
How Governance Functions:

Case studies of seven countries through the
lens of Political Accommodation

Mission Statement

Conflict Dynamics International is an independent, not-for-profit organization founded to prevent and resolve violent conflict, and to alleviate human suffering resulting from conflicts and other crises around the world.

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The findings and conclusions expressed in the compilation do not necessarily reflect the views or official policies of any of these supporting partners.

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PREFACE: THOUGHTS FROM THE PRESIDENT

It's a sure thing: when people are excluded from political, economic, and socio-cultural opportunities it leads to strife in society and invites conflict.

The Political Accommodation Methodology is an approach to preventing and resolving violent conflict, which we developed over several years to address exclusion and its consequences. It enables people and their representatives to design, discuss and build consensus around options that could genuinely reconcile their different political interests, including options for governance and political dialogue that can move society toward sustainable peace.

The method emphasizes *peoples'* interests and is geared towards people and their representatives trying to prevent or find ways out of conflict, as well as other peace practitioners.

Through interactive workshops, seminars, and bilateral meetings, Conflict Dynamics has supported use of the Political Accommodation Methodology in Somalia/Somaliland, South Sudan, Sudan, and Syria to support actors in governments, political parties, armed opposition groups, traditional leadership, women's groups, and youth groups to develop relevant and practical proposals for dialogue and governance.

Case studies from different contexts are integral to this work. They provide examples of both accommodating and nonaccommodating arrangements when generating options for reconciling interests. Conflict Dynamics has incorporated these case studies into its approach and support since 2010, and has had specific requests to generate case studies of interest.

I, along with my colleagues, am delighted to share this compilation of seven of our most detailed case studies. They examine the governance systems of Bolivia, Botswana, Ethiopia, India, Malaysia, Nigeria, and South Africa. This compilation is intended for use by those who live and work in conflict-affected contexts and are interested in different options for how to improve the governance system where they operate. It is also intended for use by regional and international supporting actors, including mediators.

I highly commend my Conflict Dynamics colleagues who have developed these case studies and the numerous people we have worked with who have provided feedback on the cases. We trust that you will find them of high interest and value as you forge ahead with persistence and determination in your work to sustain peace.

Gerard Mc Hugh

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INTRODUCTION

Governance case studies are indispensable in Conflict Dynamic International's work to support stakeholders in generating accommodating options for governance arrangements in Somalia/Somaliland, South Sudan, Sudan, and Syria. We invite stakeholders to brainstorm what the advantages and disadvantages would be of adopting one of the governance structures described in these case studies in their own context. The overall purpose of the case studies is to show how elements of governance systems interact in the real world and deepen the pool of ideas for how governance structures may best support peace and stability in a specific context.

This compilation includes seven case studies that examine countries' governance arrangements through the lens of Political Accommodation.¹ The Political Accommodation methodology enables people and their representatives to design and discuss options for governance and political dialogue that can reconcile their different political interests.² The case studies are an in-depth exploration of how current governance arrangements accommodate—or do not accommodate—different political interests according to the six 'Strands' of the Political Accommodation governance framework.³ They assess the degree to which individual mechanisms promote inclusivity and representation of diverse interests within a particular context.

These case studies are designed for making comparisons between contexts and generating ideas for governance mechanisms that may advance political accommodation in a particular context. Each case study examines constitutionally-defined governance arrangements, as well as how the governance arrangements *actually operate in practice*. The case studies in this compilation are not meant to be a road map for specific governance arrangements to adopt in any particular context, as the experiences described may play out differently in other contexts and cannot simply be transferred.

Content of Case Studies

The case studies included are Bolivia, Botswana, Ethiopia, India, Malaysia, Nigeria, and South Africa. They cover a variety of regions, demographics, political systems (different types of federal and unitary states), and conflict environments (States emerging from civil war, those coping with low-intensity conflict, and those notable for their stability). Case study examples from developing and newly industrialized countries have been selected to ensure that there is sufficient similarity between the capacity and funds in the example countries and the contexts in which Conflict Dynamics works.

¹ Political Accommodation can be defined as the objectives, arrangements, processes, or outcomes of mutual conciliation of people's competing political interests and perspectives. Adapted from Brian Barry, "Political Accommodation and Consociational Democracy," *British Journal of Political Science* 5, no. 4 (Oct. 1975): 477 – 505.

² Here, 'representatives' is used broadly to mean political, community, and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment, or inheritance.

³ The six Strands are: political structure; systems of election and selection; executive branch; legislative branch; public participation; and traditional and customary arrangements.

Bolivia, Ethiopia, India, and Malaysia have provisions either for autonomy or for some sort of asymmetric federalism; this flexibility in political structure has increased accommodation. However, in many of the cases, decentralization—even if strongly outlined constitutionally—is limited in practice, and this has reduced the prospect for successful accommodation. In Malaysia, while the State is highly centralized and subnational governments have limited autonomy in practice, the State has been able to successfully spur consistent economic growth through coordinated central planning that delivered economic benefits to all major ethnic groups in Malaysia, thus easing tensions that might have required alternate accommodation.

Bolivia, Ethiopia, India, and Malaysia all provide examples of recognized special rights for ethnic, indigenous, minority, or otherwise marginalized groups. Overall, the introduction of these rights has helped remedy previous grievances and increased accommodation. However, some cases have also seen these protections reinforce existing divisions and increase competition based on identity politics. In Malaysia, for example, preferential policies for ethnic Malays are interpreted as both accommodating and discriminatory, and they seem to have contributed to an entrenchment of ethnic identities.

Bolivia and Nigeria both use electoral mechanisms to try to ensure that the national executive cannot be elected by a small portion of the population. Bolivia, Ethiopia, India, and South Africa have implemented measures to successfully increase women's representation in government; while Bolivia, Ethiopia, and India have instituted measures to successfully increase minority group representation.

Bolivia, Botswana, Nigeria, and South Africa all have mechanisms in place to increase public participation in governance beyond voting in elections. These include referendums, the ability to recall elected officials, local forums, public hearings, submitting oral/written comments, and bringing national-level representatives to subnational areas. However, the extent to which these mechanisms are implemented successfully varies. While South Africa has some of the most robust public participation mechanisms in the world, other countries' mechanisms are more limited.

India, Malaysia, and Nigeria have grappled with how to accommodate diverse religious communities within their States. India maintains separate personal laws for different religions. Malaysia has both civil and Sharia courts and grants each subnational state control over Islamic law. Similarly, in Nigeria, subnational states have the authority to decide whether secular, Islamic, or customary law, or a hybrid system, is applied by the judiciary.

Botswana, Malaysia, and South Africa incorporate traditional leaders into the formal governance system. In the cases of Botswana and South Africa, they are integrated into the legislative branch, while in Malaysia they are part of the executive. In all three cases, this integration has been cited as both an accommodating and a divisive force.

Each of these case studies highlights ways in which States struggle to bridge various accommodating mechanisms enshrined in the constitution and legal code, and their effective implementation in practice.

At a Glance: Accommodating Aspects in the Case Studies

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
BOLIVIA	<ul style="list-style-type: none"> • Indigenous rights and autonomy • Recognition of multiple national identities • Decentralization • Proportional representation and two-round majority voting • Women's and indigenous quotas • Mechanisms for public participation 	<ul style="list-style-type: none"> • Inconsistent implementation • Single dominant political party • Limited checks on national executive
BOTSWANA	<ul style="list-style-type: none"> • Integration of traditional leaders into national upper house • Mechanisms for public participation[†] 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • Limited checks on national executive • Poor accommodation of women, minority tribes, opposition
ETHIOPIA	<ul style="list-style-type: none"> • Ethnic federalism: self-determination, self-government, and cultural rights to ethnic groups • All nationalities represented in national upper house • Recognition of public participation 	<ul style="list-style-type: none"> • Inconsistent implementation • Limited decentralization • Single dominant political party • Restricted public participation space
INDIA	<ul style="list-style-type: none"> • Asymmetric and linguistic federalism • Subnational fiscal autonomy • Women's and minority quotas • Separate personal laws for different religions • Tribal areas with tribal justice systems 	<ul style="list-style-type: none"> • Significant numbers appointed or indirectly elected • Limited checks on national executive
MALAYSIA	<ul style="list-style-type: none"> • Centralized, asymmetric federalism • Subnational control over Islam • Consistent economic growth • Integration of traditional leaders into executive levels 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • First-past-the-post and high numbers appointed • Limited checks on national executive • Special rights for majority Malays • Limited space for public participation
NIGERIA	<ul style="list-style-type: none"> • Parallel consent voting for executive leadership[‡] • Diverse and inclusive executive bodies • Mechanisms for public participation[§] • Subnational control over Islam and local judicial systems 	<ul style="list-style-type: none"> • Significant corruption • Limited decentralization • Restricted public participation space • Legislature has low capacity
SOUTH AFRICA	<ul style="list-style-type: none"> • Political party quotas for women • Representative legislature • Mechanisms for public participation • Integration of traditional leaders into legislative • Independent court system 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • Limited checks on national executive • Implementation relies on good faith of political parties

[†] However, this is mostly through *kgotlas*, traditional local-level forums, which tend not to be welcoming to women and minority tribes.

[‡] The winning candidate is the candidate who receives a majority of votes in the election plus no less than 25 percent of votes cast in at least two-thirds of the states and the federal capital territory (Abuja), or in the case of governors, no less than 25 percent of votes cast in all local government areas in the state.

[§] However, citizens' ability to recall an elected official can be manipulated by elites to exert influence over a legislator.

At a Glance: Key Themes in Case Studies

	BOLIVIA	BOTSWANA	ETHIOPIA	INDIA	MALAYSIA	NIGERIA	SOUTH AFRICA
Is the country in current conflict or post-conflict since 1990?			✓	✓		✓	✓
Political Structure							
Does the constitution outline a federal state system?			✓	✓	✓	✓	✓
Is authority on the ground relatively decentralized ?	✓						
Does the law provide for the possibility of special territorial rights ?	✓		✓	✓	✓		
Systems of Election and Selection							
Are elections determined through proportional representation or a mixed system?	✓					✓	✓
Are there reserved or voluntary quotas for women ?	✓		✓	✓	✓		✓
Are there reserved or voluntary quotas for minority groups ?	✓		✓	✓			
Executive Branch							
In practice, is the executive accountable to the legislature ?		✓	✓	✓			
Legislative Branch							
Is national legislation subject to executive veto ?	✓	✓				✓	
Public Participation							
In practice, are there significant measures for public participation ?	✓	✓				✓	✓
Traditional and Customary Arrangements							
Are traditional leaders or institutions integrated into the formal national governance system?		✓			✓		✓
In practice, are there special protections for ethnic minorities ?	✓		✓	✓			
Are there special laws protecting minority language rights ?			✓	✓			
Are there provisions for religious law or court systems ?			✓	✓	✓	✓	

POLITICAL ACCOMMODATION METHODOLOGY

1. Introduction to Political Accommodation

How do people deal with political differences? This question is central to the effective running of any society. It matters especially when societies experience violent conflicts and political change. In these situations, Political Accommodation offers a powerful idea about how people can sort out their differences peacefully.

Political Accommodation is about people with diverse interests taking account of others' perspectives without compromising their own core interests. This can lead to finding compatible interests, and to reaching agreements on parameters for continued dialogue, or on how people are willing to be governed.

Practically, Political Accommodation addresses four people-centered elements:

1. People committing to the objective of reconciling others' interests with theirs, even if they may not agree with them.
2. People engaging in a trust- and consensus-building process in pursuit of that objective.
3. People generating ideas for specific arrangements and processes that can fairly balance people's different interests in society.
4. People achieving outcomes that everyone feels they can live with.

As a methodology, Political Accommodation is a set of tools to achieve these four elements. The tools are flexible so users can tailor them to their needs and situations. They offer straightforward approaches to building consensus, designing dialogue processes, and generating ideas for specific governance arrangements.

2. Foundations of Political Accommodation

The idea of Political Accommodation builds on 50 years of social science theory about how people with different political interests can live together and participate in governance. This specific methodology evolved from Conflict Dynamics' and partners' direct experiences in situations of armed conflict over more than ten years. That work revealed needs that other approaches to peacemaking and peacebuilding struggle to meet, particularly related to links between governance and drivers of conflict. By responding directly to these needs, the Political Accommodation methodology emerged as an approach with distinct benefits, as summarized in the table below.

Table 1: Distinct Features of the Political Accommodation Methodology

POLITICAL ACCOMMODATION IS ABOUT...	POLITICAL ACCOMMODATION IS NOT ABOUT...
<ul style="list-style-type: none"> Fairly balancing people’s political interests 	<ul style="list-style-type: none"> Opponents buying each other off
<ul style="list-style-type: none"> Valuing the diversity of society 	<ul style="list-style-type: none"> Elites making deals among themselves, for themselves
<ul style="list-style-type: none"> Enabling people to fully develop their own process options 	<ul style="list-style-type: none"> Imposing prescriptions from outside
<ul style="list-style-type: none"> Enabling people to imagine creative governance options that fit their contexts 	<ul style="list-style-type: none"> Favoring particular models of governance over others
<ul style="list-style-type: none"> Understanding where consensus exists or can be fostered, and building confidence 	<ul style="list-style-type: none"> Forcing people to conform to the ideas of one group in society
<ul style="list-style-type: none"> Building peace through addressing drivers of conflict linked to how political systems work 	<ul style="list-style-type: none"> Statebuilding or governance reform in the absence of peacebuilding

3. The Political Accommodation Methodology

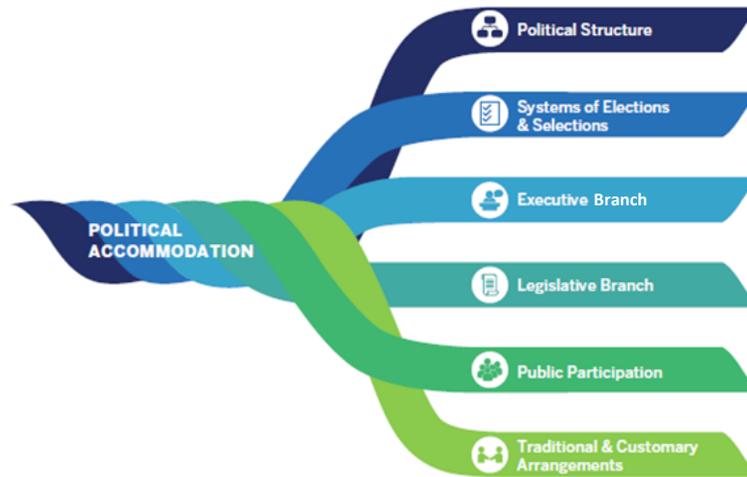
One of the three components of the Political Accommodation methodology is the governance framework of six ‘Strands’ (focal areas) for considering how governance arrangements can accommodate people’s different interests. This framework offers a way to locate areas of a political system that drive conflict. It also offers a structure to guide creation of new options that can address factors driving conflict.

Arrangements

As used here, an arrangement is a set of rules, provisions, practices, or institutions organized to perform a particular function. Arrangements can be formal or informal. They can be agreed principles or actual operational practices. For example, a law creating an anticorruption commission and a monthly meeting of chiefs based on an unwritten understanding are both arrangements.

The six Strands of the framework each represent complementary paths that can contribute to political accommodation. As shown in Figure 1, the six governance Strands are:

Figure 1—Six Strands of the Governance Framework



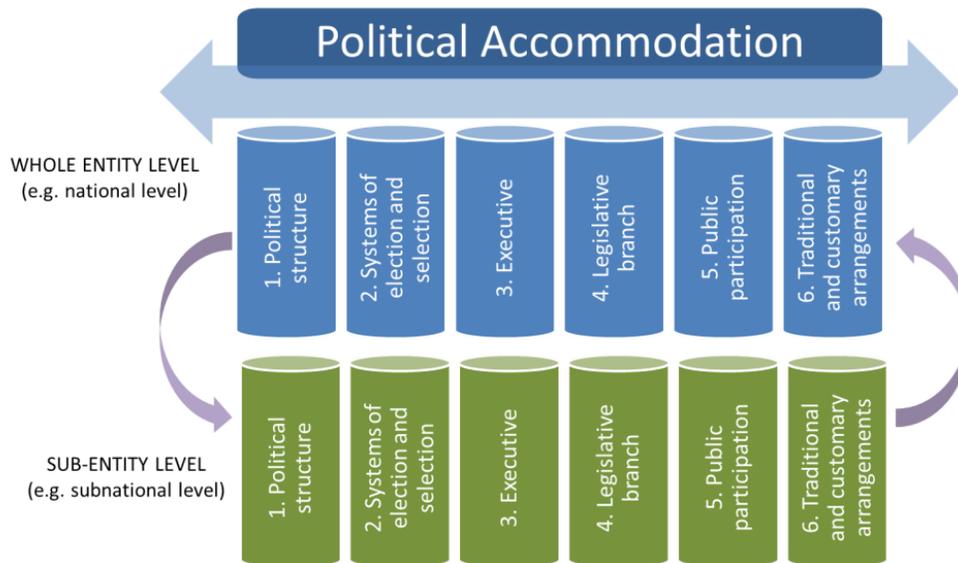
Decisions in one Strand shape how all the other Strands function in practice. The governance framework helps users to consider these relationships and develop options that represent coherent choices across all the Strands. This approach gives options the best chance of working.

Levels and interactions

The governance framework guides analysis and options at **two levels**: the whole-entity level (e.g., the national level for a State; the central authority in an area of special autonomy) and the subentity level (e.g., the local district, province, or state level for a State; individual members in a confederation). Users can adopt this two-level approach to ensure that governance arrangements for the whole entity complement those at other levels, and likewise that lower-level arrangements do not contradict each other or any arrangements at the whole-entity level (see Figure 2).

The framework is applicable to at least **two types of political interactions**: those within single entities (e.g., within a State; within an area of special autonomy; within a local district) and those among political entities interacting politically or economically (e.g., between states; between areas of special autonomy and states; between subnational units in a federal system).

Figure 2—Governance Framework—Application at Two Levels



Governance Strand overviews

This section presents each governance Strand, including definitions and examples, and provides guidance on the choices each Strand offers. The Strand overviews are meant to support open and creative thinking about options. Rather than present a comprehensive set of choices or a prescriptive checklist, the overviews underline important considerations, and explain how the Strands contribute to political accommodation.

1. POLITICAL STRUCTURE

Political structure encompasses the units that make up a political entity and their boundaries, authority, and relationships to each other. This Strand includes three components relevant to Political Accommodation: structure, division of powers, and resource distribution and control.

1. Structure: The hierarchy of political units (e.g., national, state, local), their borders, and how they interact, including how disputes between different political units are resolved.
2. Division of powers: The authority of different political units to decide policy.
3. Resource distribution and control: The authority of different political units to raise and expend revenue, and the redistribution of revenue among political units.

Relevance for Political Accommodation

The political structure determines the levels at which people can express their political interests and perspectives. In a highly centralized system, the central authority (e.g., the national government) is the main avenue for people to voice their political interests, while decentralized systems offer multiple avenues. If lower-level authorities (e.g., state or local government) have

sufficient political powers and fiscal capacity, they can make and implement decisions that account for their constituents' interests. In addition, the political structure can provide opportunities to these lower-level authorities to share their constituents' interests at the central level.

2. SYSTEMS OF ELECTION AND SELECTION

Systems of election and selection are the method of choosing candidates and representatives through converting votes into seats or positions, or through appointment. This Strand includes four components relevant to Political Accommodation: system design, system administration, political parties, and special provisions.

1. System design: The method for translating votes into seats or positions, or the method of appointment at each level of representation or government (e.g., national, state, local).
2. System administration: The structure and role of institutions responsible for election management, deciding boundaries, deciding who is eligible to vote and stand for office, and dispute resolution; or, in the case of a selection system, overseeing how candidates are nominated.
3. Political parties: Formation and regulation of political parties, and selection of positions or candidates within their ranks.
4. Special provisions: Mechanisms, such as quotas, to provide 'descriptive' representation on the basis of criteria such as gender, ethnicity, religion, or caste.

Relevance for Political Accommodation

Systems of election and selection are paths for representation of a range of groups in society, giving these groups a stake in governance and allowing them to express their interests and perspectives peacefully. In an electoral system, arrangements shape the incentives for parties or candidates to appeal for support beyond their core base, and for voters to consider representation outside their own group. In a selection system, the selecting authority can incorporate groups that might be excluded in an electoral system.

3. EXECUTIVE BRANCH

*The **executive branch** is responsible for administering day-to-day affairs. In a State, the executive branch consists of the head of State, head of government, ministries, civil service, and other institutions. In a regional organization or multi-entity configuration, the executive branch could consist of a secretary general or chairperson, a commission or secretariat, and other institutions depending on the entity. This Strand includes four components relevant to Political Accommodation: structure and competencies, decision-making rules and procedures, checks on the executive, and inclusivity.*

1. Structure and competencies: The composition of the executive (e.g., president, prime minister, council, chairperson, commission), and executive powers (e.g., issuing executive orders, serving as commander in chief).
2. Decision-making rules and procedures: How the executive makes decisions (e.g., voting or consensus in a multimember executive).
3. Checks on the executive: How other branches of the governance arrangement (legislative or judicial) or the general public can check the power of the executive (e.g., legislative veto, impeachment or vote of no confidence, judicial review, recall election, term limits).
4. Inclusivity: How the executive includes a variety of identity groups, such as in the ministries, civil service, and security sector if a State, and the commission or secretariat if a regional organization.

Relevance for Political Accommodation

The executive branch can support political accommodation through how it makes decisions about implementing laws and policies. It can also support political accommodation by representing and allocating decision-making authority and resources to a diverse range of interests in its institutions, such as the ministries, civil service, security sector, commission or secretariat, depending on the type of entity.

