right to care at  
authorities.

es of martyrs, the injured and the har  
rehabilitation, which shall be provided by  
apped have the  
Palestinian au

**Art. 22:** Mother  
right to protec  
development of their  
by the Palestinia

d, childhood, the family, the young and  
and to the availability of proper opportu  
ents. Such protection is a duty on socie  
thorities within the limits stipulated by l

youth have the  
s for the deve  
to be discharged

**Art. 23:** The law

all set out the rules pertaining to social s  
rity.

**Art. 24:** Work is  
labor to provide  
right under law  
perform forced c  
(1) Any service  
save for con  
(2) Any service  
or well-being  
(3) Any work of

ght, duty and honor. The Palestinian aut  
al opportunities to citizens to enable th  
which provide for social justice. No one  
ompulsory labour except in the following  
a military character or any national servi  
ntious objectors;  
cted in cases of emergency or calamity  
the community;  
vice which forms part of normal civil obl

ies shall endea  
to exercise this  
ll be required to  
umstances:  
quired by law,  
hatening the life  
ions.

**Art. 25:**  
(1) Every person  
until the se  
shall endeavor  
(2) Minorities,  
scribed by  
tional institu  
in the law;  
(3) The educat  
centres of s  
ner provided

s the right to education which shall be fr  
ndary stage in public institutions. The Pa  
o provide education at all stages;  
ious or otherwise, and others who meet  
shall have the right to establish private  
ns, provided they observe the general c  
authorities shall supervise all educati  
tific research shall enjoy respect and au  
he law.

and compulsory  
inian authorities  
conditions pre-  
ools and educa-  
tions laid down  
Universities and  
omy in the man-

**Art. 26:** The r  
placed on the  
law and which  
nal security or p  
rals or the prote

to peaceful assembly is recognised. No  
rcise of this right other than those whic  
necessary in a democratic society in th  
ic safety, public order, the protection of  
n of the rights and freedoms of others.

trictions may be  
re prescribed by  
terests of natio-  
ic health of mo-

**Art. 27:**  
(1) The right t  
sons, includ  
their rights;  
(2) No restrictio  
which are

freedom of association with others is re  
the right to form and join trade unions f  
may be placed on the exercise of this rig  
scribed by law and which are necessary

gnised to all per-  
he protection of  
other than those  
a democratic so-



ciety in t protection freedoms restriction of thi interests of national security or public sa public health or morals or the protec others. This Article shall not prevent the on members of the security forces and th ight. , public order, the n of the rights and position of lawfull ource in their exer-

Art. 28: No ted or prohib foreign author astinian may be deported, deprived of h i from returning to or leaving Palestine except in accordance with extradition ag ationality, preven- urrendered to any ements.

Art. 29: The authorities in rrender of persons granted political asyl ordance with international law is prohibit by the Palestinian

Art. 30: Eve nal matters of erson has the right to address the public hcern to him or on public matters. thorities on perso-

Art. 31: Jeru Palestine with tions for tole Palestine. m is a city holy to the three divine religi s spiritual heritage, Palestinian authoritie t co-existence between religions in Jeru m and the rest of

Art. 32: Free guaranteed, si n of belief and worship and exercise of t ct to non-violation of public order or mo ous functions are y.

Art. 33: Free sites are gua Freedom of exercise of t public security n of access and visit to holy places and r teed for all, citizens and non-citizens, v ship for the followers of such places is o guaranteed. The e requirements of ous buildings and out discrimination. o guaranteed. The e requirements of

Protection of Fundamental Rights and Fr oms

Art. 34: Eve this chapter a lunge the vic appropriate. erson whose fundamental rights or fre chapter Three, have been violated shall l on before courts of law and to demand pensation, where

Art. 35: An ir ty shall be es rights and fr defined by l duals, to the this Basic Lav ndent Commission for Human Rights v lished by law to monitor and ensure the oms in Palestine. Its formation, function and shall be without prejudice to any p :orney General, to the Audit Office ar any other law. juridical personali- ervation of human d powers shall be ars given to indivi- o the Courts under

CHAPTER THREE

The Rule of Law

Art. 36: The r of law is the basis of government in Pal e.

Art. 37: All P sons in Pale: violation. The tinian authorities and organs as well as e shall be subject to the law and shall ldependence of the judiciary, its immunity pect for and exe-

tection of its de freedoms and the ons are basic guarantees for the prote n of rights and ablishment of the rule of law.

