



International IDEA/Nepal

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What is a Constitution?

What is International IDEA?

The International Institute for Democracy and Electoral Assistance—International IDEA—is an intergovernmental organization that supports sustainable democracy worldwide. Its objective is to strengthen democratic institutions and processes.

What does International IDEA do?

International IDEA acts as a catalyst for democracy building by providing knowledge resources and policy proposals or by supporting democratic reforms in response to specific national requests. It works together with policy makers, governments, UN agencies and regional organizations engaged in the field of democracy building.

International IDEA's programmes aim to:

- ▶ provide **knowledge resources** in the form of handbooks, databases and websites, training materials, and foster professional expert networks;
- ▶ **develop policy proposals** based on this knowledge as a means to provoke dialogue and debate on how best to strengthen democratic processes;

What is a Constitution?

A Constitution is a legal document that sets out the highest law of the land. It can include a statement of the basic values of the society, the rights and obligations of the citizens, and how power is divided and regulated in the state. Some say that a Constitution should be the 'soul of a nation', others consider it to be the basic social contract between the people and the leaders.

A national Constitution refers to a political charter stating the structure of the state, the distribution of its powers, how governments and communities relate to the state structure as well as other critical social issues. A Constitution establishes the rules and principles by which government is conducted. Constitutions define:

- ▶ the powers of the executive, legislative, judicial branches of government;
- ▶ the powers of administration or civil service and oversight branches;
- ▶ the relationship between individuals and the state;
- ▶ the broad rights of individual citizens.

Constitutions can also be used to regulate the relationship between states coming together into a supranational organization, (e.g. the European Union), or sub-national or provincial bodies (e.g. the Constitution of the State of Maryland) levels.

Constitutions as codified documents

Today most governments are governed by Constitutions that are codified as a single written document (Only three nations, Israel, New Zealand and the United Kingdom have uncoded Constitutions. Codified Constitutions are usually the product of concerted political activity and change, such as a legal or political revolution. For example, the US Constitution was written and ratified after the American Revolution, the Indian Constitution on India's independence from Great Britain and the 1990 Constitution of Nepal was written to signal the transition to multiparty democracy from monarchical rule.

The codified Constitution normally gives the Constitution supremacy over ordinary statute law and if there is a conflict between a legal statute and the codified Constitution, all or part of the statute can be struck down by the courts as unconstitutional. Codified constitutions are subject to a wide range of interpretations by constitutional courts.

The Constitution of India is the longest codified Constitution in the world and has been noted for providing impetus toward changing and rebuilding society for the common good through its directive principles of social policy and fundamental rights charter. Some countries specifically include the application of the United Nations Charter in their Constitutions (for example, Mozambique).

Division and sharing of power

Constitutions often set out the principles by which power can be shared or divided between different regions or peoples. In a unitary state model, executive, legislative, economic and administrative power is centralized and is held at the national level. In a federal model, these powers are divided between the central government and the regional levels of government through provisions in the Constitution, amendment of which will require some form of consent at both levels.

Federal options and other different decentralization options can give political groups or regional groups more autonomy to pursue their interests and govern their own geographical or influential territories by assuming some of the powers exercised in unitary states by the central government. It can be also thought of as dividing sovereignty between the centre and regions of the state.

Separation of powers

Constitutions usually explicitly divide different aspects of power between various branches of government, to encourage accountability. The standard model involves three branches of government: executive (government), legislative (parliament) and judicial (courts). Some Constitutions include additional branches, such as an oversight or auditory branch. Constitutions vary

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► provide **assistance to democratic reform processes** in response to national requests and in partnership with regional or other organizations.

Where does International IDEA work?

International IDEA works worldwide. It is based in Stockholm, Sweden, and has offices in Latin America, Africa and Asia.

Who are International IDEA's Member States?

International IDEA's Member States are all democracies and provide both political and financial support to the work of the Institute. They are: Australia, Barbados, Belgium, Botswana, Canada, Cape Verde, Chile, Costa Rica, Denmark, Finland, Germany, Ghana, India, Mauritius, Mexico, Namibia, The Netherlands, Norway, Peru, Portugal, South Africa, Spain, Sweden, Switzerland and Uruguay.

Japan has observer status.

extensively as to the degree of between these branches.

Systems of government:

Monarchy or republic

Constitutions may provide for a constitutional monarchy or a republic within a unitary or a federal system of government. There are constitutional monarchs in both unitary (UK) and federal systems (Canada, Belgium). India is an example of a federal republic that has a parliamentary system of government.

Lines of accountability

The Constitution will determine if the system of government is presidential (US), parliamentary (UK, Canada, India) or a hybrid system that includes both a presidency and a Parliament (as in France and Sri Lanka).

In parliamentary systems, the Constitution provides that the president, who is the head of the executive, is directly elected by the people and so accountable to the people in an election. The president serves for a fixed term: impeachment before the term of office ends can only be based on breach of the Constitution, criminal activity or (in some countries) moral turpitude.

In parliamentary systems, governments are formed with the confidence of Parliament and can be brought down through a vote of no confidence. The prime minister is thus chosen by Parliament. If a majority of Parliament vote for a no confidence motion, then the government must resign and a new one will be formed, or Parliament will be dissolved and a general election called.

In presidential systems of government, ministers are accountable to the president. In some countries, the president has full power to appoint ministers; in others, the president needs the agreement of the legislature.

In parliamentary systems, the cabinet of ministers is accountable to Parliament, although the prime minister chooses and dismisses them.

Amendment

The procedure for modifying a Constitution is often called amending. Amending an entrenched Constitution may require wider acceptance than the simple approval of the national legislature. States with an entrenched Constitution recognize the difference between constitutional law and ordinary statutory law.

Codified Constitutions are often relatively rigid, and usually have an amendment procedure requiring special majorities in national legislatures, a referendum process or some other procedure that makes it more difficult than passing an ordinary law.

Procedures for ratification of constitutional amendments exist in some countries. In a federal system of government, the approval of a majority of state/provincial legislatures may be required. Alternatively, a national referendum may be required in some countries, such as in Australia.

A Constitution is merely the first step

The adoption of a Constitution is a watershed, but it does not resolve all problems of governance or ensure that the Constitution will take root automatically. A Constitution needs to be nurtured over time and supported by many institutions, actors and processes. These include the courts and political actors in the executive and legislature.

Constitutions made in the aftermath of civil conflicts can be designed to promote reconciliation among the previous conflicting communities and to develop a national consensus around a political, social and economic developmental agenda. If they are to succeed in these objectives they require support from the executive and legislature and the bureaucracy. Often Constitutions contain broad principles (such as the right to equality, non discrimination on the basis of gender, ethnicity and religion) which have to be put into effect through laws and special policies. If these are not done the Constitution will remain no more than several pieces of paper.