4. LEGISLATIVE BRANCH

*The **legislative branch** is made up of representatives responsible for debating, approving, and amending laws for a political entity. This Strand includes four components relevant to Political Accommodation: structure and competencies, decision-making rules and procedures, checks on the legislature, and committee processes and arrangements.*

1. Structure and competencies: The number of chambers, membership of each chamber (e.g., representatives of subentity units, traditional/customary, or religious authorities), term limits, methods of dissolution, and legislative powers (e.g., passing legislation and budget, overseeing the security sector).
2. Decision-making rules and procedures: How the legislature makes decisions (e.g., the number of votes needed for passing legislation or constitutional amendments, the role of party leadership).
3. Checks on the legislature: How other branches of the governance arrangement (executive and judicial) and the general public can check legislative power (e.g., executive veto, judicial review, recall election).
4. Committee processes and arrangements: Formation of legislative committees (e.g., topic, purview, and membership), and how bills move from committee to the full chamber for action.

Relevance for Political Accommodation

The representative nature of the legislative branch allows for the expression of diverse political interests. Additional chambers or reserved seats can support accommodation of specific interests, such as those related to political units, minority groups, or traditional and customary authorities. How the legislature makes decisions can also affect the representation of interests. For example, if decisions are made by majority vote and one party holds a majority of seats, that party may have little incentive to accommodate minority parties, or minority views within the majority party.

5. PUBLIC PARTICIPATION

Public participation encompasses mechanisms and systems through which the public influences and shares control over priority setting, policy making, and resource allocation within a political entity. In this context, the public includes all people (regardless of citizenship) affected by governance arrangements in a given territory or association. This Strand includes four components relevant to Political Accommodation: engagement with the executive, production of legislation, local-level decision making, and referendums.

1. Engagement with the executive: How the public influences executive decision making (e.g., through town hall meetings on proposed policies, online petitions).
2. Production of legislation: How the public is included in the production of legislation (e.g., through open legislative sessions, solicitation of public comments on draft legislation).
3. Local-level decision making: How the public engages in decision making at the local level, including participatory budgeting, public engagement in setting priorities for local development, and traditional or customary forums for public participation (e.g., village councils).
4. Referendums: Popular votes on policy (either binding or nonbinding), which can be required by the constitution, initiated by the executive or legislature, or initiated by the public through a petition.

Public Participation vs. Elections in the Political Accommodation Methodology

It is important to note that public participation under the governance framework is distinct from systems of election and selection. While elections are a means for people to directly register their preferences, public participation deals with a variety of ways the public expresses their views and accesses information between moments of election and selection.

Relevance for Political Accommodation

Public participation can contribute to political accommodation by opening avenues for the public to influence governance beyond representation in governance institutions. Public participation can improve the legitimacy of policy decisions and motivate accountability of representatives to constituents, as it broadens opportunities for people to voice their interests.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

Traditional and customary arrangements are patterns of governance, including institutions, norms, and processes that are rooted in traditions or have evolved from practice.⁴ They may have religious or cultural dimensions. This Strand includes four components relevant to Political Accommodation: executive roles and interactions, legislative roles and interactions, judicial activities, and territorial autonomy.

1. Executive roles and interactions: The role(s) traditional and customary arrangements play in executive decision making, through both their informal executive responsibilities (e.g., powers held by a monarch or chief), and their interaction with formal executive structures (e.g., with a ministry or commission for tribal affairs).
2. Legislative roles and interactions: The role(s) traditional and customary arrangements play in production of legislation, through traditional and customary legislative bodies (e.g., tribal councils) and incorporation into formal legislative structures (e.g., through an upper house representing traditional authorities, or formal consultative status).
3. Judicial activities: How traditional and customary arrangements facilitate local reconciliation and restorative justice through customary laws, courts, and forums.
4. Territorial autonomy: The degree to which tribal or other groups have autonomy to follow customary laws or are granted special provisions relating to religious law, language, land use, customary justice, or the recognition of identity for certain groups.

Relevance for Political Accommodation

Collaboration between traditional and customary arrangements and formal governance structures can encourage political accommodation if traditional leaders and institutions are representative and legitimate in the eyes of constituents. In such situations, traditional and customary arrangements can bridge the gap between elites and the public, especially in contexts with widespread illiteracy, marginalized areas, community tensions, or a high degree of linguistic, cultural, or religious plurality.

⁴ Including, but not limited to, monarchy and aristocracy, chieftaincies with sections, chiefdoms, and age sets. This Strand emerged from Conflict Dynamics' experiences in Sudan, South Sudan, and Somalia. Conflict Dynamics is conducting ongoing research on traditional and customary arrangements in other parts of the world, with the goal of producing a refined version of this Strand for broader application.

BOLIVIA

Executive Summary

This case study focuses on Bolivia's governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and nonaccommodating arrangements to consider.

Bolivia approved a new constitution in 2009, establishing a series of new governance arrangements. The new constitution, which was passionately debated and ultimately approved by referendum, contains a number of provisions that attempt to accommodate Bolivia's sizeable indigenous populations, which historically were marginalized. The constitution acknowledges multiple national identities within the State, devolves significant powers to subnational entities, and creates a process where subnational entities can apply for autonomy. The electoral system features two-round majority voting for many of its elections, reserves seats for indigenous populations in the national legislature, and establishes gender parity across all legislative levels, which has led to high levels of women's participation. The constitution guarantees a number of avenues for public participation, including elevating civil society to an official public monitor role. Through referendums, the public can recall elected officials and has a say in constitutional amendments, creation of autonomous entities, and international treaties. Indigenous populations may set up their own judicial systems, and territorial autonomy provisions provide indigenous groups the ability to govern their own communities.

The constitution's new governance arrangements have contributed to greater representation, participation, and economic inclusion. However, many mechanisms have not been defined or fully implemented, and this has led to confusion and increased tensions.

Table 1—Accommodating and Less Accommodating Aspects in Bolivia

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
BOLIVIA	<ul style="list-style-type: none"> • Indigenous rights and autonomy • Recognition of multiple national identities • Decentralization • Proportional representation and two-round majority voting • Women's and indigenous quotas • Mechanisms for public participation 	<ul style="list-style-type: none"> • Inconsistent implementation • Single dominant political party • Limited checks on national executive

Background

Despite significant natural resource deposits, Bolivia is the poorest country in Latin America. It is a relatively small country with a population of about ten million.⁵ Approximately 60 percent of Bolivia's population identifies as at least one of the country's many indigenous groups, which historically were very marginalized. The majority of the indigenous populations live in the western highlands departments, while the populations of the eastern lowlands departments tend to be of more European and mestizo descent and to be more prosperous.⁶ However, the indigenous populations in Bolivia are very heterogeneous, and 'indigenous' and 'mestizo' are not exclusive categories, as many people identify as both.⁷ Bolivia has not had large-scale violent conflict in the last 30 years. The Law of Popular Participation (1994) started Bolivia's decentralization process, creating municipalities and devolving significant executive, legislative, and administrative authority and 20 percent of the national budget to the municipal level.⁸

In 2008 and 2009, Bolivia embarked on a controversial constitutional reform process led by President Evo Morales to try to rectify a history of political and economic institutional exclusion of indigenous populations. The process polarized the country's political parties and the population over issues of departmental autonomy, land reform, and natural resource revenue distribution. President Morales and his Movement Toward Socialism (MAS) political party champi-

⁵ Patricia Rey Mallén, "Bolivian Census Highlights How Changes In Bolivian Demographics Might Affect President Evo Morales' Power Base," *International Business Times* (7 August 2013). <http://www.ibtimes.com/bolivian-census-highlights-how-changes-bolivian-demographics-might-affect-president-evo-morales>.

⁶ Nancy Postero, "The Struggle to Create a Radical Democracy in Bolivia," *Latin American Research Review* 45 (2010): 64.

⁷ Mala Htun and Juan Pablo Ossa, "Political Inclusion of Marginalized Groups: Indigenous Reservations and Gender Parity in Bolivia," *Politics, Groups, and Identities* 1, no. 1 (2013): 11.

⁸ Jason Tockman, "Decentralisation, Socio-territoriality and the Exercise of Indigenous Self-governance in Bolivia," *Third World Quarterly* 37, no. 1 (2016): 3.

oned a transformation of State structures so they respected and promoted indigenous rights.⁹ The departments in eastern Bolivia (known as the eastern lowlands or the ‘Media Luna’)¹⁰ lobbied for significantly increased autonomy and authority, while many western highlands residents favored the creation of a socialist state.¹¹ The two regions’ opinions increasingly diverged during the constitutional reform process, with some contending that MAS manipulated negotiations.¹² The government put the constitution to a public referendum on 25 January 2009, and despite the contentious drafting process, the constitution passed with 61 percent of those voting approving the constitution.¹³

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.¹⁴ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests. The framework consists of six focal areas or ‘Strands’, each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

⁹ Roberta Rice, “Intercultural Democracy and Civil Society Participation in the New, Decolonized Bolivia” in *Re-Imagining Community and Civil Society in Latin America and the Caribbean*, eds. Roberta Rice and Gordana Yovanovich (New York: Routledge, 2017): 132.

¹⁰ These four departments—Santa Cruz, Beni, Pando, and Tarija—are known as the “Media Luna” for the shape they make on a map of Bolivia, resembling a crescent moon.

¹¹ Almut Schilling-Vacaflor, “Bolivia’s New Constitution: Towards Participatory Democracy and Political Pluralism?” *European Review of Latin American and Caribbean Studies* (April 2011): 11.

¹² Postero, “Radical Democracy in Bolivia,” 67.

¹³ Sara Miller Llana, “Bolivia Sets New Global High Mark for Indigenous Rights,” *The Christian Science Monitor* (27 January 2009), <http://www.csmonitor.com/World/Americas/2009/0127/p01s01-woam.html>.

¹⁴ Here, ‘representatives’ is used broadly to mean political, community, and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

Decisions in one Strand affect how the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where Bolivia has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

Bolivia is a unitary, decentralized state with autonomous areas. Departments, municipalities, and indigenous autonomies are considered “autonomous zones” with constitutionally-defined powers. There is a mechanism for other indigenous territories to gain autonomy. Increased decentralization and autonomy have improved representation and participation in Bolivia; however, incomplete frameworks and implementation have also heightened tensions.

a. Structure

Bolivia is a unitary, decentralized state with autonomous areas.¹⁵ However, it also resembles a federal state, since the constitution explicitly recognizes subnational levels of government and protects their exclusive competencies. The constitution describes Bolivia as a ‘plurinational’ State, explicitly acknowledging that multiple national identities exist within the State. It recognizes and attempts to provide equal political, social, and economic rights to the country’s indigenous populations. It also extends the rights of free determination to the indigenous populations, granting them rights to autonomy, self-governance, cultivation of their individual cultures, and recognition of their institutions.¹⁶

Bolivia’s political structure primarily consists of the national government, departments, regions, provinces, municipalities, and rural native indigenous autonomies (*autonomías indígenas originarias campesinas*, or AIOCs).¹⁷ At the national level, Bolivia is governed by a president and bicameral legislative assembly (the Chamber of Deputies and the Chamber of Senators). Departments are headed by a governor and legislative assembly, regions by an executive council and assembly, and municipalities by a mayor and municipal council.¹⁸

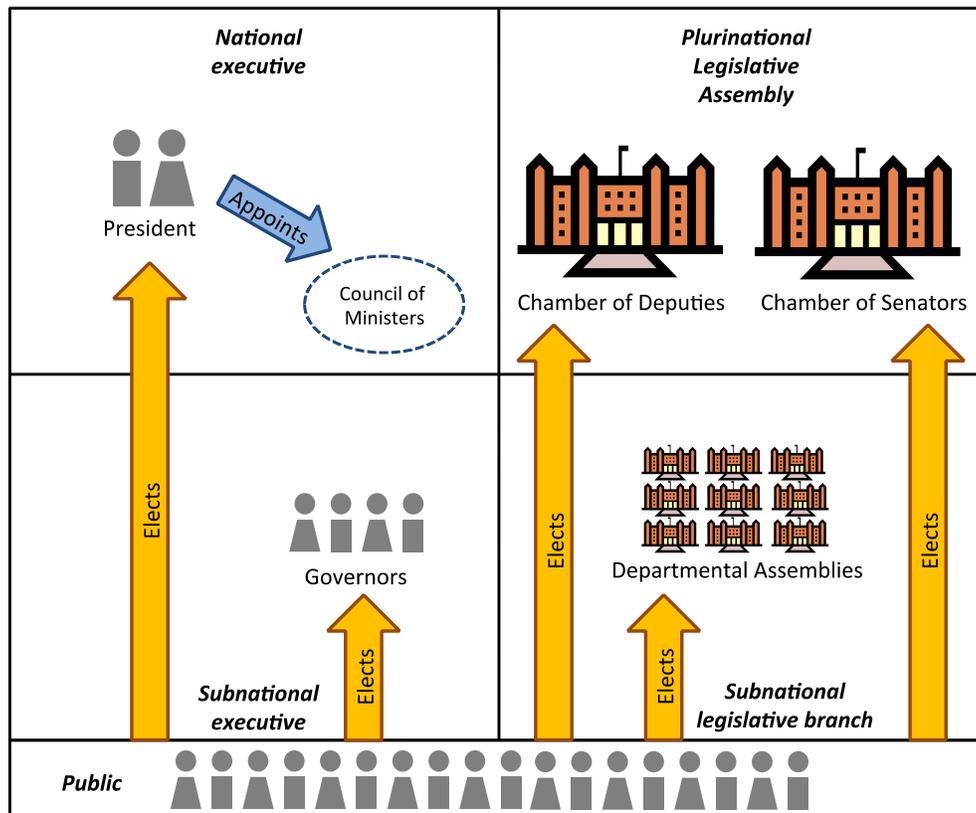
¹⁵ BOL. CONST., 2009, art. 1.

¹⁶ BOL. CONST., 2009, art. 2.

¹⁷ BOL. CONST., 2009, art. 269, 280, cl. 1.

¹⁸ BOL. CONST., 2009, art. 278, 279, 281, 283.

Figure 3—Bolivia's Political Structure

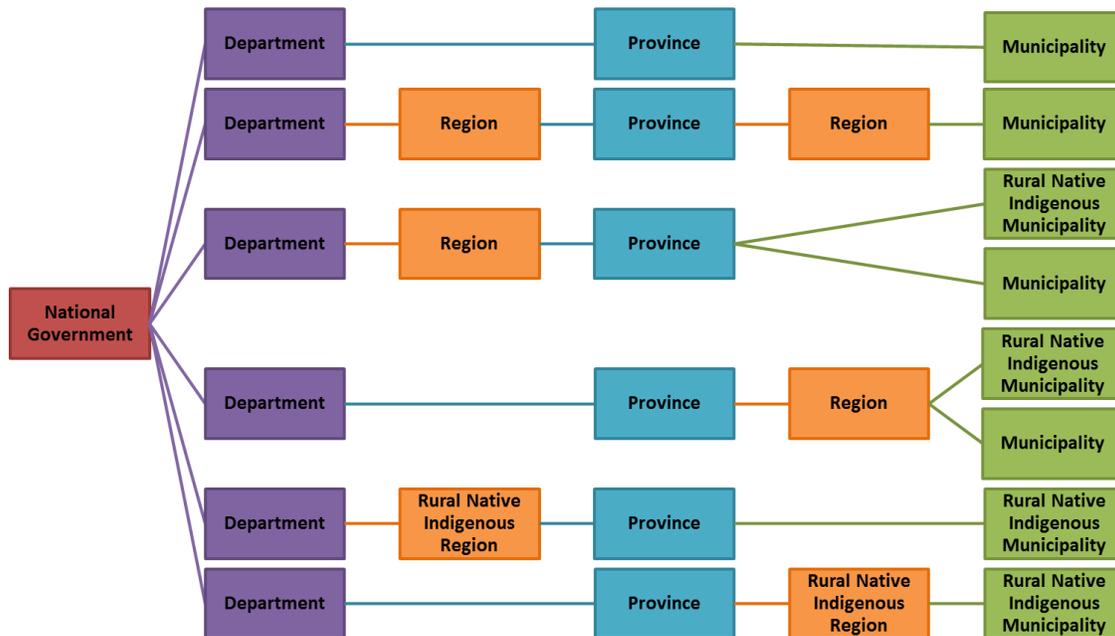


Departments are the largest level of subnational government, followed by provinces, then municipalities. Regions, which are an optional level of governance and do not necessarily exist within each department, are composed of either two or more provinces or two or more municipalities that have geographical continuity and are within the same department.¹⁹ Rural native indigenous autonomies AIOCs parallel this structure and thus also vary in size. Regions, municipalities, and state-recognized indigenous territories can all be converted into AIOCs, which may cross regional and municipal (but not departmental) borders.²⁰ AIOC is the overarching term for these entities, but they are usually referred to by their specific level of government. For example, once a municipality has converted to an AIOC, it is usually called a rural native indigenous municipality. A sample configuration of these different levels (except for indigenous territories) is shown in Figure 4.

¹⁹ BOL. CONST., 2009, art. 280, cl. 1. The state-recognized indigenous territories are also known as *Tierras Comunitarias de Origen*, or TCOs. Albó and Romero, *Autonomías Indígenas*, 15.

²⁰ BOL. CONST., 2009, art. 280, 291, 293.

Figure 4—Sample Configuration of Bolivia’s Levels of Government



b. Division of powers

Most powers fall under the national government’s authority or are shared between national and subnational authorities. However, departments, municipalities, and AIOCs are considered ‘autonomous zones’ with constitutionally-defined legislative, fiscal, and deliberative (policy-making) powers, some of which are exclusive to them.²¹ They also have equal standing with each other, meaning that none of those entities is considered subordinate to another.²² Regions are administrative and planning units and provinces are administrative units solely.²³ Neither regions nor provinces have legislative authority, but powers can be transferred or delegated to regions.²⁴

Prerogative powers belong to the national government and cannot be transferred or delegated. Exclusive powers belong to a certain level of government, and their regulatory and executive authority may be transferred or delegated. For concurrent powers, legislation is determined nationally, but subnational authorities exercise regulatory and executive authority.

²¹ BOL. CONST., 2009, art. 277, 283; and Xavier Albó and Carlos Romero, *Autonomías indígenas en la realidad boliviana y su nueva constitución* (La Paz: Vicepresidencia del Estado Plurinacional de Bolivia, 2009), 12.

²² BOL. CONST., 2009, art. 276.

²³ BOL. CONST., 2009, art. 280, cl. 1; and Albó and Romero, *Autonomías Indígenas*, 12.

²⁴ BOL. CONST., 2009, art. 281, 293, 301.

Shared powers are those subject to basic national legislation but where legislative development and regulatory and executive authority correspond to the autonomous territories. Any powers not listed in the constitution belong to the national level.²⁵ See Table 2 for the distribution of major powers, aside from AIOC powers which are described after the table.

Table 2—Distribution of Major Powers across Levels

NATIONAL-LEVEL PREROGATIVE AUTHORITY	NATIONAL-LEVEL EXCLUSIVE AUTHORITY	NATIONAL AND SUBNATIONAL CONCURRENT AUTHORITY	NATIONAL AND SUBNATIONAL SHARED AUTHORITY	AUTONOMOUS DEPARTMENTAL EXCLUSIVE AUTHORITY	AUTONOMOUS MUNICIPAL EXCLUSIVE AUTHORITY
<ul style="list-style-type: none"> • Financial and monetary policy • Customs • State security, defense, the armed forces, and the police • Foreign policy • Immigration • Public enterprises • Hydrocarbons • National taxes • Economic policy[†] 	<ul style="list-style-type: none"> • Health and education policies • Electoral system • Environmental policy • Energy policy • Communications • Postal service • Infrastructure • Tax policy • Strategic natural resources • Justice • Labor policies • Territorial planning and land registry • Tourism • Housing policies[‡] 	<ul style="list-style-type: none"> • Management of health and education systems • Protection of environment • Science and technology • Conservation of forest resources • Water • Public security • Public housing • Agriculture, livestock, hunting, and fishing[§] 	<ul style="list-style-type: none"> • Departmental and municipal elections • International relations • Telecommunications • Taxes exclusive to autonomous governments • Forums for citizen conciliation[#] 	<ul style="list-style-type: none"> • Human development • Departmental referendums and consultations • Land registry and regulation • Transportation infrastructure • Agricultural health and safety services • Departmental energy projects • Departmental tourism • Departmental taxes and fees • Commerce within the department • Hydrocarbons within the department[*] 	<ul style="list-style-type: none"> • Human development • Municipal referendums and consultations • Environmental protection • Land registry and regulation • Transportation infrastructure • Municipal energy projects • Food regulation • Local tourism • Municipal taxes and fees • Sanitation • Micro-irrigation • Basic services • Hydrocarbons within municipal territory^{††}

† BOL. CONST., 2009, art. 298, cl. 1.

‡ BOL. CONST., 2009, art. 298 cl. 2.

§ BOL. CONST., 2009, art. 299.

BOL. CONST., 2009, art. 299.

* BOL. CONST., 2009, art. 300, cl. 1.

†† Bol. Const., 2009, art. 303.

²⁵ BOL. CONST., 2009, art. 297.

AIOCs maintain exclusive authority over economic, social, political, organizational, and cultural development; management of renewable natural resources; land regulation and use; infrastructure; justice and conflict resolution, in accordance with the constitution; tourism; taxes and fees within their jurisdiction; and housing and town planning (among other powers).²⁶ They have concurrent authority over health policy; education, science, technology, and research plans; forestry and environmental conservation; irrigation and water and energy sources; infrastructure; agriculture; and monitoring of hydrocarbon and mining activities.²⁷ Rural native indigenous villages maintain the same competencies as the municipal governments, plus they have shared authority over international exchanges within the foreign policy framework and over a few other competencies.²⁸

Declaring autonomous status

As of August 2014, 13 municipalities and nine indigenous territories had started the conversion process into AIOCs.²⁹

The Framework Law of Autonomies and Decentralization (2010) regulates procedures for transferring and delegating authority and for territories to become autonomous entities, among other processes.³⁰ It outlines three territorial methods for obtaining indigenous autonomy: through regions, municipalities, or indigenous territories. The process involves seven steps, which vary depending on the method chosen, but generally include a referendum to declare autonomy; community drafting of an autonomy statute; and approval of the statute by the Ministry of Autonomy, the community, and Constitutional Review Committee.³¹ (See *Special Feature: Declaring Indigenous Autonomous Status*.)