**Art. 38:** All perso shall be equal before the courts and the and are entit led to the equa protection of the law without discrimin on any ground such as race, col sex, language, religion, political or othe inion, national or social origin, b or other status. ion, national

**Art. 39:** The rig recourse to the courts is guaranteed fo eryone and no administrative ac decision may exclude its review by the ts.

**Art. 40:** Everyon charged with a criminal offence shall be p umed innocent until proved guilt a lawful trial in which he has been affor guarantees to defend himself. ry person charged with a serious cri al offence shall have a lawyer to and him.

**Art. 41:**

- (1) Punishment i personal, and no one shall be held guilty ny criminal of fence on ac of any act or omission which did not stitute a crimi nal offence, er national or international law, at the e when it was committed. N shall a heavier penalty be imposed than e one that was applicable at time when the criminal offence was cor tted. If, subse quent to the mmission of the offence, provision is m by law for the imposition of lighter penalty, the offender shall benef hereby. No one shall be liable be tried or punished again for an offence which he has already been ally convicted or acquitted in accordance th the applica ble law and p procedure;
- (2) Collective pur nent is prohibited.

**Art. 42:** Except ases of flagrante delicto, no person may arrested, sear ched, detained c have his liberty restricted in any manner revented from free movement, ept by order given by a competent cour or the prosecu tion service in ac ance with the law and only where such equired for the needs of the inv gation and security of society. The law s determine the period of detent on remand. No detention or imprisonme s permitted ex cept in place whi re subject to laws regulating prisons.

**Art. 43:** Except v e otherwise is provided by law, crimina tions shall only be instituted by o of a judicial body.

**Art. 44:** All perso deprived of their liberty shall be treated v humanity and with respect for t nherent dignity of the human person.

**Art. 45:** Every on who has been arrested or detained all be informed promptly on his st of the cause thereof, and shall, witho elay, be infor med in detail and a language which he understands of the me ure and cause of the charge ag him. He shall be given adequate time ar acilities for the preparation of his ence and to communicate with a lawyer his own choo sing. He shall b ed without undue delay in his presence manner which guarantees defen hrough a lawyer of his own choosing.

**Art. 46:** Judgm s shall be given and executed in the nam f the people. It shall be a crim ffence subject to prosecution and punis nt in the man-

ner provided the law for any public official required by v to execute deci-  
sions of the c ts to refuse or suspend such execution. nis event, the per-  
son in whose or judgment has been given shall have th irect right to bring  
a criminal acti before the competent court.

#### CHAPTER FOUR

##### Legislative Authority

**Art. 47:** The cted Council (the Council) shall exercis gislative authority  
during the tra tional period. The life of the Council sh e until the end of  
the transitiona riod.

**Art. 48:** The C cil shall be composed of the President a 38 Members elec-  
ted in general tions in accordance with the Elections L s.

**Art. 49:**  
(1) The Coun shall have two ordinary sessions every r, each to last for  
no longer in 3 months, commencing on 1st Octo and 1st April, but  
on the folk g day if the 1st falls on a national holid  
(2) The Coun ay prolong its session if its business is concluded, and in  
any event ssion may not end before approval of th dget.

**Art. 50:** The P dent or Speaker may call for the Council meet in extraordi-  
nary session f nary period to discuss or debate or decide matters specified  
in the Agend or the extraordinary session. The Spe shall also call for  
such extraordi session if he receives such a request fr not less than one  
third of the M bers of the Council signed by them and cifying the Agen-  
da. The Coun shall not discuss or debate any matte it specified in the  
Agenda to the raordinary session.

**Art. 51:** At i augural meeting, the Council shall el from amongst its  
Members, a S ker, a Deputy Speaker and a Rapporteur ho shall compose  
the office of t Speaker. The Speaker, Deputy Speaker v Rapporteur must  
not be Memb of the Executive or Ministers, and shall office during the  
life of the Cour

**Art. 52:** Every mber of the Council shall take an oath e terms provided  
for in Article 6:

**Art. 53:** The sident shall open each session of the C cil and lay down  
the programme his Government, provided that the Prim nister may depu-  
tise for him.

**Art. 54:** The orum of all Meetings of the Council shall 50% of its Mem-  
bers. All decis s of the Council shall be taken by a s e majority of the  
Members pres unless otherwise provided for in this Be Law and in parti-  
cular Article 7(

**Art. 55:** All Me ings of the Council shall be public, save t at the request of  
the Governme or by a decision of the Council, a Meet may be closed to  
the public if th tional interest so requires.