²⁶ BOL. CONST., 2009, art. 304, cl. 1.

²⁷ BOL. CONST., 2009, art. 304, cl. 3.

²⁸ BOL. CONST., 2009, art. 300, cl. 2, 304, cl. 2.

²⁹ Tockman, "Decentralisation," 3.

³⁰ BOL. CONST., 2009, art. 271.

³¹ Andean Information Network, "Indigenous Autonomies in Bolivia; Part I: Legal Guidelines and Gaps," (3 February 2012), <http://ain-bolivia.org/2012/02/indigenous-autonomies-in-bolivia-part-i-legal-guidelines-and-gaps/>.

SPECIAL FEATURE: DECLARING INDIGENOUS AUTONOMOUS STATUS

The Framework Law of Autonomies and Decentralization (2010) details a seven-step process for regions, municipalities, and indigenous territories to obtain rural native indigenous autonomy:

1. The entity must document its shared ancestral territory and culture and its capacity to provide social, political, judicial, and economic institutions for autonomous government.
2. Municipalities and regions hold a referendum on starting the autonomy process. Indigenous territories do not have to hold a referendum.
3. If the referendum passes, the entity must elect an assembly to draft the AIOC's autonomy statute, providing a framework for governance.
4. The community has 360 days to debate and approve the statute.
5. The Ministry of Autonomy must approve the statute.
6. The community holds a referendum on the statute.
7. If the referendum approves the statute, the Constitutional Review Committee reviews it before the entity can implement the statute.

Source: Framework Law of Autonomies and Decentralization Act 31 of 2010 (Bol.) and "Indigenous Autonomies in Bolivia; Part I."

Many regions, municipalities, and indigenous territories have decided not to pursue indigenous autonomy or have not met the requirements for autonomy. Many communities have found the process of declaring and ratifying autonomy frustrating and exceedingly complex.³² Others are satisfied with the increased local control, representation, or material gains that resulted from the 1994 decentralization reforms and do not feel the lengthy conversion process to become an AIOC is necessary. Official territorial boundaries are often incongruous with ancestral indigenous territories, meaning that AIOCs will not necessarily help restore the territorial integrity of indigenous nations.³³ This is compounded by the fact that many indigenous people no longer reside in the areas where their precolonial ancestors were from. Finally, the MAS party has grown increasingly ambivalent to indigenous autonomy, as shown by failures to support autonomy efforts, the limited resources available, and even legal obstacles to conversion.³⁴

It remains to be seen what effect indigenous autonomy will have on departmental authority. There is currently an absence of clear guidelines, which has restricted the ability to firmly establish authorities and competencies within the separate jurisdictions.³⁵ The lack of clarity,

³² Andean Information Network, "Indigenous Autonomies in Bolivia."

³³ Tockman, "Decentralisation," 2.

³⁴ Tockman, "Decentralisation," 8.

³⁵ Jean-Paul Faguet, "Impacts and Consequences of the New Regime of Autonomies in Bolivia: Elements for a Discussion," Inter-American Development Bank, Policy Brief no. 122 (July 2011): 34–35, <http://eprints.lse.ac.uk/37513/>.

along with eastern lowlands elites' desires to maintain control over natural resources, has led to physical violence.³⁶

c. Resource distribution and control

The constitution affords departments a number of sources of revenue: revenues from royalties; a portion of revenue from taxing hydrocarbons, as outlined in law; income from the sale of goods, services, and assets by the department; departmental taxes and fees; transfers from the General Treasury for health, education, and social assistance programs; and internal and foreign credits and loans.³⁷

While national revenue is distributed to departments, municipalities, and AIOCs, the State does not take any of the revenues collected by these bodies.³⁸ Natural resources are the property of the State, and the national government maintains exploitation and extraction rights and income from natural resources.³⁹ Departments that produce hydrocarbons receive an 11 percent royalty of their production. Hydrocarbon revenue is distributed to nonproducing departments according to law.⁴⁰

In 2009, approximately 55 percent of hydrocarbon revenue, and 20 percent of revenue from other taxes, was transferred from the national government to subnational entities. In total, the national government transferred approximately 30 percent of its revenue to departments and municipalities.⁴¹

Funds from resource extraction and their distribution between levels of government has been a source of contention within Bolivia. The national government's efforts to reduce the amount of direct hydrocarbon tax funds that the departments receive produced a significant backlash.⁴² Departments are highly dependent on hydrocarbon revenues, which comprise approximately 90 percent of departmental budgets. However, hydrocarbon revenues are shared unevenly among the departments. Due to provisions giving hydrocarbon producers a larger portion of hydrocarbon revenues, the less populated but resource-rich lowland departments have received a greater percentage of the revenue associate with hydrocarbons.⁴³

³⁶ John D. Cameron, "Is this What Autonomy Looks Like? Tensions and Challenges in the Construction of Indigenous Autonomy in Bolivia," 2010 Meeting of the Latin American Studies Association, Toronto, Canada (2010), <http://lasa.international.pitt.edu/members/congress-papers/lasa2010/files/2631.pdf>.

³⁷ BOL. CONST., 2009, art. 341.

³⁸ BOL. CONST., 2009, art. 340.

³⁹ BOL. CONST., 2009, art. 349, cl. 1, 351.

⁴⁰ BOL. CONST., 2009, art. 368.

⁴¹ IMF, "Bolivia: Selected Issues," International Monetary Fund, IMF Country Report No. 10/29, 2010, 10, <http://www.imf.org/external/pubs/ft/scr/2010/cr1029.pdf>.

⁴² ICG, *Bolivia: Rescuing the New Constitution and Democratic Stability*, International Crisis Group, Latin America Briefing 18 (19 June 2008): 5–6.

⁴³ IMF, "Bolivia: Selected Issues," 9–10.

The Bolivian government has implemented many of the revenue distribution provisions effectively, resulting in improved income distribution, cash transfer programs, and investment in infrastructure. Between 2005 and 2011, extreme poverty in Bolivia was halved (from 48.5 to 24.3 percent). However, the eastern lowlands departments continue to maintain significantly larger GDP than the western departments, which continues to be a source of tension.⁴⁴

Assessment

Bolivia represents an interesting example of an attempt to make a formerly highly centralized State more decentralized and responsive to the population by devolving powers, recognizing indigenous national identities, and creating indigenous autonomous areas. A significant number of powers are either shared with the national government or exclusive to departments, municipalities, and AIOCs. The autonomy enjoyed by many subnational units balances the power of strong executive and legislative national structures and provides an important avenue for political accommodation of opposition parties. However, due to complex legal frameworks, the system is vulnerable to manipulation which can hinder full exercise of these powers.

2. SYSTEMS OF ELECTION AND SELECTION

Bolivia uses a mixed system—closed party list proportional representation plus two-round majority voting—to elect Plurinational Legislative Assembly members. Executives are elected via two-round majority voting. There is an extensive system of reserved seats for members of indigenous groups and for women. As a result, women hold 52 percent of seats in the Legislative Assembly.

a. System design

Elections in Bolivia are compulsory.⁴⁵

The president is elected by a two-round majority system. The winning candidate needs either a simple majority (more than 50 percent of the vote) or 40 percent of the vote where no other candidate is within ten percentage points. If no candidate meets the requirements for election, a second round is held between the two highest vote-grossing candidates.⁴⁶

The Chamber of Deputies, Bolivia's lower house, uses a mixed system to elect its 130 representatives and alternates (who serve if the representative is no longer able to occupy the seat). Seventy deputies are elected by simple majority (more than 50 percent of votes) from single-member districts; 53 are elected through closed party list proportional representation (PR);

⁴⁴ IMF, "IMF Executive Board Concludes 2012 Article IV Consultation with Bolivia," International Monetary Fund (7 June 2012), <http://www.imf.org/external/np/sec/pn/2012/pn1257.htm>.

⁴⁵ BOL. CONST., 2009, art. 26, cl. 2.

⁴⁶ BOL. CONST., 2009, art. 166.

and seven seats reserved for indigenous peoples are elected by simple majority from single-member districts.⁴⁷ Legislation establishes the minimum number of deputy seats allocated to each department, and the Plurinational Electoral Organ (OEP) divides seats among the departments based on population.⁴⁸

Senators and their alternates are directly elected from each department by closed-list PR to the Chamber of Senators, the upper house. The constitution allocates each department four seats, for a total of 36 senators.⁴⁹

Rather unusually, judges for the high courts are elected. Members of the Supreme Court, Constitutional Court, Agro-Environmental Court, and Council of Magistrates are nominated by the Plurinational Legislative Assembly (by a two-thirds vote) and chosen through a national election. Judges serve a six-year term and may not be reelected.⁵⁰

At the subnational level, department governors are elected by simple majority. If no candidate receives the required votes, a second round is held.⁵¹ Municipal mayors are elected by plurality.⁵² The 2010 subnational elections marked the first time the country held direct elections for governors and legislators in all nine departments. Additionally, it was the first time that municipal mayors were directly elected.⁵³

Representatives of departmental, regional, and municipal assemblies are directly elected. Provisions for how they are elected are specified by each department, region, or municipality, and vary.⁵⁴

b. System administration

The OEP, an overarching electoral body, is composed of the Supreme Electoral Tribunal (TSE), departmental electoral courts, electoral judges, juries of the polling places, and electoral notaries.⁵⁵ The TSE organizes and administers Bolivia's elections, the civil registry, and the electoral

⁴⁷ Ley del Régimen Electoral 26 of 2010 §§56, 57, 58, 60, 61 (Bol.). In the case of a tie for any of the single-member districts, a second round is held between the tied candidates. Party-list PR is a system in which each party presents a list of candidates for a multimember district. The voters vote for a party, and the winning candidates are taken from the top of the lists to fill seats according to each party's overall share of the vote. In a 'closed-list' system, the party determines candidates' positions on the lists.

⁴⁸ Ley del Régimen Electoral 26 of 2010 §§56, 57 (Bol.).

⁴⁹ BOL. CONST., 2009, art. 148; and Ley del Régimen Electoral 26 of 2010 §54, cl. 1 (Bol.).

⁵⁰ BOL. CONST., 2009, art. 182, 183, 188, 194, 200.

⁵¹ Ley del Régimen Electoral 26 of 2010 §64(a) (Bol.).

⁵² Ley del Régimen Electoral 26 of 2010 §71 (Bol.).

⁵³ Anaid Flesken, "Bolivia's Regional Elections 2010," Exeter Centre for Ethno-Political Studies, University of Exeter (UK, 2010): 4, <https://www.researchgate.net/publication/258517905>.

⁵⁴ BOL. CONST., 2009, art. 278, 282, 284.

⁵⁵ BOL. CONST., 2009, art. 205, cl. 1.

roll.⁵⁶ Two of the TSE's members must come from indigenous populations.⁵⁷ The president selects one member of the TSE, and the legislative branch elects six members.⁵⁸ At times, infighting within the legislature has left the TSE understaffed, with only four of the mandated seven members.⁵⁹

c. Political parties

Indigenous organizations and citizens' associations, along with political parties, are allowed to propose candidates for elected public office.⁶⁰ The ruling MAS party controls the presidency and much of the national legislature.⁶¹

d. Special provisions

While indigenous autonomous areas are meant to accommodate the needs of many Bolivians, a significant portion of Bolivia's indigenous populations lives outside of those areas. To ensure indigenous representation across the State, the constitution allocates reserved seats in the legislature for indigenous populations.⁶² The Electoral Regime Law (2010) reserves seven seats in the Chamber of Deputies for election from special indigenous rural districts.⁶³ Legislation defines the special districts of rural native indigenous populations, taking into account population density and geographical continuity.⁶⁴ Legislation also requires that members of indigenous groups be included in the lists of candidates for election to the Supreme Court of Justice, Constitutional Court, Agro-Environmental Court, and Council of Magistrates, and that two out of seven members of the TSE be of rural indigenous origin.⁶⁵

Many indigenous movements were disappointed in the number of reserved seats allocated to indigenous districts. During debate of the temporary electoral law, the lowland federation and highland federation had proposed 34 and 24 reserved seats, respectively.⁶⁶ However, the reserved seats, combined with other electoral reforms, have led to increased representation for many of the previously underrepresented indigenous populations. Improved indigenous politi-

⁵⁶ BOL. CONST., 2009, art. 208, cl. 1(3).

⁵⁷ BOL. CONST., 2009, art. 206, cl. 2.

⁵⁸ BOL. CONST., 2009, art. 206, cl. 3.

⁵⁹ FM Bolivia, "Asamblea designa vocales y completa el Tribunal Electoral," *FM Bolivia* (15 September 2011), <http://www.fmbolivia.tv/asamblea-designa-vocales-y-completa-el-tribunal-electoral/>.

⁶⁰ BOL. CONST., 2009, art. 209.

⁶¹ Nick Miroff, "Evo Morales, Bolivia's Powerful Incumbent, Plays Politics at High Altitude," *Washington Post* (6 October 2014), https://www.washingtonpost.com/world/evo-morales-bolivias-powerful-incumbent-plays-politics-at-high-altitude/2014/10/05/f7c8d330-7f04-427b-9fb4-2157378dbecd_story.html.

⁶² Antonio Espinoza and Stephen Garvey, "Electoral Fairness Research," The Foundation for Democratic Advancement (2011), <http://democracychange.com/Bolivia%20research.pdf>.

⁶³ Ley del Régimen Electoral 26 of 2010 §50, cl. 1(e) (Bol.).

⁶⁴ BOL. CONST., 2009, art. 146.

⁶⁵ Ley del Régimen Electoral 26 of 2010 §79 (Bol.); and Ley del Órgano Electoral Plurinacional 18 of 2010 §12 (Bol.).

⁶⁶ Htun and Ossa, "Political Inclusion of Marginalized Groups," 16.

cal power has helped resolve and de-escalate social conflicts related to indigenous rights, but it has also generated a new set of political conflicts with political and economic elites. The new electoral structure has led to political dominance of certain indigenous groups at the national level, often pushing conflicts to the departmental level where tensions persist between the national government and local opposition groups.⁶⁷

The constitution states that gender equality in participation is one of the State's core values.⁶⁸ Electoral law establishes an 'alternate parity' system for elections, where party lists for legislative representatives at all levels must alternate between men and women, and for single-member districts, the primary candidate must be a woman in at least 50 percent of districts. Additionally, each candidate's substitute must be the opposite gender of the candidate.⁶⁹

***Prospect for Political Accommodation:
Gender Parity Quotas***

The Electoral Regime Law (2010) requires that party lists alternate between men and women. The 2009 constitution establishes an 'alternate parity' system, stating that for single-member districts, each representative must have an alternate who takes over his or her duties if that person is unable to occupy the seat. The alternate must be the opposite gender of the candidate. These mechanisms apply to indigenous representatives as well and try to ensure equal representation of men and women in legislative bodies.

Legislation also requires that 50 percent of candidates for election to the Supreme Court of Justice, Constitutional Court, Agro-Environmental Court, and Council of Magistrates, and three out of seven members of the TSE, be women.⁷⁰ The Political Party Law (1999) requires that all political parties have at least 30 percent women at all decision-making levels within the party.⁷¹

As a result of these quotas, in the 2014 elections, women won 47 percent of seats in the Chamber of Senators and 53 percent of seats in the Chamber of Deputies (for 52 percent of seats in the combined Legislative Assembly). This puts Bolivia second in the world for women's representation in a lower or single house of parliament.⁷²

However, issues with implementation still exist. Criminalization of political assault was included in the electoral law after repeated reports of harassment of women elected officials to pressure them to resign.⁷³ In a 2015 interview discussing departmental and municipal elections, the president of the TSE, Wilma Velasco, expressed concern about a practice that reduced wom-

⁶⁷ Jonas Wolff, *Challenges to Democracy Promotion: The Case of Bolivia* (Washington DC: Carnegie Endowment for International Peace, March 2011): 6–7.

⁶⁸ BOL. CONST., 2009, art. 8, cl. 2.

⁶⁹ Ley del Régimen Electoral 26 of 2010 §§11, 54, cl. 2, 58, cl. 2 (Bol.).

⁷⁰ Ley del Régimen Electoral 26 of 2010 §79 (Bol.); and Ley del Órgano Electoral Plurinacional 18 of 2010 §12 (Bol.).

⁷¹ Ley de Partidos Políticos 1983 of 1999 §§19(4) (Bol.).

⁷² IPU, "Women in national parliaments" (Inter-Parliamentary Union, 1 September 2016), <http://www.ipu.org/wmn-e/classif.htm>.

⁷³ Htun and Ossa, "Political Inclusion of Marginalized Groups," 11.

en's representation. Following a woman candidate's disqualification from running, the slot would never be filled with another woman candidate as required, so that if the party won the seat, the male alternate would have to fill it.⁷⁴ And while the 2014 elections resulted in high numbers of women in the Plurinational Legislative Assembly, observers of the 2009 elections suggested that the OEP's failure to implement transitional electoral provisions resulted in party lists that did not exhibit gender parity.⁷⁵ While the quota for women's representation also applies to indigenous districts, the observers noted that women candidates were 'almost invisible' on party lists, with local traditions and practice taking precedence over women's representation.⁷⁶

Assessment

Proportional representation (PR), used to elect some of Bolivia's legislators, is generally considered to be accommodating as it aims to produce representative bodies. While majority voting is generally considered to be less accommodating than PR, Bolivia uses a two-round voting system rather than a plurality system to fill its single-member districts. This mixed system, combined with quotas for indigenous and women's representation and compulsory voting, has led to reasonably inclusive and representative bodies. Additionally, the fact that subnational executives and legislative members are now elected provides an element of direct accountability between officials and constituents that did not previously exist.

Despite certain obstacles to women's effective participation, significant reserved seats for women at all levels have improved representation and inclusion in decision making and started to transform political dynamics. Reserved seats for indigenous groups, combined with effective competition for multi- and single-member districts, have also increased indigenous representation, although the reserved seats are not as robust as they are for women.

⁷⁴ Luis Maella, "Wilma Velasco: Las sustituciones de los candidatos afectarían la representación de las mujeres," *La Razón* (27 March 2015), http://www.la-razon.com/nacional/animal_electoral/Subnacionales-Wilma_Velasco-sustituciones-candidatos-representacion-mujeres_0_2241975838.html.

⁷⁵ The Carter Center, "Analysis of the Electoral Legal Framework," Observation Mission of the Bolivia Voter Registration: The Final Report (The Carter Center, 2009): 11, http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReportBoliviaVoterRegistration2009.pdf.

⁷⁶ The Carter Center, "Electoral Legal Framework," 12.

3. EXECUTIVE BRANCH

The president heads the executive branch, supported by a vice president and council of ministers. Due to ruling party control of both the executive and legislature, the legislature does not serve as a strong check on executive action. There are no formal mechanisms for ensuring inclusivity, so it falls to the president to ensure broad representation and inclusion in the executive. Elected governors head departments, and mayors head municipalities.

a. Structure and competencies

The executive branch (also executive organ) is composed of the president, vice president, and council of ministers.⁷⁷ The president and vice president serve five-year terms, and according to legal frameworks, they may be reelected once for a continuous term.⁷⁸ However, in November 2017 the Constitutional Court struck down those term limits as unconstitutional.⁷⁹

The president is the head of State and commander of the Armed Forces, and as such is responsible for proposing and directing national government policy. He or she also has jurisdiction over foreign policy. The executive organ may initiate legislation and is responsible for enacting legislation once it is passed.⁸⁰ The president may also return a bill to the Legislative Assembly with comments, which the Legislative Assembly can consider or not.⁸¹ The president can declare a state of emergency and may issue supreme decrees and resolutions. He or she administers State revenues and presents a budget and an economic and social development plan to the legislature. The president may propose laws that are economically urgent that will receive priority attention in the legislature.⁸² Ministers, appointed by the president, propose policies and implement the general policies of the government. Ministers may propose supreme decrees for the president to sign.⁸³

Executive power has steadily increased since President Morales and the MAS came to power. Since the Supreme Electoral Tribunal is chosen by the President and the MAS-controlled Plurinational Legislative Assembly, the body responsible for ensuring free and fair elections risks representing the interests of those already in power.⁸⁴ President Morales has repeatedly tested the term limit provisions in the 2009 constitution. The Constitutional Court ruled that

⁷⁷ BOL. CONST., 2009, art. 166.

⁷⁸ BOL. CONST., 2009, art. 168.

⁷⁹ Tribunal Constitucional Plurinacional [TCP] [Plurinational Constitutional Court], Sentencia Constitucional Plurinacional 0084/2017 (Bol.).

⁸⁰ BOL. CONST., 2009, art. 162, 163(8).

⁸¹ BOL. CONST., 2009, art. 163, cl. 10–11.

⁸² BOL. CONST., 2009, art. 172.

⁸³ BOL. CONST., 2009, art. 175.

⁸⁴ Julio Mendez Cabrera, "Bolivia's Perennial President," *Harvard Political Review* (8 October 2014), <http://harvardpolitics.com/world/bolivas-perennial-president/>.

President Morales could run in the 2014 election since his first term had occurred under the previous constitution and he had served only one term under the 2009 constitution.⁸⁵ In October 2014, President Morales was reelected for a third term, receiving 60 percent of the vote.⁸⁶ The Legislative Assembly attempted to amend the constitution to allow President Morales to run for a fourth term in 2019.⁸⁷ While voters rejected that amendment in a 2016 referendum,⁸⁸ in November 2017 the Constitutional Court declared most term limits in the constitution unconstitutional, including for the president.⁸⁹

Governors head the executive in departments.⁹⁰ Each department specifies the governor's exact competencies in its autonomous statute.⁹¹ Mayors head the executive at the municipal level. Their competencies are detailed in their municipal charters.⁹²

b. Checks on the executive

The president is required to submit an annual report on the state of public administration to the Legislative Assembly.⁹³ The legislature has the power to question and censure Ministers of State and can investigate executive bodies as part of its supervisory powers.⁹⁴ The legislature may also override presidential vetoes with an absolute majority of members present and authorize a trial of the president or vice president.⁹⁵

Because President Morales's MAS party controls both the executive and the legislative branch, the legislature does not serve as a strong check on executive action. MAS's supermajority control of the legislature has often allowed it to consolidate power, most notably in its attempts to amend the constitution to allow President Morales to run for more than two terms.⁹⁶

⁸⁵ Clare Ribando Seelke, *Bolivia: In Brief* (Washington, DC: Congressional Research Service, 17 April 2014): 5, <https://www.fas.org/sgp/crs/row/R43473.pdf>.

⁸⁶ AP, "Bolivia Elects Evo Morales as President for Third Term" (Associated Press, 13 October 2014), <http://www.theguardian.com/world/2014/oct/13/bolivia-evo-morales--president-third-term>. Associated Press

⁸⁷ Daniel Zovatto, "Slaves of the People or the Institutions," *Institute for Democracy and Electoral Assistance* (1 October 2015), <http://www.idea.int/americas/slaves-of-the-people-or-the-institutions.cfm>.

⁸⁸ Jonathan Watts, "Bolivia President Blames 'Conspiracy' for Loss—But Weary Voters May Be to Blame," *The Guardian* (24 February 2016), <http://www.theguardian.com/world/2016/feb/24/bolivia-evo-morales-referendum-vote-defeat>.

⁸⁹ Other term limits affected include for national assembly members, governors, departmental assembly members, mayors, and members of municipal councils. TCP, Sentencia Constitucional Plurinacional 0084/2017.

⁹⁰ BOL. CONST., 2009, art. 279.

⁹¹ Framework Law of Autonomies and Decentralization Act 31 of 2010 §30, cl. 2 (Bol.).

⁹² Framework Law of Autonomies and Decentralization Act 31 of 2010 §34, cl. 2 (Bol.).

⁹³ BOL. CONST., 2009, art. 172(12).

⁹⁴ BOL. CONST., 2009, art. 158, cl. 1, para. 18, 19.

⁹⁵ BOL. CONST., 2009, art. 163, cl. 11 and art. 161, cl. 1, para. 7.

⁹⁶ BBC, "Vote May Allow Bolivian President to Seek Re-election," BBC News (27 September 2015), <http://www.bbc.com/news/world-latin-america-34372038>.

Voters can recall elected members of the executive through a referendum.⁹⁷ (See *Public participation—Referendums*.) In 2008, President Morales and a number of governors were subject to recall referendums. Morales and all but two governors won the referendums.⁹⁸

c. Inclusivity

In appointing ministers, the president must respect “the Pluri-National character of the country and gender equity.”⁹⁹ In 2010, President Morales appointed equal numbers of women and men to his cabinet of 20 ministers.¹⁰⁰ However, as of November 2015, six of 21 ministers (29 percent) were women.¹⁰¹

While not due to any formal mechanism for inclusivity within the executive, President Morales is the first president of Bolivia from an indigenous background.¹⁰²

Assessment

Bolivia’s strong powers of the presidency, combined with the MAS party’s control of both the executive and the legislative branches, mean the legislature does not serve as a strong check on executive action. The president’s authority to designate legislation as an economic priority grants the executive branch further control over the priorities of the legislature and the issues it addresses.

The current president has largely ensured broad representation and inclusion in the cabinet; however, there are no formal mechanisms for ensuring inclusivity within the executive, so this relies on the good will of the president.

4. LEGISLATIVE BRANCH

The Bolivian legislature is composed of a bicameral legislative assembly—the Chamber of Deputies (the lower house) and the Chamber of Senators (the upper house). Many legislative responsibilities are shared between the two chambers. Citizens, members of the assembly, the executive, the Supreme Court, and autonomous subnational governments may propose legislation.

⁹⁷ BOL. CONST., 2009, art. 240, cl. 3.

⁹⁸ Wolff, “Towards Post-Liberal Democracy,” 43.

⁹⁹ BOL. CONST., 2009, art. 172, cl. 22.

¹⁰⁰ Franz Chávez, “BOLIVIA: Unprecedented Gender Parity in Cabinet,” Inter Press Service News Agency (27 January 2010), <http://www.ipsnews.net/2010/01/bolivia-unprecedented-gender-parity-in-cabinet/>.

¹⁰¹ WITW Staff, “Bolivian President Calls Health Minister a Lesbian for Talking to Another Woman,” Women in the World Media (19 November 2015), <http://nytlive.nytimes.com/womenintheworld/2015/11/19/bolivian-president-calls-health-minister-a-lesbian-for-talking-to-another-woman/>.

¹⁰² BBC, “Profile: Bolivia’s President Evo Morales,” BBC News (22 February 2016), <http://www.bbc.com/news/world-latin-america-12166905>.

a. Structure and competencies

Bolivia has a bicameral legislature, the Plurinational Legislative Assembly, composed of the Chamber of Deputies (the lower house) and the Chamber of Senators (the upper house). The assembly as a whole has the authority to approve laws that govern the entire Bolivian State.¹⁰³

The Chamber of Deputies is composed of 130 members. The Chamber of Senators is composed of 36 members. The vice president heads the Plurinational Legislative Assembly. Members of both chambers serve five-year terms and according to the constitution can serve two consecutive terms, although those term limits were ruled unconstitutional in November 2017 by the Constitutional Court.¹⁰⁴ Many responsibilities are shared between the two chambers, such as approval of the budget, approving new territorial units, overseeing state organs, national-level taxation, and authorizing military force. The Chamber of Deputies is responsible for legislation on the budget, economic and social development plans, the Armed Forces, and oversight of the higher courts, among others. The Chamber of Senators' competencies include trying members of the higher courts and approving nominations of military leaders, executive ministers, and ambassadors. Table 3 lays out the competencies the two chambers share and those they possess individually.

Table 3—Select Legislative Competencies

PLURINATIONAL LEGISLATIVE ASSEMBLY (BOTH CHAMBERS) [†]	CHAMBER OF DEPUTIES [‡]	CHAMBER OF SENATORS [§]
<ul style="list-style-type: none"> • Approval and execution of the budget • Electing the electoral organ • Nomination of candidates to the Constitutional Court, Supreme Court, Agro-Environmental Court, and Council of Magistrates • Approval of the creation of new territorial units • Ratification of international treaties • Establishment of monetary system • Oversight of state organs • Creation and modification of taxes at the national level • Authorization of military forces 	<ul style="list-style-type: none"> • Legislation on the budget, economic and social development plans, public credit and subsidies, and the Armed Forces • Oversight of the Constitutional Court, the Supreme Court, and the Administrative Control of Justice 	<ul style="list-style-type: none"> • Trying members of the Constitutional Court, the Supreme Court, the Agro-Environmental Court, and the Central Administration of Justice if they commit crimes against their functions • Approval of nominations of military leaders, executive ministers, and ambassadors
<p>† Bol. Const., 2009, art. 158. ‡ Bol. Const., 2009, art. 159. § Bol. Const., 2009, art. 160.</p>		

¹⁰³ BOL. CONST., 2009, art. 145.

¹⁰⁴ BOL. CONST., 2009, art. 156; TCP, Sentencia Constitucional Plurinacional 0084/2017.

Legislative authority at the subnational level is vested in departmental assemblies, regional assemblies, and municipal councils.¹⁰⁵ Autonomous statutes outline the competencies and composition of departmental and municipal legislatures.¹⁰⁶ Members of the assemblies and councils serve five-year terms, and as of the November 2017 Constitutional Court ruling there are no term limits for these positions.¹⁰⁷

b. Decision-making rules and procedures

Legislation may be proposed by citizens, members of the Plurinational Legislative Assembly, the executive organ, the Supreme Court (on issues related to justice), and autonomous governments of the territorial entities. The Plurinational Legislative Assembly is responsible for processing all proposed legislation. The rules for processing legislation are outlined in the rules of each legislative chamber.¹⁰⁸

Legislation regarding decentralization, autonomies, and land regulations must be introduced in the Chamber of Senators, along with legislation proposed by a senator. All other legislation is introduced in the Chamber of Deputies. Legislation must be approved by both chambers, after which it is sent to the president to be enacted.¹⁰⁹

Despite constitutional provisions calling for laws defining political organizations and public participation, as of September 2016 these laws have not been passed.

c. Checks on the legislature

There are fewer checks on the legislature than on the executive. The legislative branch relies on the executive to implement its legislation,¹¹⁰ and the executive proposes the budget to the legislature.¹¹¹ The executive also has power to propose ‘laws of economic urgency’, to which the legislature must give priority consideration.¹¹²

Assessment

Due to reserved seats for women and indigenous peoples, as well as partial use of proportional representation to elect deputies, the legislature is broadly representative of diverse interests. However, its authority is constrained by the power of the executive and the influence of the ruling party.

¹⁰⁵ BOL. CONST., 2009, art. 277, 281, 283.

¹⁰⁶ BOL. CONST., 2009, art. 278, 282, 284.

¹⁰⁷ BOL. CONST., 2009, art. 288; TCP, Sentencia Constitucional Plurinacional 0084/2017.

¹⁰⁸ BOL. CONST., 2009, art. 162.

¹⁰⁹ BOL. CONST., 2009, art. 163.

¹¹⁰ BOL. CONST., 2009, art. 172, cl. 7.

¹¹¹ BOL. CONST., 2009, art. 172, cl. 11.

¹¹² BOL. CONST., 2009, art. 172, cl. 24.

The fact that subnational entities and individuals may propose legislation that must be processed creates additional avenues for public participation and accommodation of subnational interests.

5. PUBLIC PARTICIPATION

The constitution guarantees a number of avenues for public participation, including elevating civil society to an official public monitor role. Through referendums, the public can recall elected officials and has a say in constitutional amendments, establishing autonomous areas, and international treaties.

a. Engagement with the executive

The constitution mandates public participation in political affairs and public policy through organized civil society. Civil society is tasked with monitoring public management at all levels of government.¹¹³ This includes supporting government policy formulation, coordinating joint planning with and monitoring of the State, supporting candidate transparency, and filing complaints for investigation.¹¹⁴ The constitution also mandates public participation in the determination of expenses and public investments.¹¹⁵ Through informal channels, popular organizations have organized protests that have been effective at holding the Morales government accountable for certain issues.¹¹⁶

b. Production of legislation

Citizens may propose legislation to the Plurinational Legislative Assembly.¹¹⁷ Civil society is tasked with helping design public policy and supporting the Legislative Assembly in developing legislation.¹¹⁸

While the constitutional reforms enable the public's and civil society's greater participation in politics, broad participation has not been fully realized. Many of the constitution's participation provisions are not detailed in legislation. The MAS government has mobilized civil society support to overcome political opposition, has privileged certain organizations close to it to the ex-

¹¹³ BOL. CONST., 2009, art. 241.

¹¹⁴ BOL. CONST., 2009, art. 242, cl. 1, cl. 7-8.

¹¹⁵ BOL. CONST., 2009, art. 321, cl. 2.

¹¹⁶ Wolff, "Towards Post-Liberal Democracy," 45-46.

¹¹⁷ BOL. CONST., 2009, art. 162.

¹¹⁸ BOL. CONST., 2009, arts. 241, cl. 1, 242, cl. 1, 2.

clusion of others, and has attempted to steer participation from above rather than the bottom-up processes envisioned in the constitution.¹¹⁹

c. Local-level decision making

At the local level, civil society can play an oversight role for government institutions.¹²⁰

d. Referendums

The public has the ability to recall any elected official except judges through referendums.¹²¹ Public referendums are required for constitutional amendments,¹²² the establishment of departmental, regional, municipal, or rural indigenous autonomies,¹²³ and ratification of certain international treaties. The public must approve through a referendum any international treaties addressing borders, monetary or economic integration, or granting institutional authority to international organizations.¹²⁴ Additionally, treaties are subject to a referendum if 5 percent of the people request a referendum or if 35 percent of Plurinational Legislative Assembly members request a referendum.¹²⁵

Through a referendum, the public rejected a constitutional amendment allowing President Morales to run for a third term under the current constitution (fourth term in total).¹²⁶ However in November 2017, the Constitutional Court ruled presidential (and other) term limits were unconstitutional, making the referendum results irrelevant.¹²⁷

Assessment

While the constitution lists a number of avenues for public participation, the fact that these are not further detailed in legislation hinders people's ability to use them. Some of the most successful forms of participation—protests—are not part of formal mechanisms, and thus might not be as effective with a different government in power.

The constitution calls for a new law establishing a stronger framework for public monitoring and public engagement in governance. The most recent public participation legislation is the

¹¹⁹ Schilling-Vacaflor, "Bolivia's New Constitution," 14–15.

¹²⁰ BOL. CONST., 2009, art. 242, cl. 3.

¹²¹ BOL. CONST., 2009, art. 240, cl. 3. This must be initiated by at least 15 percent of that official's voting constituents.

¹²² BOL. CONST., 2009, art. 411(12).

¹²³ BOL. CONST., 2009, art. 274, 294, cl. 2.

¹²⁴ BOL. CONST., 2009, art. 257, cl. 2.

¹²⁵ BOL. CONST., 2009, art. 259, cl. 1.

¹²⁶ Nicholas Casey, "Bolivian President Concedes Defeat in Term-Limit Referendum," *New York Times* (24 February 2016), <http://www.nytimes.com/2016/02/25/world/americas/bolivian-president-evo-morales-concedes-defeat-in-term-limit-referendum.html>.

¹²⁷ TCP, Sentencia Constitucional Plurinacional 0084/2017.

1994 Law of Popular Participation (LPP).¹²⁸ However, as of September 2016, no law regarding public participation had been passed since the new constitution came into force.

Referendums create an avenue for public influence over the legislature and executive, and they have the capacity to alter the political structure through the creation of autonomous departments. However, the growing power of the executive combined with the lack of legislation on public participation hinders the public's ability to fully make use of these options.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

The constitution recognizes an expansive set of indigenous rights. Indigenous populations are guaranteed representation in legislative and judicial structures, and may set up their own judicial systems. Provisions on territorial autonomy give indigenous groups the ability to govern their own communities.

a. Executive roles and interactions

The constitution mandates that ministers respect the “Pluri-National character of the country.”¹²⁹ It also recognizes all 36 languages of the rural native indigenous peoples as official languages.¹³⁰

The concentration of power within the executive during President Morales’s administrations has limited the ability of indigenous communities to engage in substantive policy making. Some community leaders have criticized the Morales administration’s control over policy making and contend that the administration is not representing the interests of their communities.¹³¹

b. Legislative roles and interactions

The constitution guarantees indigenous representation in legislative structures.¹³² (See *Systems of Election and Selection—Special provisions*.) Indigenous rural districts can choose their own method to elect candidates, and the electoral organ is tasked with ensuring native indigenous norms and procedures are respected in the elections.¹³³ However, many indigenous groups have criticized the reservations—seven seats in the Chamber of Deputies—as not nearly enough to guarantee representation of the diversity of indigenous groups.¹³⁴ Others have not-

¹²⁸ BOL. CONST., 2009, art. 241.

¹²⁹ BOL. CONST., 2009, art. 241.

¹³⁰ BOL. CONST., 2009, art. 5.

¹³¹ Nancy Postero, “Morales’s MAS Government: Building Indigenous Popular Hegemony in Bolivia,” *Latin American Perspectives* 37, no. 3 (May 2010): 27.

¹³² BOL. CONST., 2009, art. 147, cl. 2.

¹³³ BOL. CONST., 2009, art. 211, cl. 1, cl. 2.

¹³⁴ Htun and Ossa, “Political Inclusion of Marginalized Groups,” 15–16.

ed that candidate selection has not occurred according to indigenous norms and procedures but rather been a process of negotiation that has allowed MAS to exert undue influence on the selection.¹³⁵ The constitution also grants indigenous peoples the right to be consulted whenever legislative or administrative measures may affect them.¹³⁶

c. Judicial activities

Each indigenous nation may set up its own courts, which can receive support from the Bolivian State and are granted equal status with other state courts, so public officials must respect and follow the rulings of those courts.¹³⁷ Indigenous courts must, however, respect the constitutional rights outlined in Bolivia's constitution.¹³⁸ Legislation also requires that members of indigenous groups be included in the lists of candidates for election to the Supreme Court of Justice, Constitutional Court, Agro-Environmental Court, and Council of Magistrates.¹³⁹ (See *Systems of Election and Selection—Special provisions.*)

d. Territorial autonomy

The constitution details the political rights of the country's indigenous groups. They have the right of self-determination, and they may administer their own systems of government within an autonomous indigenous territory. (See *Political Structure—Division of powers.*) This allows the indigenous community the exclusive use and exploitation of renewable natural resources existing in their territory and the ability to create and administer their own system of governance.¹⁴⁰ Indigenous communities also have the right to maintain isolation from other communities.¹⁴¹ This recognition of indigenous populations and the ability for rural native indigenous populations to set up and maintain their own autonomous subnational entities has given unprecedented rights to previously unrecognized populations.

However, the promise of autonomy has yet to be realized in many areas. While indigenous rights and autonomy have been a pillar of the governing MAS party's message, in reality MAS has actively opposed the establishment of many autonomous indigenous governing structures. In elections in 11 municipalities in 2009, MAS fielded its own candidates in local elections to try to prevent pro-autonomy candidates from achieving power in municipalities.¹⁴² Implementation of these reforms has also been uneven across the country. Some lowland communities

¹³⁵ Tockman, "Decentralisation," 4–5.

¹³⁶ BOL. CONST., 2009, art. 30, cl. 2.

¹³⁷ BOL. CONST., 2009, art. 179, cl. 1-2, 191, cl. 1, 192, cl. 1-3.

¹³⁸ BOL. CONST., 2009, art. 190, cl. 2.

¹³⁹ Ley del Régimen Electoral 26 of 2010 §79 (Bol.) and Ley del Órgano Electoral Plurinacional 18 of 2010 §12 (Bol.).

¹⁴⁰ BOL. CONST., 2009, art. 30.

¹⁴¹ BOL. CONST., 2009, art. 31.

¹⁴² Htun and Ossa, "Political Inclusion of Marginalized Groups," 14.

have limited knowledge of new structures and institutions, and this limits the impact these reforms can have at addressing the interests of those communities.¹⁴³

There are also tensions between traditional indigenous governance practices and the rights of women and minorities within those communities. While indigenous communities in Bolivia are diverse and not monolithic, some indigenous communities follow decision-making procedures that, in striving to reach consensus, often exclude opposing views and have been characterized as authoritarian and sexist.¹⁴⁴

Assessment

Bolivia's explicit recognition of many indigenous rights and practices, reserved seats for indigenous members of the Legislative Assembly, and options for creating indigenous autonomies represent a comprehensive attempt to accommodate indigenous groups that were marginalized and excluded from political processes for many years. As a result, indigenous representation and participation has significantly increased. Bolivia has many examples of indigenous norms and practices fused with State structures, which has led some to call for greater autonomy. The strong presidency, combined with the power of the MAS party, has meant that, despite constitutional protections, the State has often been able to exert control over the exercise of indigenous rights.

How accommodating these structures are is affected by the reality that traditional methods of decision making and justice in Bolivia can sometimes exclude women's and minority groups' rights.

Conclusion

Bolivia's constitution seeks to transform the structure of the State in an attempt to accommodate its sizeable indigenous populations that historically were marginalized. It provides a number of examples of political accommodation, including recognition of multiple national identities within the State, devolution of significant powers to subnational entities, reserved seats for indigenous populations and women, multiple avenues for public participation, and territorial autonomy provisions so indigenous groups can govern their own communities.

Bolivia's governance arrangements have contributed to greater representation, participation, and economic inclusion. However, many mechanisms have not been defined or fully implemented yet, and this has led to confusion of roles and increased tensions, and has left legislation open to manipulation. Since these reforms are still young, it remains to be seen what

¹⁴³ Victoria Reyes-Garcia et al., "The Uneven Reach of Decentralization: A Case Study among Indigenous Peoples in the Bolivian Amazon," *International Political Science Review* 31, no. 2 (2010), 229–243.

¹⁴⁴ Schilling-Vacaflor, "Bolivia's New Constitution," 17.

many of the arrangements' true effects on decentralization, representation, public participation, and respect for indigenous rights will be.

References

Legal References

BOL. CONST., 2009.

Framework Law of Autonomies and Decentralization Act 31 of 2010 (Bol.).

Law on State Budgets Act 62 of 2010 (Bol.).

Ley de Partidos Políticos 1983 of 1999 (Bol.).

Ley del Régimen Electoral 26 of 2010 (Bol.).

Tribunal Constitucional Plurinacional [TCP] [Plurinational Constitutional Court], Sentencia Constitucional Plurinacional 0084/2017 (Bol.).

Nonlegal References

Albó, Xavier, and Carlos Romero. *Autonomías Indígenas en la Realidad Boliviana y su Nueva Constitución*. La Paz: Vicepresidencia del Estado Plurinacional de Bolivia, 2009.

Andean Information Network. "Indigenous Autonomies in Bolivia; Part I: Legal Guidelines and Gaps." 3 February 2012. <http://ain-bolivia.org/2012/02/indigenous-autonomies-in-bolivia-part-i-legal-guidelines-and-gaps/>.

BBC. "Profile: Bolivia's President Evo Morales." *BBC News* (22 February 2016). <http://www.bbc.com/news/world-latin-america-12166905>.

Cameron, John D. "Is this What Autonomy Looks Like? Tensions and Challenges in the Construction of Indigenous Autonomy in Bolivia." 2010 Meetings of the Latin American Studies Association. Toronto, Canada, 2010. <http://lasa.international.pitt.edu/members/congress-papers/lasa2010/files/2631.pdf>.

Carter Center, The. "Analysis of the Electoral Legal Framework." Observation Mission of the Bolivia Voter Registration: The Final Report. The Carter Center, 2009. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReportBoliviaVoterRegistration2009.pdf.

Chávez, Franz. "BOLIVIA: Unprecedented Gender Parity in Cabinet." Inter Press Service News Agency (27 January 2010). <http://www.ipsnews.net/2010/01/bolivia-unprecedented-gender-parity-in-cabinet/>.