- Art. 56:** Members of the Council shall not be held civilly or criminally liable for anything said or done in the Council or for voting in the Council, whether the meeting is public or in meetings close to the public, or in Committees of the Council.
- Art. 57:** Members of the Council shall enjoy legal immunity during the life of the Council and shall not be liable for arrestable crimes discovered during their commission, no criminal proceedings may be instituted against a Member except with the permission of the Council, and when the Council is not in session, the Speaker's permission, and the Speaker shall inform the Council at its next session of the action he took.
- Art. 58:**
- (1) No Member of the Council may exploit his position as a Member of the Council to influence any business or matter.
  - (2) The law shall determine what type of work, business or activity a Member of the Council may conduct.
- Art. 59:** Members of the Council may propose the enactment of laws and may question the Government generally or individual Ministers according to the rules of Procedure of the Council.
- Art. 60:** The Council shall have the following functions:
- (1) Approval of Laws;
  - (2) Debating the Policy of the Government.
  - (3) Approval of the Budget and Development Plans;
  - (4) Approval of a general amnesty or pardon;
  - (5) Accepting the resignations of Members of the Council;
  - (6) Approval of the appointment of Cabinet Ministers;
  - (7) Withdrawal of confidence in the Government or a Cabinet Minister as provided for in Article 84 of this Basic Law.
- Art. 61:** The Annual Budget Plan must be laid before the Council at least two months before the beginning of the financial year and no Budget shall be operative until and unless it is approved by the Council.
- Art. 62:**
- (1) Voting on the Budget shall be Chapter by Chapter.
  - (2) Reallocation of budgetary amounts as between Chapters is prohibited except as provided in the law.
- Art. 63:** The Council may establish temporary Committees from amongst its Members to investigate any matter within its jurisdiction.
- Art. 64:** The salaries, allowances and expenses of the Members of the Council shall be determined by Law.
- Art. 65:** A vacancy in the membership of the Council, whether caused by death, resignation or otherwise, shall be filled by the holding of a by-election in the District concerned.
- Art. 66:** The Council shall lay down by-laws or rules for the determination of its procedure and for the carrying out of its functions.

**CHAPTER FIVE**

**Executive Authority**

**Art. 67:** The Executive Authority during the transitional period shall be exercised by the President and a Cabinet of Ministers in the manner provided for in this Basic Law

***I. The President***

**Art. 68:** The President shall be elected in a general election in accordance with the Elections Law and shall by virtue of his election be the Head of the Executive Authority.

**Art. 69:** Before assuming office, the President shall take the following oath in the presence of the Bureau of the Presidency of the Palestine National Council:  
"I swear by almighty God to be faithful to the Nation and to preserve this Basic Law and the laws of the Palestinian People faithfully carry out the duties entrusted to me according to law."

**Art. 70:** The term of the Presidency shall be five (5) years and no person may be President for more than two consecutive terms. The term of the first President and his successor in the transitional period shall expire with the expiry of the transitional period.

**Art. 71:** If the office of the President becomes vacant or if he becomes permanently incapacitated, the Speaker of the Council shall assume his powers and duties in a caretaker capacity until a new President is elected. The President shall be elected within a period of more than 60 days from the date of occurrence of the vacancy or the permanent incapacity.

**Art. 72:** The President is the Commander-in-Chief of the Palestinian forces.

**Art. 73:**  
(1) The President shall sign and promulgate the laws within 30 days after their approval by the Council, and if not signed within the said period, such laws shall be deemed to have been promulgated.

(2) The President has the power to initiate or propose legislation, including Orders and Regulations, to the Council or issue them if authorised to do so by primary law.

**Art. 74:** The President may grant a special pardon and commute sentences. The manner in which all be prescribed by law.

**Art. 75:** The President shall exercise his powers through Orders and Resolutions in the manner prescribed by this Basic Law or any other law.

**Art. 76:** The President's salary, allowances and expenses shall be determined by law.

***II. The Council of National Authority***

**Art. 77:** The President shall appoint a Cabinet of Ministers (the Cabinet) consisting of

ting of a Prime  
accept their resig

minister and Ministers. He has the power  
on and has the power to preside over th

dismiss them or  
Meetings.

**Art. 78:**

- (1) The Cabinet authority of t
- (2) The Preside to the Council
- (3) Every Ministe ve that the Ministers, pr of Cabinet f pate in the d

all assist the President in the performanc  
government in the manner provided in th  
hall submit the names of the Prime Min  
obtain approval to their appointment.  
the Cabinet shall be an elected Member  
sident may appoint non Members of the  
ed their number does not exceed 20% c  
sters. Ministers who are non-Council Me  
es of the Council but may not vote.

f the executive  
asic Law.  
r and Ministers

the Council sa-  
ted Council as  
ie total number  
ars may partici-

**Art. 79:** The Ca  
ministration of th

t shall generally be responsible for the g  
ffairs of the country.

rnment and ad-

**Art. 80:**

- (1) The Cabinet sters as the shall designa
- (2) A Minister resolution of

all be composed of a Prime Minister a  
ublic interest may require. The resolut  
Ministry for which the Minister shall be  
hold more than one portfolio, as may b  
pointment.

uch other Mini-  
of appointment  
possible;  
terminated in the

**Art. 81:** The Pr  
ded for in Article

Minister shall, before assuming office, t  
of this Basic Law in the presence of the

the oath provi-  
sident.

**Art. 82:** Neithe  
any government  
them have a fi  
dies, nor may  
board of direct  
or receive a s  
source.

ne Prime Minister nor any Ministers ma  
perty, not even through public auction,  
cial interest in any contract concluded w  
while being a member of the Cabinet,  
of any company or carry on a trade or p  
/ or any other remuneration from any co

urchase or lease  
may any one of  
government bo-  
member of the  
ice a profession  
ny or any other

**Art. 83:** The Pr  
President and  
the competenc  
them actions of

Minister and Cabinet Ministers are jointl  
he Council for the general policy of the  
f the Cabinet and each Minister is re  
Ministry.

sponsible to the  
ntry as is within  
nsible to the for

**Art. 84:**

The Prime Minis  
Council. A nor  
also be propose  
a simple major  
must present th

may propose a vote of confidence in the  
nfidence motion in the Cabinet or a par  
/ at least 10 Members of the Council an  
in which case, the Cabinet or Minister,  
signation of the Government or Minister

binet before the  
lar Minister may  
ay be passed by  
ne case may be,  
the President.

**Art. 85:** The  
tions made by 1

ers of the various Ministers shall be d  
Cabinet and endorsed by the President.

mined by regula-

**Art. 86:** Witho  
Cabinet shall h  
(1) To lay dow

ejudice to the generality of Article 79 of  
the following powers:  
e general policy within the powers entru

s Basic Law, the  
d to the Cabinet



service of the people, protection of society and to maintain public order. shall perform its duties within the limits of rights and freedoms without prejudice to cooperate with and assist the police and the police shall be regulated by law.

All persons of their duties  
(2) Security forces

in security and provided by law discrimination. ie performance

#### **IV. Public Bodies and Institutions**

**Art. 94:** Special public bodies and institutions may be established by the President to assist the government in formulating policies within the general fields of activity such bodies and institutions may be autonomous bodies entrusted with judicial or administrative functions in which case they shall be established by law.

#### **V. Local Government**

**Art. 95:** For purposes of local government the country shall be divided into administrative units and municipalities enjoying juridical personality. Each administrative unit shall have a popular council directly elected in the law. The law shall determine the competence of such units, their financial resources, relations with the central authorities, their role in the preparation and implementation of the development plans and their concentration. Division shall be, as far as possible, on the basis of the various files and their concentration.

#### **VI. General Provisions**

**Art. 96:** No administrative unit or any official thereof may incur financial obligations or undertake a legal action except within the allocations provided for in the law, and no effect shall be given to such obligations in contravention of the law.

**Art. 97:** No administrative unit or any official thereof may issue instructions or regulations in contravention of laws in force. Administrative decisions, instructions or regulations made in contravention of the law shall be null and void.

**Art. 98:** Each administrative unit shall be entitled to exercise the powers, carry out the duties and issue resolutions, instructions and regulations within the limits and conditions prescribed to it by law.

**Art. 99:** Appointments to public offices and specialized bodies shall be on the basis of competence, experience and ability in accordance with the nature of the public office and functions to be performed in accordance with the aims of the body or institution.

#### **VII. Finance**

**Art. 100:** General taxes and duties may not be imposed, and no total or partial exemption may be granted except in the circumstances provided for in the law.