CNE. "¿Que Elegiremos el 4 de Abril?" 2010. http://www.cne.org.bo/proces_electoral/Municipals2010/boletines.aspx.

Espinoza, Antonio, and Stephen Garvey. "Electoral Fairness Research." The Foundation for Democratic Advancement, 2011. <http://democracychange.com/Bolivia%20research.pdf>.

Faguet, Jean-Paul. "Can Subnational Autonomy Strengthen Democracy in Bolivia?" *Publius: The Journal of Federalism* 44, no. 1 (2014): 51–81.

Faguet, Jean-Paul. "Impacts and Consequences of the New Regime of Autonomies in Bolivia: Elements for a Discussion." Inter-American Development Bank. Policy Brief No. 122. 2011. <http://eprints.lse.ac.uk/37513/>.

- Flesken, Anaid. "Bolivia's Regional Elections 2010." Exeter Centre for Ethno-Political Studies, University of Exeter, UK, 2010.
- Frank, Jonas, Sr. "Towards a Fiscal Pact: The Political Economy of Decentralization in Bolivia." World Bank (2010). http://siteresources.worldbank.org/EXTLACREGTOPPUBSECGOV/Resources/Bolivia_Towards_a_Fiscal_Pact-Jonas_Frank_2010.pdf
- Hertzner, Doug. "Debunking Myths Part II: Bolivia's Autonomy Initiatives." Andean Information Network, 2010. <http://ain-bolivia.org/2010/02/debunking-myths-part-ii-bolivia%E2%80%99s-autonomy-initiatives/>.
- Htun, Mala, and Juan Pablo Ossa. "Political Inclusion of Marginalized Groups: Indigenous Reservations and Gender Parity in Bolivia." *Politics, Groups, and Identities* 1, no. 1 (2013): 4–25.
- IMF. "Bolivia: Selected Issues." International Monetary Fund. International Monetary Fund Country Report No. 10/29 (2010). <http://www.imf.org/external/pubs/ft/scr/2010/cr1029.pdf>.
- IMF. "IMF Executive Board Concludes 2012 Article IV Consultation with Bolivia." International Monetary Fund, 7 June 2012. <http://www.imf.org/external/np/sec/pn/2012/pn1257.htm>.
- International Crisis Group. "Bolivia: Rescuing the New Constitution and Democratic Stability." Latin America Briefing 18, 19 June 2008. <http://www.crisisgroup.org/en/regions/latin-america-caribbean/andes/bolivia/b018-bolivia-rescuing-the-new-constitution-and-democratic-stability.aspx>.
- Inter-Parliamentary Union. "Women in National Parliaments." 1 September 2016. <http://www.ipu.org/wmn-e/classif.htm>.
- Kohl, Benjamin. "Bolivia under Morales." *Latin American Perspectives*. 172, 37.3 (2010): 107–122. www.temple.edu/gus/kohl/.../KOHLEBUMworkinprogress.pdf.
- Maella, Luis. "Wilma Velasco: Las sustituciones de los candidatos afectarían la representación de las mujeres." *La Razón* (27 March 2015). http://www.la-razon.com/nacional/animal_electoral/Subnacionales-Wilma_Velasco-sustituciones-candidatos-representacion-mujeres_0_2241975838.html.
- Mallén, Patricia Rey. "Bolivian Census Highlights How Changes In Bolivian Demographics Might Affect President Evo Morales' Power Base." *International Business Times* (7 August 2013). <http://www.ibtimes.com/bolivian-census-highlights-how-changes-bolivian-demographics-might-affect-president-evo-morales>.
- Miroff, Nick. "Evo Morales, Bolivia's Powerful Incumbent, Plays Politics at High Altitude." *Washington Post* (6 October 2014). https://www.washingtonpost.com/world/evo-morales-bolivas-powerful-incumbent-plays-politics-at-high-altitude/2014/10/05/f7c8d330-7f04-427b-9fb4-2157378dbecd_story.html.
- Postero, Nancy. "Morales's MAS Government: Building Indigenous Popular Hegemony in Bolivia." *Latin American Perspectives* 37, no. 3 (May 2010): 18–34.
- Postero, Nancy. "The Struggle to Create a Radical Democracy in Bolivia." *Latin American Research Review* 45 (2010): 59–78.
- Rice, Roberta. "Intercultural Democracy and Civil Society Participation in the New, Decolonized Bolivia." In *Re-Imagining Community and Civil Society in Latin America and the Caribbean*, edited by Roberta Rice and Gordana Yovanovich, 129–142. New York: Routledge, 2017.
- Rice, Roberta. "Regional Autonomy and Municipal Politics in Post-Neoliberal Bolivia." American Political Science Association 2011 Annual Meeting Paper. <https://papers.ssrn.com/abstract=1901983>.
- Schilling-Vacaflor, Almut. "Bolivia's New Constitution: Toward Participatory Democracy and Political Pluralism?" *European Review of Latin American and Caribbean Studies* (April 2011): 3–22.

Tockman, Jason. "Decentralisation, Socio-territoriality and the Exercise of Indigenous Self-governance in Bolivia." *Third World Quarterly* 37, no. 1 (2016): 153–171.

Verdugo, Sergio. "How the Bolivian Constitutional Court Helped the Morales Regime to Break the Political Insurance of the Bolivian Constitution." I·CONnect. 10 December 2017.

<http://www.iconnectblog.com/2017/12/how-the-bolivian-constitutional-court-helped-the-morales-regime-to-break-the-political-insurance-of-the-bolivian-constitution/>.

WITW Staff. "Bolivian President Calls Health Minister a Lesbian for Talking to Another Woman." *Women in the World Media* (19 November 2015). <http://nytlive.nytimes.com/womenintheworld/2015/11/19/bolivian-president-calls-health-minister-a-lesbian-for-talking-to-another-woman/>.

World Bank. "Bolivia: Toward a New Social Contract Options for the Constituent Assembly." World Bank—Bolivia, Ecuador, Peru, Venezuela Country Management Unit, 2006.

http://siteresources.worldbank.org/BOLIVIA/Resources/Bolivia_CSA_Report.pdf.

BOTSWANA

Executive Summary

This case study focuses on Botswana's governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and nonaccommodating arrangements to consider.

In some respects, Botswana's governance structures are not particularly accommodating. It has a centralized governance structure, and local governance institutions have limited authority and financial resources. The first-past-the-post (FPTP) electoral model for legislative elections, coupled with a powerful executive structure, have contributed to the Botswana Democratic Party's dominant role in national government since independence.

Nonetheless, the political system has been stable, and international analysts highlight Botswana as an example of good governance in Africa.¹⁴⁵ While Botswana's small population and productive economy contribute to the country's stability, there are also mechanisms within the political system that promote good governance through the inclusion of various interests. Specifically, the integration of traditional and customary arrangements into the political system—such as the Ntlo ya Dikgosi (House of Chiefs) in the national legislature—and opportunities for public participation through kgotlas, or traditional local-level forums, promote political accommodation.

¹⁴⁵ Since 2000, the Ibrahim Index of African Governance has ranked Botswana as one of the top five countries in mainland Africa in terms of quality of governance, and Transparency International's annual "Corruption Perceptions Index" regularly has ranked Botswana as the country with the lowest levels of perceived corruption in Sub-Saharan Africa. See Mo Ibrahim Foundation, "2015 Ibrahim Index of African Governance" (2015) <http://mo.ibrahim.foundation/iia> and Transparency International, "Corruption Perceptions Index," <http://www.transparency.org/research/cpi>.

Table 4—Accommodating and Less Accommodating Aspects in Botswana

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
BOTSWANA	<ul style="list-style-type: none"> • Integration of traditional leaders into national upper house • Mechanisms for public participation[†] 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • Limited checks on national executive • Poor accommodation of women, minority tribes, opposition

[†] However, this is mostly through *kgotlas*, traditional local-level forums, which tend not to be welcoming to women and minority tribes.

Background

Botswana is a former British colony in southern Africa with a population of approximately two million; its population is one of the smallest countries on the continent.¹⁴⁶ Upon independence in 1966, it was one of the poorest countries in the region. Since then, it has emerged as one of the most politically stable and economically prosperous countries in Africa. While Botswana has not experienced large-scale violent conflict during its time as an independent State, there are tensions between the officially recognized Tswana tribes and its many minority tribes.¹⁴⁷ Botswana has consistently held multiparty elections, although the Botswana Democratic Party has regularly won elections at the national level. Botswana has had one of the highest rates of per capita growth in the world, largely fueled by diamond exports.¹⁴⁸

Political institutions and governance in Botswana have evolved since the country's independence through court rulings, constitutional amendments, and national referendums. Overall, political institutions have channeled and addressed issues facing the country successfully, demonstrated by the absence of significant political or ethnic violence.

¹⁴⁶ The World Bank, "World Bank Open Data Project: Population, total, Botswana," <http://data.worldbank.org/indicator/SP.POP.TOTL?locations=BW&view=map>.

¹⁴⁷ Uppsala Conflict Data Program, "Botswana: Number of Deaths," <http://ucdp.uu.se/#country/571>; Lydia Nyati-Ramahobo "Minority Tribes in Botswana: The Politics of Recognition," *Minority Rights Group International* (2008): 1.

¹⁴⁸ Stephanie Hanson, "Botswana: An African Success Story Shows Strains," *Council on Foreign Relations Background* (10 January 2008), <http://www.cfr.org/botswana/botswana-african-success-story-shows-strains/p15108>.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.¹⁴⁹ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests. The framework consists of six focal areas or 'Strands', each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where Botswana has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

Botswana is a unitary state with a strong central government. While local governance institutions increase opportunities for representation, limited decentralization has not significantly enhanced opportunities for political accommodation. However, Botswana's small population means that decentralization may not be necessary for accommodation, as the people are already close to the government.

¹⁴⁹ Here, 'representatives' is used broadly to mean political, community and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

a. Structure

Botswana is a unitary state that does not provide for decentralization in the constitution. There is, however, limited decentralization through several pieces of legislation that create a framework for local governance. The Local Government Act and the Townships Act establish district councils in each district¹⁵⁰ and urban councils in five towns and cities.¹⁵¹ The Tribal Land Act¹⁵² and Bogosi Act¹⁵³ are the basis for land boards and tribal administrations in each tribal area. (See *Traditional and Customary Arrangements*.) These pieces of legislation, taken together, form the four pillars of local government in Botswana: 1) councils; 2) district administration; 3) land boards; and 4) tribal administration.¹⁵⁴

Prospect for Political Accommodation: Land Boards and Tribal Administrations

Botswana recognizes traditional governance structures on the local level through two primary institutions: land boards and tribal administrations. Land boards serve to administer communal tribal lands, while tribal administrations grant formal recognition to the rule of traditional chiefs.

At the national level, Botswana is governed by a head of state and government (whose title is president but whose responsibilities are similar to a prime minister), and a bicameral legislature. The legislature is composed of the National Assembly, which holds legislative power, and the House of Chiefs, which advises on tribal affairs.

The establishment of elected subnational government institutions has increased representation at the local level. For instance, opposition parties have never succeeded in obtaining a majority in the National Assembly but have held majorities in several urban councils.¹⁵⁵ The establishment of tribal administrations, including formal recognition of tribal communities and traditional leadership, has also increased local representation.

Land boards enable local administration of tribal lands, in theory bringing government institutions and governance decisions closer to communities. Yet, as land boards have played an increasing management role, the role of tribal chiefs has diminished. Land boards have come under criticism for lacking local political accountability, particularly because they act inde-

¹⁵⁰ Local Government (District Council) Act, 1965, arts. 4, 59.

¹⁵¹ Townships Act of 1965.

¹⁵² Tribal Land Act of 1970.

¹⁵³ Bogosi Act of 2008.

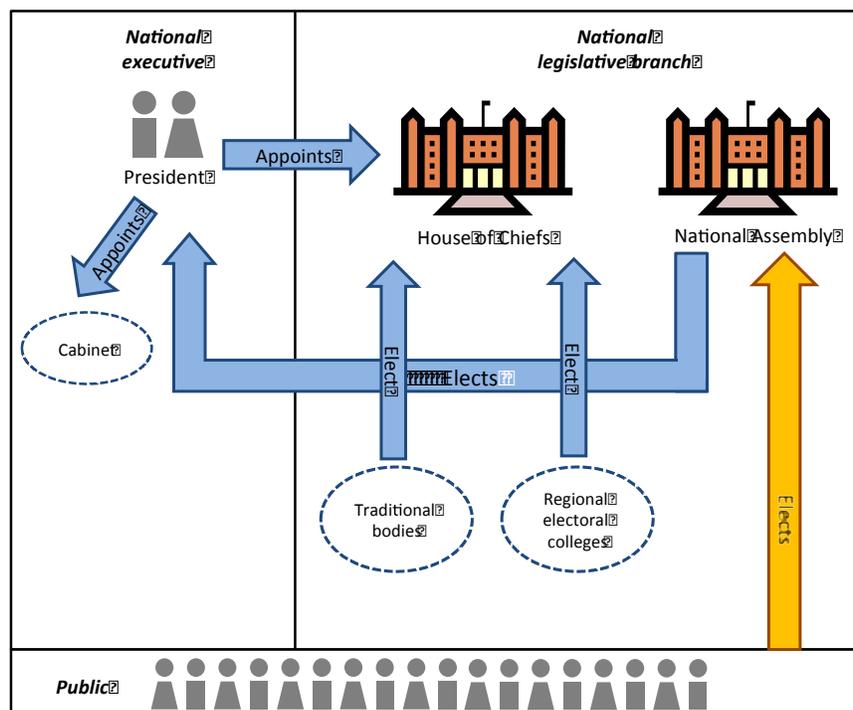
¹⁵⁴ Keshav C. Sharma, "Role of Traditional Structures in Local Governance for Local Development: The Case of Botswana," Community Empowerment and Social Inclusion Program, *World Bank Institute* (2004): 19.

¹⁵⁵ Kempe Ronald Hope, Sr., "Decentralisation and Local Governance Theory and the Practice in Botswana," *Development Southern Africa* 17, no. 4 (2000): 527.

pendently of the district councils and tribal administrations.¹⁵⁶ This criticism of land boards demonstrates that interactions between branches of local government could be strengthened.

While the four local governance institutions are not particularly integrated, they all fall under the Ministry of Local Government. The Ministry of Local Government is part of the national executive, and the Ministry's mandate includes oversight and support of local government administration and social service provision.¹⁵⁷ The minister of local government holds significant authority over the composition and operations of local government institutions.

Figure 5—Botswana's Political Structure



b. Division of powers

Competencies in Botswana are centralized in the national government. District councils have been delegated authority in five main competency areas through legislation: primary education; health and sanitation; road construction and maintenance; water supply; and social and community development.¹⁵⁸ This is a very limited form of decentralization, which is not entrenched in the constitution and delegates the administrative and implementation aspects of service provision rather than the policy development or curriculum development aspects. Ad-

¹⁵⁶ Richard White, "Tribal Land Administration in Botswana," *Institute for Poverty, Land and Agrarian Studies* (2009): 4–5.

¹⁵⁷ Ministry of Local Government, "Mandate," Republic of Botswana, <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Local-Government-MLG1/About-MLG/Mandate/>.

¹⁵⁸ Local Government (District Council) Act, 1965, arts. 31, 33, First Schedule.

ditionally, the Local Government Act specifies that a number of these competencies are only delegated to district councils when they are not undertaken by another authority or government institution.¹⁵⁹ These provisions have enabled the national government to recentralize certain services, including healthcare and water supply, as well as management of civil service personnel.¹⁶⁰ The dominance of the national government is reinforced by the fact that the minister of local government must approve district council laws, and the president can amend or suspend them.¹⁶¹

Traditional tribal administrations headed by chiefs have limited formal competencies over tribal areas.¹⁶² (See *Traditional and Customary Arrangements*.) The minister of local government must recognize the appointment of chiefs and has the power to remove them, withdraw recognition, or give them instructions with which they must comply.¹⁶³ That recognition of chiefs lies with the government rather than the tribes has generated criticism, and there have been cases of disagreements between the government and tribes over individual chiefs.¹⁶⁴

c. Resource distribution and control

The national government controls most revenue streams in Botswana, largely through its role in the diamond sector. The national government has managed diamond revenues centrally since independence, and the government established its own diamond trading company in September 2013.¹⁶⁵ Diamonds accounted for more than 80 percent of total export earnings that year.¹⁶⁶

As a result of its control of these revenue streams, the national government maintains control over all decisions about budgets and government expenditures. This is reinforced by the fact that local government institutions have limited or no authority to raise revenue. Urban councils may raise revenue through property taxes, and both district and urban councils may raise revenue through trade licenses, clinic fees, and service fees. However, councils depend on transfers from the national government for a significant percentage of their revenue; councils re-

¹⁵⁹ Local Government (District Council) Act, 1965, arts. 31, 33, First Schedule.

¹⁶⁰ Amy Poteete, Bashi Mothusi, and Daniel Molaodi, "Comparative Assessment of Decentralization in Africa: Botswana In-Country Assessment Report," *United States Agency for International Development* (2010): 10–13.

¹⁶¹ Local Government (District Council) Act, 1965, arts. 39, 40.

¹⁶² Hope, "Decentralisation," 524–525.

¹⁶³ Bogosi Act of 2008, arts. 4–6, 13, 15, 20.

¹⁶⁴ Gretchen Bauer, "What Is Wrong with a Woman Being Chief? Women Chiefs and Symbolic and Substantive Representation in Botswana," *Journal of Asian and African Studies* 51, no. 2 (2014): 226.

¹⁶⁵ George J. Honde and Fitsum G. Abraha, "Botswana 2015," *African Economic Outlook*, African Development Bank, Organization for Economic Cooperation and Development, United Nations Development Programme (2015): 7. <http://www.bw.undp.org/content/dam/botswana/docs/Publications/Botswana%60s%20GDP%202015.pdf>.

¹⁶⁶ Honde and Abraha, "Botswana 2015," 7.

ceived 70 to 80 percent of revenue from the national government from the years 2005/2006 through 2009/2010.¹⁶⁷

Assessment

Botswana is characterized as a highly centralized State with a relatively stable and functional political structure. Typically, decentralization is a mechanism that can bring governance closer to communities and allow community members to have direct influence on the public decisions that affect their lives. However, given Botswana's very small population and geographical size, the lack of decentralization has not generally prevented constituencies' interests from being accommodated.

2. SYSTEMS OF ELECTION AND SELECTION

Elections in Botswana have been successful technical exercises that produced stable governments. However, aspects of the electoral system have been criticized for limiting representation of opposition parties, women, and minority tribes. The first-past-the-post system of elections for members of the National Assembly hinders accommodation by underrepresenting opposition parties. The selection for inclusion in the House of Chiefs contributes to women being severely underrepresented in the legislature and has historically excluded non-Tswana tribes.

a. System design

Elections for the president and the National Assembly (Botswana's lower house) are held every five years or within 60 days of the dissolution of parliament.¹⁶⁸ The president is indirectly elected by the National Assembly.¹⁶⁹ The president appoints a cabinet of ministers from among the members of the National Assembly.¹⁷⁰

Of the National Assembly's 61 members, 57 are directly elected by plurality from single-member constituencies,¹⁷¹ (also known as 'first-past-the-post' or FPTP), and four 'specially elected members' are indirectly elected by the other members.¹⁷²

¹⁶⁷ Honde and Abraha, "Botswana 2015," 15.

¹⁶⁸ BOTSWANA CONST., 1966, art. 90.

¹⁶⁹ BOTSWANA CONST., 1966, art. 32.

¹⁷⁰ BOTSWANA CONST., 1966, art. 42.

¹⁷¹ The Judicial Service Commission appoints a temporary Delimitation Commission to revise constituency boundaries every five to ten years. Constituencies are of approximately equal size while taking into account factors such as communities of interest and boundaries of tribal territories. BOTSWANA CONST., 1966, art. 63–65.

¹⁷² The president and each elected member can nominate four candidates to be specially elected members; each elected member can then vote for four of these candidates, and the top four candidates with the most votes are

The House of Chiefs forms the upper house of the legislature and consists of at least 33 and no more than 35 members: up to 12 chiefs from 12 constitutionally recognized regions;¹⁷³ five members appointed by the president; and up to 20 members selected by regional electoral colleges.¹⁷⁴ The members serve five-year terms and cannot be a member of a political party.¹⁷⁵

In practice, the FPTP system for National Assembly elections has overrepresented the ruling party and underrepresented opposition parties in relation to their share of the popular vote.¹⁷⁶ The 'specially elected members' in the National Assembly and government-appointed members of district and urban councils further the overrepresentation of the ruling party.¹⁷⁷ These structural components of the electoral system have contributed to the political dominance of the Botswana Democratic Party at the national level.

The process of selection of chiefs themselves has a significant impact on representation. Chieftaincy traditionally is hereditary, although today some chiefs are elected.¹⁷⁸ Chieftaincy historically was reserved for men. However, opportunities for women to serve as chiefs have increased in recent years. The first woman was elected to the House of Chiefs in 1999 and held the seat for a five-year term.¹⁷⁹ The first woman to join the House of Chiefs as a Paramount Chief joined in 2004, serving in one of the permanent seats.¹⁸⁰ While chieftaincy has slowly been opening to women, chiefs remain predominantly men.

Representation of minority, non-Tswana tribes within the House of Chiefs has also generated intense debate. The House of Chiefs originally consisted of 15 members: the chiefs of the eight constitutionally recognized Tswana tribes as permanent members; four members elected by the subchiefs of the former crown lands, which were dominated by minority tribes; and three

elected. Schedule to the Constitution of Botswana, Election of Specially Elected Members of the National Assembly, art. 4.

¹⁷³ For areas other than Ghanzi, Chobe, Kgalagadi, and North East, the permanent members must be a chief and are selected "according to the established norms and practices of those areas." For Ghanzi, Chobe, Kgalagadi, and North East, permanent members must be a chief and are selected by the chiefs of those areas. BOTSWANA CONST., 1966, art. 78, cl. 1-2.

¹⁷⁴ The regional electoral colleges are composed of headmen, including chiefs, and are chaired by a government official appointed by the minister of local government. BOTSWANA CONST., 1966, arts. 77, 78 (amendment 2005).

¹⁷⁵ BOTSWANA CONST., 1966, art. 82, cl. 1(a)(d).

¹⁷⁶ In 2009, the BDP won 53.26 percent of the popular vote but 78.95 percent of the seats in the National Assembly. The second place party won 21.94 percent of the popular vote but 10.53 percent of the seats. Electoral Institute for Sustainability of Democracy in Africa, "Botswana: 2009 National Assembly election results" (February 2010), <http://www.eisa.org.za/WEP/bot2009presults.htm>.

¹⁷⁷ In 2009, only 7.1 percent of appointees were from the opposition, even though the opposition held 32.2 percent of elected council seats. Poteete, Mothusi, and Molaodi, "Comparative Assessment of Decentralization in Africa," 21–22.

¹⁷⁸ Mpho Molomo, "Chieftainship (Bogosi) Endures Despite Democratic Consolidation in Botswana," *Afrobarometer Briefing Paper No. 130* (February 2014): 2, <http://afrobarometer.org/sites/default/files/publications/Briefing%20paper/afrobriefno130.pdf>.

¹⁷⁹ Bauer, "What Is Wrong," 228.

¹⁸⁰ Bauer, "What Is Wrong," 228.

members (who did not need to have tribal associations) elected by the other 12 members of the House of Chiefs.¹⁸¹ This arrangement attracted criticism for discriminating against non-Tswana tribes. Tswana chiefs were guaranteed a majority of seats and held these seats permanently, while most tribes were excluded. In 2001, the High Court ruled that the exclusion of certain tribes from the House of Chiefs was discriminatory and unjustified,¹⁸² which resulted in a constitutional amendment that changed the system of selection of members of the House of Chiefs in 2005. However, critics argue that the 12 regions specified in the constitutional amendment are based around the eight Tswana tribes and four minority-dominated crown lands as before, resulting in no change in those seats in practice. The degree to which minority tribes are represented in the House of Chiefs therefore continues to be debated.

b. Political parties

Botswana has few restrictions on political parties, and registration of a political party is relatively easy. All the main political parties select candidates through primary elections. However, political parties have little formal control over their elected representatives since representatives can switch parties without losing their seats.¹⁸³ And even though Botswana is a multiparty system with few formal restrictions on political parties, the Botswana Democratic Party has dominated politics at the national level, as described above.

c. Special provisions

There are no provisions within Botswana's constitution to promote the representation of women or minority tribes. Women represent less than ten percent of parliamentarians as of 2015.¹⁸⁴ The two main political parties introduced 30 percent quotas for women on electoral lists in 1999, but have not always met this target.¹⁸⁵

Assessment

The system of election and selection in Botswana does not promote equity of representation. FPTP systems of election tend to drown out the voices of minority constituencies, and this is evident in the makeup of the National Assembly. Because the president is indirectly elected by the already noninclusive National Assembly, the Botswana Democratic Party's dominance of power is reinforced.

¹⁸¹ BOTSWANA CONST., 1966, art. 77 (prior to 2005 amendment).

¹⁸² *Kamanako and Others v. Attorney-General and Another (2001)*, High Court of Botswana. Refworld, "World Directory of Minorities and Indigenous Peoples – Botswana: Overview," 2008, <http://www.unhcr.org/refworld/country,,,COUNTRYPROF,BWA,,4954ce1b23,0.html>.

¹⁸³ Gloria Somolekae, "Political Parties in Botswana," *EISA Research Report No. 27*, 2005, 20–25.

¹⁸⁴ World Bank Open Data, "Proportion of Seats Held by Women in National Parliaments: Botswana," World Bank Group, <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=BW>.

¹⁸⁵ Quota Project, "Voluntary Political Party Quotas," <http://www.quotaproject.org/systemParty.cfm>.

Although women now hold permanent seats within the House of Chiefs and also have held elected seats, customs and practices related to the system of selection of chiefs limit opportunities for women to serve as representatives. In terms of minority tribes, the 2001 High Court finding of discrimination within the system of selection of members of the House of Chiefs was significant, although the effect of the constitutional amendment meant to increase minority representation remains unclear. Therefore, while there have been steps toward greater inclusion within the House of Chiefs, overall the prospects for political accommodation within the institution remain relatively low.

3. EXECUTIVE BRANCH

The president of Botswana is head of State and head of government, commander in chief, and an ex officio member of the National Assembly. There is significant political power vested in the office of the president, and, while the National Assembly has successfully pressured the government to introduce or withdraw certain laws, in practice there are few checks on the executive.

a. Structure and competencies

Botswana is a parliamentary system, meaning that the executive is responsible to the legislature. The head of the executive (the president) has the same responsibilities as a prime minister.¹⁸⁶ The president of Botswana is head of State and head of government, commander in chief, and an ex officio member of the National Assembly.¹⁸⁷ The president cannot hold office for more than ten years total and must stand for reelection whenever the National Assembly is dissolved.¹⁸⁸

The president can, at any time, discontinue or dissolve the National Assembly.¹⁸⁹ The president also can appoint the chief justice of the High Court and the president of the Court of Appeal.¹⁹⁰

b. Checks on the executive

The legislative and judicial branches can provide checks on the executive. Constitutionally, the National Assembly can pass a vote of no confidence in the government with a simple majority, which causes the dissolution of parliament and resignation of the president.¹⁹¹ The High Court

¹⁸⁶ South Africa is another example of a parliamentary republic with a powerful president.

¹⁸⁷ BOTSWANA CONST., 1966, arts. 30, 48, 57.

¹⁸⁸ BOTSWANA CONST., 1966, art. 34.

¹⁸⁹ BOTSWANA CONST., 1966, art. 91.

¹⁹⁰ BOTSWANA CONST., 1966, art. 96, 100.

¹⁹¹ BOTSWANA CONST., 1966, art. 92.

and Court of Appeal both have the power to interpret the constitution, which they can use to overturn executive decisions.¹⁹²

Although the legislature is a professional body with relatively strong capacity (see *Legislative Branch*), many of the constitutional checks between the legislature and executive are not employed in practice. There even seems to be some disagreement within the political discourse on whether the provision on a vote of no confidence can be exercised.¹⁹³ Nonetheless, the National Assembly has successfully pressured the government to introduce or withdraw certain laws. The National Assembly also has held the executive accountable in limited ways through parliamentary procedures such as ‘question time’, during which any member of parliament can question cabinet ministers.¹⁹⁴

The courts have served as the primary institutional check on the executive and have been largely effective in this role.¹⁹⁵

Assessment

Botswana is an example of a strong executive with power centralized in one person. While strong executives do not necessarily undermine political accommodation, a combination of structural factors within Botswana’s political system results in an executive structure that does not particularly promote equity of representation and decision making. Specifically, a parliamentary system with a single dominant party combined with negative incentives for the legislature to exercise checks on the executive has led to a powerful president in Botswana.

4. LEGISLATIVE BRANCH

The legislature in Botswana is composed of the National Assembly (the lower house), which holds legislative power, and the House of Chiefs (the upper house), which advises on tribal affairs. The House of Chiefs is a measure to try to accommodate traditional leaders into the formal governance system. However, it has historically been dominated by members of the dominant ethnic group and by men, limiting how accommodating it is in practice.

¹⁹² BOTSWANA CONST., 1966, arts. 105–106.

¹⁹³ Amy R. Poteete, “Renegotiation of Executive Powers and Executive-Legislative Relations in Botswana,” Paper presented at the Annual Meeting of the American Political Science Association (Washington, DC, September 2010): 5, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1643102.

¹⁹⁴ Charles Manga Fombad, “The Separation of Powers and Constitutionalism in Africa: The Case of Botswana,” *Boston College Third World Law Journal* 25, no. 2 (2005): 320–322, 325–326.

¹⁹⁵ Fombad, “Separation of Powers,” 341.

a. Structure and competencies

Botswana has a bicameral legislature: the National Assembly holds legislative power, while the House of Chiefs advises on tribal affairs.

The National Assembly consists of 61 members, and the president and attorney general are nonvoting ex officio members.¹⁹⁶ The National Assembly serves for a period of five years unless dissolved earlier or if Botswana is at war and it extends its term.¹⁹⁷

Prospect for Political Accommodation: House of Chiefs

Botswana's House of Chiefs aims to accommodate traditional leaders through an advisory upper chamber in the legislature. Historically, the House of Chiefs has been dominated by traditional leaders of the dominant ethnic group, limiting the degree to which the institution supports accommodation in practice. More recently, changes to the process for selecting chiefs has increased opportunities for women and may support the inclusion of minority tribes.

The House of Chiefs consists of at least 33 and no more than 35 members. The 12 chiefs from the constitutionally recognized regions are permanent members, while the other members serve for five years unless the House of Chiefs is dissolved earlier.¹⁹⁸

In practice, the legislature in Botswana is a professional body with relatively strong capacity. The National Assembly convenes regularly¹⁹⁹ and the House of Chiefs convenes three times a year for a period of two weeks at each sitting.²⁰⁰ Since there are no term limits for parliamentarians and individuals run regularly for reelection, it is possible for parliamentarians to build knowledge and experience over time.²⁰¹

b. Decision-making rules and procedures

The National Assembly can pass legislation or a vote of no confidence by simple majority and constitutional amendments by two-thirds majority.²⁰² The National Assembly must consult the House of Chiefs before consideration of legislation related to tribal concerns.²⁰³ (See *Traditional and Customary Arrangements*.)

¹⁹⁶ BOTSWANA CONST., 1966, arts. 57, 58.

¹⁹⁷ The National Assembly can extend its term by up to one year at a time for a maximum of five years. BOTSWANA CONST., 1966, art. 91.

¹⁹⁸ BOTSWANA CONST., 1966, arts. 77, 78, 82 (amended 2005).

¹⁹⁹ Poteete, "Renegotiation of Executive Powers," 6.

²⁰⁰ Bauer, "What Is Wrong," 227.

²⁰¹ Poteete, "Renegotiation of Executive Powers," 6.

²⁰² BOTSWANA CONST., 1966, arts. 87, 89, 92.

²⁰³ BOTSWANA CONST., 1966, art. 88.

c. Checks on the legislature

The National Assembly cannot consider legislation to increase taxes or revenues or related to budgetary payments or debt without the recommendation of the president.²⁰⁴ The president, though, cannot veto bills passed by the National Assembly, but can withhold assent. In this case, the National Assembly can resubmit the bill to the president in six months, and if the president again withholds consent, parliament is automatically dissolved.²⁰⁵

As noted above, many of the constitutional checks between the legislature and executive are not employed in practice, and the executive has substantial influence over the lawmaking process.

The High Court and Court of Appeal both have the power to interpret the constitution, which they can use to overturn legislative decisions.²⁰⁶

Assessment

Many of the constitutional checks between the legislature and executive are not employed in practice, and the executive has substantial influence over the lawmaking process. The integration of traditional leaders as an advisory upper chamber in the legislature is important for inclusion; however, the degree to which the House of Chiefs is representative is limited by the nature of the chieftaincy structure in Botswana, since chiefs are predominantly men.

5. PUBLIC PARTICIPATION

Kgotlas, traditional local-level forums, offer a venue for public participation in national and local governance. While they serve to connect the government to the general public, there has been decreasing turnout and lack of participation among minority groups, limiting the degree to which kgotlas support political accommodation in practice.

a. Engagement with the executive

The Bogosi Act recognizes the responsibility of chiefs to convene *kgotlas*, traditional local-level forums, which provide opportunities for public engagement with national and local politicians.²⁰⁷ (See *Traditional and Customary Arrangements*.)

For example, ministers and civil servants use *kgotlas* to explain government policies and solicit feedback from local constituencies.²⁰⁸

²⁰⁴ BOTSWANA CONST., 1966, art. 88.

²⁰⁵ BOTSWANA CONST., 1966, art. 87.

²⁰⁶ BOTSWANA CONST., 1966, arts. 105–106.

²⁰⁷ Bogosi Act of 2008, art. 17.

Although *kgotlas* are a longstanding traditional institution in Botswana, they witnessed declining public participation in the 2000s.²⁰⁹ One potential reason for the decline in public participation includes enforcement of strict dress codes, noted in a number of recent instances, which disproportionately affect women and youth.²¹⁰ *Kgotlas* have also received criticism for excluding non-Tswana tribes²¹¹ and for being dominated by both the ruling party and men.²¹²

b. Production of legislation

Parliamentarians use *kgotlas* to explain the roles and responsibilities of the national legislature and government policies. *Kgotlas* also provide a platform to solicit feedback on policies. Parliamentarians typically address a series of *kgotla* meetings in their electoral district when parliament is in recess.²¹³

The National Legislature also has constituency offices around the country to facilitate interaction between parliamentarians and their constituents.²¹⁴

c. Local-level decision making

District councils provide an avenue for public participation in local governance. All district council meetings must be open to the press and public unless a majority of members vote to have a closed meeting.²¹⁵

Assessment

Kgotlas provide opportunities for exchange between ministers, civil servants, and parliamentarians, respectively, and the general public. Botswanans enjoy a high level of access to different government representatives and a number of opportunities to provide these representatives with feedback through *kgotlas*, which contribute to political accommodation.

However, turnout for *kgotlas* has decreased, and the lack of participation by women and minority tribes in *kgotlas* suggests that Botswanans are not using these forums to accommodate views of different constituencies. The lack of alternative mechanisms for participation means *kgotlas* will need to become more inclusive to truly accommodate diverse interests.

²⁰⁸ David Sebudubudu and Bertha Z. Osei-Hwedie, "Pitfalls of Parliamentary Democracy in Botswana," *Afrika Spectrum* 41, no. 1 (2006): 44.

²⁰⁹ Sebudubudu and Osei-Hwedie, "Pitfalls of Parliamentary Democracy," 44.

²¹⁰ Bauer, "What Is Wrong," 230.

²¹¹ Tlanelo Mompoti and Gerard Prinsen, "Ethnicity and Participatory Development Methods in Botswana: Some Participants Are to be Seen and Not Heard," *Development in Practice* 10, no. 5 (2000): 631.

²¹² Sebudubudu and Osei-Hwedie, "Pitfalls of Parliamentary Democracy," 44–45.

²¹³ Sebudubudu and Osei-Hwedie, "Pitfalls of Parliamentary Democracy," 44.

²¹⁴ Sebudubudu and Osei-Hwedie, "Pitfalls of Parliamentary Democracy," 45.

²¹⁵ Local Government (District Councils) Act, 1965, arts. 20, 24.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

The incorporation of traditional and customary arrangements into the modern political system is integral to political accommodation in Botswana. The State works through traditional and customary institutions to bring governance closer to communities and enable citizens to have direct influence in public decisions.

a. Executive roles and interactions

The chieftaincy structure has broad legitimacy in Botswana, and traditional leaders are trusted more than almost any other political institution in the country.²¹⁶ The government has sought to accommodate tribes through institutions including land boards, tribal administrations, the House of Chiefs, and *kgotlas*. Although the government traditionally has included only the Tswana tribes, there has been internal and external pressure to incorporate a wider range of tribes.²¹⁷

The Chieftainship Act, passed in 1974, first provided for the formal recognition of tribal administrations.²¹⁸ Yet this act effectively prevented the recognition of non-Tswana tribes.²¹⁹ As a result, in 2008 it was replaced by the Bogosi Act, which allows the minister of local government to recognize non-Tswana tribes.²²⁰ The Bogosi Act codifies the responsibility of chiefs to promote the welfare of their tribes, carry out the instructions of the minister of local government, convene *kgotlas* to obtain advice, arrange tribal ceremonies, oversee customary courts, facilitate the admission of new members to the tribe, and prevent crime.²²¹ The minister of local government may withdraw recognition of a chief if the minister “considers it to be in the public interest” or under certain conditions when a chief has been deposed.²²²

In part because of pressure to accommodate a wider range of tribes, in 2001 the government created a special commission to investigate tribal inequity. The government implemented many of this commission’s recommendations by amending the constitution to expand the House of Chiefs in 2005 and by replacing the Chieftainship Act with the Bogosi Act in 2008. Nonetheless, some people still allege discrimination against non-Tswana tribes, particularly in

²¹⁶ In the 2014/2015 Afrobarometer survey, 45.5 percent of respondents reported that they trust traditional leaders “a lot” and 25.7 reported that they trust traditional leaders “somewhat.” By comparison, 25.8 percent reported that they trusted local government officials “a lot.” The only institution with comparable trust is that of the president. Afrobarometer, “Online data analysis tool,” <http://afrobarometer.org/online-data-analysis/analyse-online>.

²¹⁷ Nyati-Ramahobo, “Minority Tribes in Botswana,” 4.

²¹⁸ Chieftainship Act of 1987.

²¹⁹ Botswana’s constitution officially recognizes only the eight Tswana tribes.

²²⁰ Bogosi Act of 2008, art. 3.

²²¹ Bogosi Act of 2008, arts. 17–19.

²²² Bogosi Act of 2008, art. 15.

the House of Chiefs (see *Systems of Election and Selection*), and the effects of the Bogosi Act on the recognition of non-Tswana tribes are still unclear.²²³

b. Legislative roles and interactions

The House of Chiefs is the upper house of the legislature. (See *Legislative Branch*.) The National Assembly must submit any bill related to tribal organization, property, customary law, or customary courts to the House of Chiefs for review.²²⁴ However, the House of Chiefs holds no legislative or veto powers.

c. Judicial activities

The Customary Law Act provides for the option to use customary law instead of common law in certain civil cases that involve tribesmen or women.²²⁵ Customary law is not codified or standardized nationwide. The law allows for the use of whatever customary law applies in a particular area based on written and oral sources.²²⁶

Prospect for Political Accommodation: Customary Law and Customary Courts

Botswana recognizes customary law as a parallel legal system to common law that governs members of tribes. It also has a system of customary courts to adjudicate on these laws.

The Customary Courts Act (1974) sets up a system of customary courts to administer customary law and other laws prescribed by the minister of local government.²²⁷ The minister of local government has the authority to establish and recognize these courts, determine their jurisdiction, determine their composition, and suspend or dismiss members.²²⁸ Tribal chiefs may recommend that traditional courts be recognized, established, or abolished and can appeal any decisions to higher customary courts.²²⁹ This parallel judicial system exists on several levels, including customary courts, higher customary courts, and customary courts of appeal, all of which fall under the jurisdiction of Botswana's High Court.

Customary courts are widely used in Botswana, and many citizens in rural areas reportedly find them to be fast, accessible, and comprehensible.²³⁰ Nonetheless, customary law and custom-

²²³ Nyati-Ramahobo, "Minority Tribes in Botswana," 2.

²²⁴ BOTSWANA CONST., 1966, art. 85.

²²⁵ Customary Law Act of 1969, arts. 3–5.

²²⁶ Customary Law Act of 1969, arts. 10, 11.

²²⁷ Customary Courts Act of 1974, art. 15, 16.

²²⁸ Customary Courts Act of 1974, arts. 7–9.

²²⁹ Customary Courts Act of 1974, arts. 7, 40.

²³⁰ Sharma, "Role of Traditional Structures," 7.

ary courts face the same criticisms as other formally recognized traditional institutions because customary law tends to equate with Tswana law.²³¹

Assessment

The integration of traditional and customary arrangements into the modern political system is at the heart of political accommodation in Botswana. At independence, the State was able to establish its legitimacy and authority in communities by incorporating traditional and customary arrangements by establishing the House of Chiefs and working through *kgotlas*.²³² The State brought governance closer to communities and enabled citizens to have direct influence in public decisions through these traditional and customary institutions. The House of Chiefs and *kgotlas* continue to play an important role in the political system in Botswana. Citizens view the chieftaincy structure as legitimate and trustworthy, conveying legitimacy onto the House of Chiefs, specifically, and the legislature by extension.

The role of traditional and customary arrangements within the political structure is not without controversy, however. In terms of representation, some argue that the constitution and other legislation privilege the Tswana tribe while constraining representation of minority tribes.²³³ The 2005 constitutional amendment that expanded the House of Chiefs and the 2008 Bogosi Act that is the basis for tribal administrations can be interpreted as an attempt to broaden accommodation to all ethnic groups. However, the degree to which these efforts actually increased representation is debated. Additionally, women have traditionally been excluded from chieftaincy, although female chiefs have been selected to serve as chiefs in recent years. (See *Systems of Election and Selection*.)

Conclusion

Botswana has been politically stable and economically prosperous for decades. Nongovernmental organizations and political analysts have recognized Botswana for its governance arrangements, and many Botswanans report having trust in and positive perceptions of the performance of political leaders and governance institutions.²³⁴

²³¹ Nyati-Ramahobo, "Minority Tribes in Botswana," 6.

²³² Patrick Molutsi, "Customary Governance and Democracy Building: The Case of Botswana," *Customary Governance and Democracy Building: Exploring the Linkages*, Conference Report, International Institute for Democracy and Electoral Assistance (2011): 29.

²³³ Nyati-Ramahobo, "Minority Tribes in Botswana," 1.

²³⁴ Afrobarometer, "Online data analysis tool," <http://afrobarometer.org/online-data-analysis/analyse-online>. Over 50 percent of respondents report having trust in and approve or strongly approve of the way that the following representatives were doing their jobs: the president, parliament/national assembly, elected local government council, and traditional leaders.

The incorporation of traditional and customary arrangements into the modern political system is central to political accommodation within governance structures in Botswana. The state works through traditional and customary institutions to bring governance closer to communities and enable citizens to have direct influence in public decisions. Land boards, tribal administrations, the House of Chiefs in the legislature, and *kgotlas* as public consultation forums all increase participation and inclusion. While there are debates around how representative these institutions are, the debates focus on how to make them more representative, not whether they should exist. This case study points to opportunities for greater political accommodation in Botswana, but recognizes that the political system has accommodated various interests successfully since independence.