**Art. 101:** The law shall set out the rules pertaining to the administration of the general



- neral budget and the disposition of funds allocated there
- Art. 102:** The v shall set out the rules governing the llection of public funds and the p edure for spending therefrom.
- Art. 103:** The l nning of the financial year shall be deter ed by law. If the budget law is r passed before the commencement of the w financial year, spending shall continue on the basis of monthly allocatio of one twelfth of the previous bu t for each month.
- Art. 104:** All t is received in taxes and the revenue st be paid to the public treasury d included in the budget. No part of the ds of the general budget may be ocated or spent for any purpose whatsoe except in accordance with the .
- Art. 105:** An A Office shall be established and it auton shall be guaran ted by law. T Office shall assist the administrative org: n supervising the collection of p c revenue and spending therefrom with he limits set out by the budget. e Audit Office shall submit to the Preside and to the Coun cil an annual r t regarding its activities, observations sl ing financial vio lations, if any, d the responsibility arising therefrom. T aw shall provide for the immuni f the head of the Audit Office and shall him the powers necessary for h o carry out his duties in the best possibl anner.
- Art. 106:** Publi ans shall be confirmed by law. A public i may be conclu ded or guarant by a law or within the allocations presc d for that purpo se in the budge v.
- Art. 107:** Bank: ail be regulated by law.

## CHAPTER SIX

### The Judicial Authority

#### I. The Judiciary

- Art. 108:** The icial authority shall be an independent au rity to be exerci sed by the Sup ie Court and other Courts in accordance h this Basic Law and any other f.
- Art. 109:** Jud shall be independent and, in their judic unction, shall be subject only to e law. No other authority may interfere i dividual cases or in the administr on of justice.
- Art. 110:** Ther hall be a Chief Justice, in that capacity, ll be the Head of the Judicial A brity and President of the Supreme Cou he Chief Justice shall be a jud of the Supreme Court appointed by Pres ntial Decree with the approval c he High Judiciary council except that th rst Chief Justice appointed in pu ance of this Article shall not require such proval.
- Art. 111:** A H Judiciary Council shall be established b w with the Chief Justice as Ch an. The law shall establish the compo n and powers of

this Council as its rules of procedure. The opinion of the Council shall be taken in respect of draft legislation pertaining to the organization of the judicial authority including the public prosecution.

**Art. 112:**

- (1) The law shall provide for the rules governing the appointment, transfer, sequestration, promotion of judges and other matters pertaining to the judiciary;      (2) Judges shall be removable, and the law shall regulate disciplinary accountability.

**Art. 113:** A Supreme Court shall be established by law comprising a High Constitutional Court which shall have exclusive jurisdiction of judicial review of the constitutionality of laws and regulations in the manner prescribed by law;

- (1) A High Constitutional Court which shall have exclusive jurisdiction of judicial review of the constitutionality of laws and regulations in the manner prescribed by law;      (2) A Court of Appeal shall be established by law to hear appeals in the manner prescribed by law;      (3) A High Court of Justice which shall have jurisdiction over administrative cases in the manner prescribed by law.      (4) The law shall determine the types of other courts, their jurisdiction and procedure.      (5) No law, administrative order or action may be excluded from review by the judiciary.

**Art. 114:** Hearings shall be in public, unless the court determines otherwise in the interests of public order or morality, and in all cases judgments shall be pronounced in open Court.

***Attorney-General and Public Prosecution***

**Art. 115:** Public and Government cases shall be conducted by the Attorney-General in the name of the people.

**Art. 116**

- (1) The appointment, transfer and dismissal of the Attorney-General and public attorney's office shall be in the manner and subject to the conditions prescribed by law;      (2) The law shall determine the powers, competence and functions of the service.

**CHAPTER SEVEN**

**Concluding and Transitory Provisions**

**Art. 117:** This Basic Law shall apply during the transitional period, but shall not affect the powers and duties of the Palestine Liberation Organization and its organs including its powers to represent the Palestinian people in foreign relations and international organizations and relations with foreign governments and international organizations.

**Art. 118:** Laws and decrees shall be promulgated in the name of the Palestinian people and shall be published in the Official Gazette after signature and promulgation.

by the President. They shall come into force 30 days from publication unless the law provides otherwise.

**Art. 119:** The provisions of laws and legislative orders shall not apply except to matters occurring from the date on which they come into force. Where required and in non-criminal matters, laws may provide otherwise.

**Art. 120:** None of the fundamental rights and freedoms enumerated in this Basic Law may be suspended, and such rights and freedoms shall remain governed by the provisions of this Basic Law and the laws enacted in pursuance thereof.

**Art. 121:** Laws, regulations and decisions in force in the West Bank before the coming into effect of this Basic Law shall remain in force to the extent that they do not conflict with the provisions of this Law, until they are amended, repealed or replaced in pursuance of this Law. In the Gaza Strip and the West Bank, laws shall remain in force until they are amended, repealed or replaced in pursuance of this Law, until any other law.

**Art. 122:** This Basic Law shall be published in the Official Gazette and shall come into force on the date of its promulgation.