References

Legal References

Bogosi Act, 2008.
 Chieftainship Act, 1987.
 Constitution of Botswana, 1966.
 Customary Courts Act, 1974.
 Customary Law Act, 1969.
 Electoral Act, 1968.
 High Court of Botswana, *Kamanako and Others v. Attorney-General and Another* (2001).
 Local Government (District Council) Act, 1965.
 Townships Act, 1965.
 Tribal Land Act, 1970.

Nonlegal References

Acemoglu, Daron, Simon Johnson, and James A. Robinson. "An African Success Story: Botswana." In *In Search of Prosperity: Analytic Narratives on Economic Growth*, edited by Dani Rodrik, 80–122. Princeton: Princeton University Press, 2003.

Afrobarometer. "Online Data Analysis Tool." <http://afrobarometer.org/online-data-analysis/analyse-online>.

Bauer, Gretchen. "'What Is Wrong with a Woman Being Chief?' Women Chiefs and Symbolic and Substantive Representation in Botswana." *Journal of Asian and African Studies* 51, no. 2 (2014): 222–237.

Daily News. "Parliament Revokes Local Police Act," 7 July 2011. http://www.dailynews.gov.bw/cgi-bin/news.cgi?d=20110707&i=Parliament_revokes_Local_Police_Act.

Du Toit, Pierre. *State Building and Democracy in Southern Africa: Botswana, Zimbabwe, and South Africa*. Washington, DC: United States Institute of Peace, 1995.

Electoral Institute for the Sustainability of Democracy in Africa. "Botswana: Election Archive," n.d. <http://www.eisa.org.za/WEP/botelectarchive.htm>.

- Fombad, Charles Manga. "The Separation of Powers and Constitutionalism in Africa: The Case of Botswana." *Boston College Third World Law Journal* 25, no. 2 (2005): 301–342.
- Good, Kenneth. "Authoritarian Liberalism: A Defining Characteristic of Botswana." *Journal of Contemporary African Studies* 14, no. 1 (1996): 29–51.
- Hanson, Stephanie. "Botswana: An African Success Story Shows Strains." *Council on Foreign Relations Background*. (10 January 2008). <http://www.cfr.org/botswana/botswana-african-success-story-shows-strains/p15108>.
- Hope, Kempe Ronald, Sr. "Decentralisation and Local Governance Theory and the Practice in Botswana." *Development Southern Africa* 17, no. 4 (2000): 519–534.
- Honde, George J., and Fitsum G. Abraha. "Botswana 2015." *African Economic Outlook*. African Development Bank, Organization for Economic Cooperation and Development, United Nations Development Programme (2015). <http://www.bw.undp.org/content/dam/botswana/docs/Publications/Botswana%60s%20GDP%202015.pdf>.
- Mo Ibrahim Foundation. "2015 Ibrahim Index of African Governance." 2015. <http://mo.ibrahim.foundation/iiag>.
- Molomo, Mpho. "Chieftainship (Bogosi) Endures Despite Democratic Consolidation in Botswana." *Afrobarometer Briefing Paper No. 130*, February 2014. <http://afrobarometer.org/sites/default/files/publications/Briefing%20paper/afrobrieffno130.pdf>.
- Molomo, Mpho. "Democracy under Siege: the Presidency and Executive Powers in Botswana." *Pula: Botswana Journal of African Studies* 14, no. 1 (2000): 95–108.
- Molomo, Mpho. "The Need for Electoral Reform in Botswana." *African Journal on Conflict Resolution* 4, no. 2 (2004): 55–77.
- Molutsi, Patrick. "Customary Governance and Democracy Building: The Case of Botswana." *Customary Governance and Democracy Building: Exploring the Linkages*. Conference Report. International Institute for Democracy and Electoral Assistance, 2011.
- Mompati, Tlamelo, and Gerard Prinsen. "Ethnicity and Participatory Development Methods in Botswana: Some Participants Are to Be Seen and Not Heard." *Development in Practice* 10, no. 5 (2000): 625–637.
- Nyati-Ramahobo, Lydia. "Minority Tribes in Botswana: the Politics of Recognition." Minority Rights Group International, 2008.
- Parliament of Botswana. "Committees." <http://www.parliament.gov.bw/parliamentary-business/committees>.
- Picard, Louis A. *The Politics of Development in Botswana: A Model for Success?* Boulder, CO: L. Rienner Publishers, 1987.
- Poteete, Amy R. "Renegotiation of Executive Powers and Executive-Legislative Relations in Botswana." Paper presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 2010. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1643102.
- Poteete, Amy, Bashi Mothusi, and Daniel Molaodi. "Comparative Assessment of Decentralization in Africa: Botswana In-Country Assessment Report." United States Agency for International Development, 2010.
- Quota Project. "Voluntary Political Party Quotas." <http://www.quotaproject.org/systemParty.cfm>.

- Refworld*. "World Directory of Minorities and Indigenous Peoples—Botswana: Overview," 2008. <http://www.unhcr.org/refworld/country,,,COUNTRYPROF,BWA,,4954ce1b23,0.html>.
- Republic of Botswana Ministry of Local Government. "Mandate." <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Local-Government-MLG1/About-MLG/Mandate/>.
- Sebudubudu, David, and Bertha Z. Osei-Hwedie. "Pitfalls of Parliamentary Democracy in Botswana." *Afrika Spectrum* 41, no. 1 (2006): 35–53.
- Sharma, Keshav C. "Role of Traditional Structures in Local Governance for Local Development: The Case of Botswana." Community Empowerment and Social Inclusion Program. World Bank Institute, 2004.
- Somolekae, Gloria. "Political Parties in Botswana." EISA Research Report No. 27, 2005.
- Transparency International. "Corruption Perceptions Index 2011." <http://www.transparency.org/research/cpi>.
- Uppsala Conflict Data Program. "Botswana: Number of Deaths." <http://ucdp.uu.se/#country/571>.
- Werbner, Richard. "Challenging Minorities, Difference and Tribal Citizenship in Botswana." *Journal of Southern African Studies* 28, no. 4 (2002): 671–684.
- White, Richard. "Tribal Land Administration in Botswana." Institute for Poverty, Land and Agrarian Studies, 2009.
- The World Bank. "World Development Indicators." <http://data.worldbank.org/data-catalog/world-development-indicators>.
- The World Bank Open Data. "Proportion of Seats Held by Women in National Parliaments: Botswana." World Bank Group. <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=BW>.

ETHIOPIA

Executive Summary

This case study focuses on Ethiopia's governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and non-accommodating arrangements to consider.

Ethiopia's 1995 constitution was drafted following decades of armed conflict. The constitution aims to maintain stability in a multiethnic country with a history of violent conflict and secessionist movements. As part of the attempt to achieve stability, the constitution established a federal system that is known as 'ethnic federalism'. The borders of Ethiopia's nine regions are drawn largely along ethnic lines, and the constitution gives significant rights to ethnic groups ('nationalities'). These include cultural rights, the right to self-government, and the right to self-determination. Self-determination enables ethnic groups to secede from Ethiopia or form new regions within Ethiopia, although the right to secede has been largely symbolic to date. Ethnicity is also incorporated into the Ethiopian political system through the legislative branch, since the upper house of parliament is elected as representatives of Ethiopia's 'Nations, Nationalities, and Peoples'.

Despite the constitutional provisions to promote accommodation between ethnic groups within the political system, there has been low-intensity conflict in Ethiopia since the current governance structures came into being in the mid-1990s. Governance has been characterized by the dominance of a single political party and restrictions on basic freedoms. Much decision making in Ethiopia remains centralized, and there is limited space for public participation in political life. While Ethiopia's constitution and subsequent laws recognize the need for political accommodation between different constituencies, this case study highlights challenges that can arise in the implementation of governance mechanisms meant to achieve accommodation.

Table 5—Accommodating and Less Accommodating Aspects in Ethiopia

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
ETHIOPIA	<ul style="list-style-type: none"> • Ethnic federalism: self-determination, self-government, and cultural rights to ethnic groups • All nationalities represented in national upper house • Recognition of public participation 	<ul style="list-style-type: none"> • Inconsistent implementation • Limited decentralization • Single dominant political party • Restricted public participation space

Background

Ethiopia is one of the only countries in Africa that was not colonized by a foreign power in modern history, although it was briefly occupied by Italy from 1936 to 1941. Ethiopia was able to maintain its independence, in part, because of a long tradition of centralized authority that continues today.

Beginning in the late nineteenth century, Ethiopia's emperors conquered the area corresponding to the country's modern borders. The Ethiopian empire was multiethnic, but the Amhara people formed its political core.²³⁵ The government attempted to assimilate other ethnic groups by making Amharic the official language, making Orthodox Christianity (the religion of the Amhara) the State religion, and promoting a national Ethiopian identity.²³⁶ The concept of ethnicity was fluid, and members of any ethnic group could gain influence by adopting an Amharic identity.²³⁷ For example, Emperor Haile Selassie, who ruled Ethiopia from 1930 through 1974, was primarily of Oromo descent but assumed an Amhara identity.²³⁸

Armed conflict and instances of violent resistance to the State significantly influenced political development in Ethiopia in more recent decades. In 1974, the military overthrew the emperor. A military junta, known as the Derg, took control of the State. Throughout the 1980s under the Derg regime, armed groups demanding self-determination gained momentum. The strongest secessionist movement was based in the region of Eritrea, while another powerful armed group, the Tigray People's Liberation Front (TPLF), fought for a national revolution in Ethiopia.²³⁹ In 1989, the TPLF formed the Ethiopian People's Revolutionary Front (EPRDF), a coalition

²³⁵ Christopher Clapham, *Transformation and Continuity in Revolutionary Ethiopia*, (Cambridge: Cambridge University Press, 1988): 23.

²³⁶ Alemseged Abbay, "Diversity and State-Building in Ethiopia," *African Affairs* 103, no. 413 (2004): 593.

²³⁷ Clapham, *Transformation and Continuity*, 23.

²³⁸ His paternal grandmother was Amhara. Clapham, *Transformation and Continuity*, 24.

²³⁹ The TPLF originally was an ethnicity-based organization appealing to support from the Tigray, but later sought support from other ethnic groups to overthrow the Derg.

of four movements that remained Tigrayan at its core.²⁴⁰ Ultimately, the Eritrean separatists and EPRDF together overthrew the Derg regime in 1991.²⁴¹

Ethiopia went through a period of transitional governance in the early 1990s, and Eritrea was recognized as an independent country in 1993. The EPRDF invited a range of groups to participate in the formulation of a transitional charter, but dominated the process and the transitional government that followed. The EPRDF also dominated the constitutional process that resulted in the constitution of 1995.²⁴²

Since 1995, Ethiopia has increasingly struggled to accommodate diverse constituencies. The population was approximately 99.4 million in 2015, making Ethiopia the second most populous country in Africa after Nigeria.²⁴³ As of 2015, the EPRDF had won every election since the current constitution took effect, and there was continuing low-scale armed opposition to the government, particularly from groups representing the Oromo, the largest ethnic group in Ethiopia, and Somalis from the Ogaden region.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.²⁴⁴ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests.

²⁴⁰ See Sarah Vaughan, "The Addis Ababa Transitional Conference of July 1991: Its Origins, History, and Significance," Centre of African Studies (Edinburgh University, 1994) and Alemseged Abbay, *Identity Jilted, Or, Re-imagining Identity?: The Divergent Paths of the Eritrean and Tigrayan Nationalist Struggles*, (Asmara: The Red Sea Press, 2006).

²⁴¹ The Eritreans and TPLF had mostly fought together in the war despite occasional conflicts. The Eritreans understood that a new regime under the TPLF/EPRDF would recognize their independence, which happened following a referendum in 1993. John M. Cohen, "Ethnic Federalism in Ethiopia," *Northeast African Studies* 2, no. 2 (1995): 159.

²⁴² International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," Crisis Group Africa Report No. 153, (September 4, 2009): 4.

²⁴³ World Bank, "World Bank Open Data Project: Ethiopia: Population, total," <http://data.worldbank.org/indicator/SP.POP.TOTL?locations=ET&view=map>.

²⁴⁴ Here, 'representatives' is used broadly to mean political, community, and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

The framework consists of six focal areas or ‘Strands’, each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how all the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where Ethiopia has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

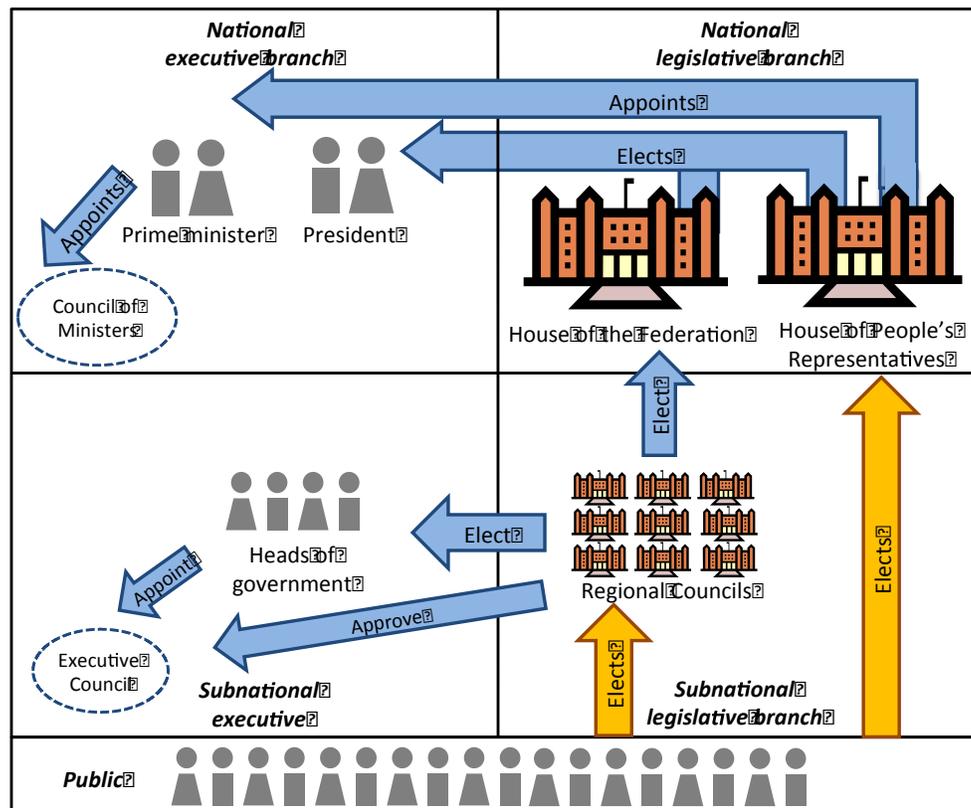
Ethiopia has a system of ethnic federalism, with nine regions. Regional borders are drawn along ethnic lines, and the constitution gives ethnic groups the right to self-determination, linguistic and cultural rights, and the right to self-government. In theory, power is highly decentralized to regional governments, but in practice the national government is dominant and highly centralized.

a. Structure

Ethiopia is a federal State with nine regional states (‘regions’) and two chartered cities, Addis Ababa, the capital, and Dire Dawa, the second-largest city. Regions are subdivided into *woredas*, administrative units of local government, which are in turn divided into *kebeles*, formal village associations. Some regions, like the Southern region, have additional levels of government.

At the national level, Ethiopia is governed by a president, prime minister, council of ministers, and a bicameral legislature consisting of the House of People’s Representatives (the lower house) and the House of the Federation (the upper house). Regions, *woredas*, and *kebeles* all have an elected legislative council, an administrative head, and an executive council.

Figure 6—Ethiopia's Political Structure



Ethiopia's political structure is rooted in ethnicity, which the constitution refers to as 'Nations, Nationalities, and Peoples' (hereafter referred to as 'nationalities'). The constitution defines a nationality as "a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."²⁴⁵ Ethiopia recognizes over 80 nationalities. However, it can be difficult to differentiate between nationalities in practice, partly due to intermarriage. Additionally, identifying contiguous geographical regions occupied by nationalities is difficult given Ethiopia's highly mobile population, a significant percentage of whom are pastoralists.

Ethiopia's political structure can be described as ethnic federalism. The constitution vests "all sovereign power" in nationalities, and the borders of the regions are drawn along ethnic lines.²⁴⁶ According to the constitution, every nationality has the right to:

- "self-determination, including the right to secession," as well as the right to form a new region;

²⁴⁵ CONSTITUTION OF THE FDRE, 1995, art. 39.

²⁴⁶ CONSTITUTION OF THE FDRE, 1995, art. 46, cl. 2.

- “speak, to write, and to develop its own language; to express, to develop, and to promote its culture; and to preserve its history;” and
- “self-government,” including establishment of their own institutions and receipt of equitable representation in the regional and national governments.²⁴⁷

The right to secession is important to the federal system in Ethiopia, particularly given Eritrea’s successful independence movement. As a precondition to participating in the transitional government in the early 1990s, parties representing the Oromo, Somali, and Afar nationalities demanded the right to secession.²⁴⁸ According to the constitution, a nationality can secede through the following process:

1. A nationality’s legislative council approves secession by a two-thirds majority.
2. The national government organizes a referendum within three years of the council’s decision.
3. A majority of voters approves secession in the referendum.
4. The national government transfers its powers to the nationality’s council.
5. Assets are divided.²⁴⁹

***Prospect for Political Accommodation:
Right to Self-determination***

All nationalities in Ethiopia have the right to secede from the country or to secede from a region and form their own region. In addition, referendums resulted in ethnic groups forming a new administrative unit within a region or leaving one region and joining another.

A majority of voters from the nationality seeking to leave needs to approve session,²⁵⁰ rather than the majority of voters in the country. The constitution lays out a similar process for nationalities to secede from a region and form a new region within Ethiopia.²⁵¹

No group has yet seceded from Ethiopia or formed its own region under the constitution,²⁵² although the Silte nationality followed the constitutional process governing secession to create a new administrative unit.²⁵³ The Silte, a small ethnic group in the Southern Nations, Nationalities and Peoples region, successfully ‘seceded’ from the Gurage, a larger ethnic group, in 2001. As a result of the process, the regional government recognized the Silte as a distinct group and granted them a separate administrative district within the region. While the experience of the

²⁴⁷ CONSTITUTION OF THE FDRE, 1995, art. 39.

²⁴⁸ Alem Habtu, “Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution,” *Publius* 35, no. 2 (2005): 326–327.

²⁴⁹ CONSTITUTION OF THE FDRE, 1995, art. 39.

²⁵⁰ Habtu, “Multiethnic Federalism in Ethiopia,” 327–328.

²⁵¹ CONSTITUTION OF THE FDRE, 1995, art. 47(2).

²⁵² In 1994, the Ogaden regional assembly voted for secession. The national government made no moves to recognize the region’s independence and removed the regional president and his deputy two months later. John Markakis, “The Somali in Ethiopia,” *Review of African Political Economy* 23, no. 70 (1996): 567–570.

²⁵³ Lahra Smith, “Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia,” *The Journal of Modern African Studies* 45, no. 4 (2007): 565–594.

Silte has been the exception rather than the norm, and some similar claims have been resolved through force rather than a legal process,²⁵⁴ nationalities' right to self-determination is a mechanism that has enabled political accommodation in Ethiopia.

Ethiopia also recognizes cultural and linguistic rights. Different nationalities can participate in education and administration, and bring cases to court in their native language.²⁵⁵ The government tries to promote public celebration of cultural diversity through various methods, including highlighting different nationalities and their cultural practices on street posters, national television programs, and postage stamps, via touristic products, and by holding cultural festivals like the annual 'Nationalities, Nations and Peoples' Day', a national meeting day for representatives of the many peoples in the country.²⁵⁶

**Prospect for Political Accommodation:
Governance Arrangements in the Southern
Region**

The Southern Nations, Nationalities and Peoples region is the most diverse region in Ethiopia, with over 50 ethnic groups. The Southern region has sought to accommodate its significant ethnic diversity through regional and local arrangements. It created ethnicity-based districts called zones (for larger nationalities) or special woredas (for smaller nationalities). As of 2005, 13 zones and eight special woredas had been created, with other groups living as minorities within them. In addition, the Southern region has an upper house modeled after the House of the Federation.

Broadly popular, Ethiopia's decentralized language policy entails additional costs, particularly in the Southern region, where schools teach more than 11 languages across the territory. Im-

**Prospect for Political Accommodation:
Cultural and Linguistic Rights**

Subnational governments in Ethiopia have significant autonomy in the areas of culture and language. This allows regions to determine which language to use in administration and education, while the language of the national government remains Amharic.

plementation of the policy also varies among the regions. Some regions teach primarily in the local language while others, due to lack of teachers and resources to teach in local languages, continue to teach primarily in Amharic. Despite expanded language rights at the subnational level, Amharic remains the dominant language, and some to view teaching in local languages as a form of marginalization.²⁵⁷

²⁵⁴ For example, the Wolayte ethnic group only gained their own administrative district within the Southern Nations, Nationalities and Peoples region after a violent conflict with the regional government. Lovise Aalen, "Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: the Case of Ethiopia," *International Journal on Minority and Group Rights* 13, no. 2/3 (2006): 258–259.

²⁵⁵ Aalen, "Ethnic Federalism and Self-Determination," 256.

²⁵⁶ Jon Abbink, "Ethnic-Based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years," *Journal of Eastern African Studies* 5, no. 4 (2011): 598, 601.

²⁵⁷ Lahra Smith, "The Politics of Contemporary Language Policy in Ethiopia," *Journal of Development Studies* 24 (2008): 227.

b. Division of powers

Ethiopia's constitution defines the powers of the national and regional governments. The national government has power over issues including development strategy, fiscal and monetary policy, land and natural resource use, defense and security, foreign policy, trade and transportation between regions, political parties and elections, and immigration.²⁵⁸

Regional governments have all powers not explicitly given to the national government, and all regional governments have equal rights and powers.²⁵⁹ Regions have the power to establish their own constitution and administration;²⁶⁰ set their own economic, social, and development policies; administer land and natural resources in accordance with national laws; oversee a regional civil service in accordance with national standards, and establish a regional police force.²⁶¹ Each region can also set up its own court system, and regional supreme courts have the highest judicial power over matters reserved for the regions in the constitution.²⁶² Finally, each region can determine its working language.²⁶³

The constitution and recent legislation address the relationship between the federal government and the regions, as well as the relationship between regions themselves. The Ministry of Federal Affairs is responsible for promoting cooperation between the regions and the national government, assisting regional governments, coordinating national intervention in regional affairs when necessary, and facilitating dispute resolution both within and between regions.²⁶⁴ The upper house of parliament is responsible for settling disputes between regions, including border disputes.²⁶⁵

Woredas, *kebeles*, and other local government units primarily have administrative authority. They are responsible for implementing policies decided at the national and regional levels, preparing plans and budgets to communicate their needs upward, overseeing service delivery (e.g., schools and health facilities), ensuring taxes are collected, and supporting development activities. Zones and special *woredas* in the Southern region have their own legislative, executive, and judicial organs and can choose their own working language, issue laws, and approve regional constitutional amendments.²⁶⁶

²⁵⁸ CONSTITUTION OF THE FDRE, 1995, art. 51.

²⁵⁹ CONSTITUTION OF THE FDRE, 1995, arts. 47, cl. 4, 52.

²⁶⁰ CONSTITUTION OF THE FDRE, 1995, arts. 50, cl. 4–5.

²⁶¹ CONSTITUTION OF THE FDRE, 1995, art. 52.

²⁶² CONSTITUTION OF THE FDRE, 1995, arts. 78, 80.

²⁶³ CONSTITUTION OF THE FDRE, 1995, arts. 5, 39, cl. 2.

²⁶⁴ Proclamation 691/2010, art. 14.

²⁶⁵ CONSTITUTION OF THE FDRE, 1995, art. 48.

²⁶⁶ Christophe Van der Beken, "Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level," *Afrika Focus* 20, no. 1–2 (2007): 122.

Despite the constitutional division of powers and rhetoric around decentralization, decision making in Ethiopia remains highly centralized in practice, largely because the EPRDF coalition controls the bureaucracy and its patronage network extends through every level of government. Federal government control over the majority of revenue streams and budget decisions also contributes to the high level of centralization. Thus, policies made at the national level are generally replicated at the regional level.²⁶⁷ The EPRDF uses *kebele* and sub-*kebele* structures to extend its influence even down to the level of households, as *kebele* officials control land tenure and access to basic services.²⁶⁸ (See *Systems of Election and Selection*.)

Senior members of the national government regularly monitor and intervene in regional affairs, and regional officials depend on the Ministry of Federal Affairs for approval.²⁶⁹ The Ministry of Federal Affairs has such influence over regional officials given that the mandate of the Ministry permits it to intervene in regional affairs when necessary.²⁷⁰ Significantly, the federal police report to the Ministry and the Ministry oversees security in some states.²⁷¹ Ethiopian troops and the intelligence apparatus are also actively deployed throughout the country, an ongoing federal intervention in the regions.²⁷²

c. Resource distribution and control

The national government raises and controls most of the revenue streams through direct and indirect taxes.²⁷³ The national government can raise revenue from taxes on imports and exports, licenses, and national-level transportation services.²⁷⁴ Regional governments can raise revenue from taxes on property, income of farmers and traders, licenses, region-level transportation services, and income from mining, as well as royalties from forest resources in line with shared powers of taxation with the national government.²⁷⁵ The national and regional governments can jointly raise revenue from taxes on companies, large-scale mining, and petroleum and gas operations.²⁷⁶ Both houses of parliament can decide how to allocate other revenue-raising powers through a two-thirds majority vote in a joint session.²⁷⁷ In practice, the national government controls approximately 83 percent of revenue through direct and indirect taxation.²⁷⁸

²⁶⁷ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 17.

²⁶⁸ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 18.

²⁶⁹ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 17.

²⁷⁰ Proclamation 691/2010, art. 14.

²⁷¹ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 17.

²⁷² International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 16.

²⁷³ World Bank Group, "Ethiopia Public Expenditure Review," Report No: ACS14541 (2016): 13–18.

²⁷⁴ CONSTITUTION OF THE FDRE, 1995, art. 96.

²⁷⁵ CONSTITUTION OF THE FDRE, 1995, art. 97.

²⁷⁶ CONSTITUTION OF THE FDRE, 1995, art. 98.

²⁷⁷ CONSTITUTION OF THE FDRE, 1995, arts. 99.

²⁷⁸ The World Bank Group, "Ethiopia Public Expenditure Review," 8, 13–18.

The national government transfers significant revenue to regional governments. Between 1993 and 2001, regional governments generated about 18 percent of government revenues but were responsible for about 35 percent of government expenditures.²⁷⁹ The regions thus are dependent on transfers from the national government. In addition to formal transfers, the national government transfers revenue to regional governments through unofficial patronage networks, infrastructure projects, businesses owned by members of the ruling party, donor-funded projects, and nationally funded services such as transport, communication, and energy.²⁸⁰

Assessment

Decentralization often enables political accommodation by bringing governance closer to individuals and communities and allowing individuals and communities to have greater voice and influence over governance decisions. Ethnic federalism provides significant constitutional rights to Ethiopia's regions and, on paper, Ethiopia's political structure is highly decentralized. At the subnational level, ethnic federalism has made governance institutions more ethnically diverse and representative. For example, rather than being appointed from the center, civil servants are locally recruited.²⁸¹

However, in practice, the EPRDF has governed the country in a highly centralized manner since 1991. The EPRDF controls the government from the national to the local level, and there is little separation between the State and the party. Political power and resources largely flow through the EPRDF. Additionally, the EPRDF or one of its affiliated parties controls every level of government throughout Ethiopia.

Overall, Ethiopia's system of ethnic federalism may play a role in keeping the country unified despite the persistence of violent conflict at the local level. The right to self-determination, generally, and secession, specifically, has been a critical mechanism for enabling peaceful accommodation of the desires of some nationalities, enabling flexibility within the political system and offering an alternative to violent conflict.

²⁷⁹ Abu Girma Moges, "An Economic Analysis of Fiscal Federalism in Ethiopia," *Northeast African Studies* 10, no. 2 (2003): 18.

²⁸⁰ Paulos Chanie, "Clientelism and Ethiopia's Post-1991 Decentralisation," *The Journal of Modern African Studies* 3, no. 45 (2007): 379–381.

²⁸¹ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 24.

2. SYSTEMS OF ELECTION AND SELECTION

Members of the House of People's Representatives are elected using the first-past-the-post system, and the prime minister and president are chosen by parliament. Members of the House of the Federation are elected by regional councils, and each nationality must be represented. The EPRDF coalition voluntarily adopted a quota for women candidates in 2004, which successfully increased women's representation. However, the 2005 parliamentary elections were the only genuinely competitive elections, and since that election the EPRDF has prevented elected candidates from opposition parties from taking their seats.

a. System design

Within the executive branch, the prime minister is appointed by the party or coalition with a majority in the House of People's Representatives (the lower house of parliament).²⁸² The prime minister's term is for the duration of the mandate of the House of People's Representatives.²⁸³ For the presidency, the House of People's Representatives nominates a candidate, and a joint session of parliament must approve the candidacy by a two-thirds majority vote. The president is elected to a six-year term and has a two-term limit.²⁸⁴

Members of the House of People's Representatives are elected by plurality from single-seat constituencies (also known as first-past-the-post or FPTP) for five-year terms.²⁸⁵ The constitution stipulates that there can be no more than 550 members of the house, with at least 20 seats reserved for minority nationalities.²⁸⁶ As of 2016, there were 547 members of the House of People's Representatives.²⁸⁷

Members of the House of the Federation (the upper house) are "representatives of Nations, Nationalities, and Peoples,"²⁸⁸ and as of 2016 there were 153 members.²⁸⁹ Each nationality must have at least one representative plus "one additional representative for each million of its population."²⁹⁰ The constitution specifies that regional councils can elect members of the up-

²⁸² CONSTITUTION OF THE FDRE, 1995, art. 56.

²⁸³ CONSTITUTION OF THE FDRE, 1995, art. 72.

²⁸⁴ CONSTITUTION OF THE FDRE, 1995, art. 70.

²⁸⁵ A single-member constituency is an electoral district from which only one representative is elected to a legislature or elected body. CONSTITUTION OF THE FDRE, 1995, art. 54, cl. 12, and 532/2007 Amended Electoral Law art. 28.

²⁸⁶ CONSTITUTION OF THE FDRE, 1995, art. 54, cl. 3.

²⁸⁷ Inter-Parliamentary Union, "Ethiopia: Yehizb Tewokayoch Mekir Bete (House of Peoples' Representatives)" (6 October 2015), http://www.ipu.org/parline-e/reports/2107_A.htm.

²⁸⁸ CONSTITUTION OF THE FDRE, 1995, art. 61, cl. 1.

²⁸⁹ Inter-Parliamentary Union, "Ethiopia: Yefedereshein Mekir Bete (House of the Federation)" (1 March 2016), <http://www.ipu.org/parline-e/reports/2108.htm#last>.

²⁹⁰ CONSTITUTION OF THE FDRE, 1995, art. 61, cl. 2.

per house or hold direct elections within their constituencies.²⁹¹ In practice, all regional councils elect members of the upper house themselves,²⁹² and elections are held every five years.²⁹³ At the subnational level, members of regional councils are elected by FPTP for five-year terms.²⁹⁴ Members of *woreda* and *kebele* councils also are directly elected, with the exact method determined by regional law.²⁹⁵ The size of regional and *woreda* councils varies by region,²⁹⁶ but the national government expanded *kebele* councils from 15 seats to a maximum of 300 seats in 2008.²⁹⁷ Regional, *woreda*, and *kebele* administrative heads of government are elected by their respective legislative councils from among the councils' members, and executive council members are appointed by the administrative heads and approved by the legislative councils.²⁹⁸

In practice, most elections under Ethiopia's 1995 constitution have not been competitive. The EPRDF coalition won 95 percent of the vote in the 1995 and 2000 federal and regional parliamentary elections, in part because a number of parties boycotted or withdrew from the electoral process.²⁹⁹ In 2010, the coalition and its affiliates won all but one of the 1,903 seats contested in the regional council elections and all but one of the 545 seats contested in elections for the House of People's Representatives.³⁰⁰

The 2005 elections have been the only genuinely multiparty elections to take place in an open and dynamic political climate that involved substantive debate. For the first time, parties that ran in opposition to the EPRDF received access to State-owned radio and television and were permitted to organize large public events in the capital.³⁰¹ The opposition parties won more than 30 percent of the seats in the lower house, including almost all the seats in urban areas.³⁰² Despite these gains, opposition parties alleged irregularities and protested the results, claiming they should have won more seats than they did. The government responded with a violent crackdown in which hundreds of people were killed and tens of thousands arrested,

²⁹¹ CONSTITUTION OF THE FDRE, 1995, art. 61, cl. 3.

²⁹² Van der Beken, "Ethiopia," 110.

²⁹³ Inter-Parliamentary Union, "Ethiopia," <http://www.ipu.org/parline-e/reports/2108.htm#last>.

²⁹⁴ 532/2007 Amended Electoral Law, art. 28.

²⁹⁵ 532/2007 Amended Electoral Law, art. 29.

²⁹⁶ Serdar Yilmaz and Varsha Venugopal, "Local Government Discretion and Accountability in Ethiopia," International Studies Program at Georgia State University (2008): 4–5.

²⁹⁷ Lovise Aalen and Kjetil Tronvoll, "The 2008 Ethiopian Local Elections: The Return of Electoral Authoritarianism," *African Affairs* 108, no. 430 (2008): 116. Aalen and Tronvoll cite the number of residents in a *kebele* as between 1,000 and 3,000, so that a significant percentage of the population of a *kebele* serves on the council.

²⁹⁸ CONSTITUTION OF THE FDRE, 1995, art.s 49, cl. 3, 92, 93, cl. 2(d), 98, cl. 3, 104, cl. 2(d).

²⁹⁹ Aalen, "Ethnic Federalism and Self-Determination," 252.

³⁰⁰ Kjetil Tronvoll, "The Ethiopian 2010 Federal and Regional Elections: Re-establishing the One-Party State," *African Affairs* 115, no. 461 (2010): 15.

³⁰¹ Aalen and Tronvoll, "The 2008 Ethiopian Local Elections," 112.

³⁰² Jon Abbink, "Discomfiture of Democracy? The 2005 Election Crisis in Ethiopia and its Aftermath," *African Affairs* 105, no. 419 (2006): 183–184.

including members of the opposition leadership.³⁰³ Most opposition representatives subsequently did not take their seats.³⁰⁴ The outcome of all elections in Ethiopia under the 1995 constitution have resulted in members of the EPRDF and affiliated parties occupying the vast majority of elected positions within national and local governments.

b. Political parties

National political parties need to have at least 1,500 founding members. Of these founding members, at least 40 percent must be residents of the same region, and the rest must be residents of at least four different regions. Regional political parties need to have at least 750 founding members, more than 60 percent of whom must be from the same region.³⁰⁵ Candidates can run as independents or through political parties.

The EPRDF is a national coalition made up of four regional parties based on nationality, each of which controls one of the four core regions: Tigray, Amhara, Oromo, and Southern. The other regions are also controlled by nationality-based regional parties that are not members of the EPRDF but are closely affiliated with it. The boundary between the EPRDF and the State is blurred, and regional officials are largely accountable to national-level party officials rather than the people of their region, *woreda*, or *kebele*.³⁰⁶

A number of factors promote party loyalty within the EPRDF over accountability to constituents. Upon its military victory over the Derg in 1991, the EPRDF took control of vital sectors and businesses in the Ethiopian economy.³⁰⁷ Additionally, the State owns all land, which the EPRDF has redistributed periodically.³⁰⁸ Finally, party membership or close party ties are requirements for public sector employment and State-sponsored education.³⁰⁹ Taken together, these factors result in significant overlap between the party, the State, and the economy.

c. Special provisions

The upper house is specifically designed to ensure representation of each nationality in the legislature, and the constitution reserves seats in the lower house for minority nationalities. Electoral law does not include mechanisms to ensure representation of other historically underrepresented groups in the legislature or executive, such as women or religious minorities.³¹⁰ However, the EPRDF voluntarily adopted a 30 percent quota for women candidates in

³⁰³ Abbink, "Discomfiture of Democracy?" 176

³⁰⁴ Abbink, "Discomfiture of Democracy?" 176.

³⁰⁵ Proclamation 573/2008, arts. 5, 6.

³⁰⁶ Aalen, "Ethnic Federalism and Self-Determination," 250–251.

³⁰⁷ Abbink, "Discomfiture of Democracy?" 177.

³⁰⁸ Abbink, "Discomfiture of Democracy?" 179.

³⁰⁹ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 15.

³¹⁰ Quota Project, "Ethiopia" (22 April 2015), <http://www.quotaproject.org/uid/countryview.cfm?country=73#party>.

2004, which successfully increased women’s representation. Following the 2015 elections, women held 38.8 percent of seats in the lower house and 32 percent in the upper house.³¹¹

Assessment

There is a significant disconnect between the design of Ethiopia’s system of election and selection and the way in which the system has played out in practice. A number of mechanisms are designed to increase inclusion and equity of decision-making power: the representation of each of the country’s nationalities within the House of the Federation, the reservation of seats within the House of the People’s Representatives for minority nationalities, and the cross-regional buy-in required to establish national and regional political parties all promote political accommodation.

Yet the EPRDF political coalition has exerted significant influence over Ethiopia’s electoral system since 1991. A positive effect of this is the voluntary quota for women the EPRDF instituted that has successfully increased women’s representation. However, although opposition parties won significant numbers of seats as the result of the 2005 elections, the EPRDF effectively prevented candidates from serving in office. The EPRDF has exerted influence over institutions within the system itself, as well as controlling means of rewarding or punishing voters for their preferences through access to resources and opportunities, effectively curtailing the ability of the electoral system from accommodating different constituencies.

3. EXECUTIVE BRANCH

The prime minister is the chief executive, chairman of the council of ministers, and commander in chief of the Armed Forces. Constitutionally, the prime minister is responsible to the lower house of parliament. In practice, parliament ceded aspects of this executive oversight role in a 2008 bill. The EPRDF has dominated parliament since independence and has controlled the executive as a result.

a. Structure and competencies

Ethiopia has a parliamentary system in which the executive is responsible to the legislature. The executive branch includes a president, a prime minister, and a council of ministers. The president serves as head of State, but has primarily ceremonial functions,³¹² while the prime minister and council of ministers hold most executive powers.³¹³

³¹¹ International Parliamentary Union, “Ethiopia: Yehizb Tewokayoch Mekir Bete”

³¹² CONSTITUTION OF THE FDRE, 1995, arts. 69, 71.

³¹³ CONSTITUTION OF THE FDRE, 1995, art. 72.

The prime minister is the chief executive, chairman of the council of ministers, and commander in chief of the Armed Forces.³¹⁴ The prime minister appoints members of the council of ministers who are approved by the lower house.³¹⁵ The prime minister also nominates commissioners, the president and vice president of the Federal Supreme Court, and the auditor general (approved by the lower house);³¹⁶ ensures implementation of laws and policies;³¹⁷ and supervises foreign policy.³¹⁸ To date, the prime minister also has been chairman of the EPRDF, meaning that most important decisions take place through the prime minister's office and EPRDF executive committee.³¹⁹ Meles Zenawi served as prime minister from 1995 until his death in 2012, at which time Hailemariam Desalegn took office.

The powers of the council of ministers include declaring a state of emergency in cases of "external invasion, a breakdown of law and order..., a natural disaster, or an epidemic."³²⁰ A state of emergency gives the council of ministers "all necessary power to protect the country's peace and sovereignty, and to maintain public security, law and order."³²¹ It also allows the council of ministers to suspend many of the political and democratic rights contained in the constitution.³²² A state of emergency must be approved by the lower house with a two-thirds majority in order to take effect.³²³ The council of ministers and lower house have declared a state of emergency at various times. (See *Public Participation*.)

Regions, *woredas*, and *kebeles* all have administrative heads of government and executive councils.³²⁴

b. Checks on the executive

Constitutionally, the prime minister and council of ministers are responsible to the lower house, which can "take decisions or measures it deems necessary" regarding the power of the executive.³²⁵ This type of provision is typical of parliamentary systems and is considered a key 'check and balance' between the branches of government since the executive is accountable to the lower house of the legislature. The executive also is accountable to the general public by

³¹⁴ CONSTITUTION OF THE FDRE, 1995, art. 74, cl. 1.

³¹⁵ CONSTITUTION OF THE FDRE, 1995, art. 74, cl. 2.

³¹⁶ CONSTITUTION OF THE FDRE, 1995, art. 74, cl. 7.

³¹⁷ CONSTITUTION OF THE FDRE, 1995, art. 74, cl. 3.

³¹⁸ CONSTITUTION OF THE FDRE, 1995, art. 74, cl. 6.

³¹⁹ As of 2009, the EPRDF executive committee consisted of the prime minister, deputy prime minister, a number of ministers and special advisers, the executives of four provinces (Amhara, Oromia, Tigray, and Southern) and Addis Ababa, and the heads of five regional bureaus. International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents."

³²⁰ CONSTITUTION OF THE FDRE, 1995, art. 93, c. 1(a).

³²¹ CONSTITUTION OF THE FDRE, 1995, art. 93, cl. 4(a).

³²² CONSTITUTION OF THE FDRE, 1995, art. 93, cl. 4 (b-c).

³²³ CONSTITUTION OF THE FDRE, 1995, arts. 93, cl. 2(a).

³²⁴ CONSTITUTION OF THE FDRE, 1995, arts. 56, 90, 101, 103.

³²⁵ CONSTITUTION OF THE FDRE, 1995, art. 55, cl.18.

extension, through constituencies' representatives in the lower house. The constitutional ability of the lower house to make decisions on or alter the power of the executive is a mechanism meant to ensure accountability of the executive to various stakeholders within the political system.

However, the lower house significantly redefined its relationship with the executive with the passage of the bill "Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation" (No. 471/2005) in September 2008.³²⁶ Among a number of provisions, the bill established 20 ministries³²⁷ and specified that the individual ministers are accountable to the prime minister and council of ministers.³²⁸ With the passage of this bill, the legislature ceded substantial oversight functions to the executive.³²⁹

At the subnational levels, administrative heads of government and their executive councils are accountable to the respective legislative councils.³³⁰

Assessment

Parliamentary systems can promote inclusivity within the executive, since members of the executive typically are drawn from a range of political representatives in the legislature.³³¹ As in Ethiopia, the executive may be accountable directly to the legislature and to the general public through their legislative representatives.

Yet the executive branch in Ethiopia is not particularly representative of diverse interests in practice. The EPRDF coalition has dominated parliament since independence, limiting the degree of inclusivity that is possible within executive institutions. The ERPDF has controlled the executive as a result. Recent shifts in oversight mechanisms away from the legislature to other offices within the executive branch have further diminished equity of decision-making power in Ethiopia.

³²⁶ Jon Abbink, "The Ethiopian Second Republic and the Fragile 'Social Contract,'" *Africa Spectrum* 44, no. 2 (2009): 16.

³²⁷ Proclamation 471/2005, Part 3, art. 9.

³²⁸ Proclamation 471/2005, Part 3, art. 11.

³²⁹ Abbink, "The Ethiopian Second Republic," 16.

³³⁰ CONSTITUTION OF THE FDRE, 1995, arts. 56, cl. 2, 93, cl. 1, 101, cl. 2.

³³¹ Benjamin Reilly, "Government Structure and Electoral Systems" (New York University, Center on International Cooperation, 2003), <http://cic.nyu.edu/sites/default/files/e20govtstructureelectoralsystemsreilly.pdf>.

4. LEGISLATIVE BRANCH

The Ethiopian legislature is composed of the House of People's Representatives and the House of the Federation. The House of the Federation represents the different nationalities and oversees implementation of ethnic federalism. However, the House of the Federation has little influence on day-to-day policy making, and both bodies are controlled by the EPRDF. In 2005 the House of People's Representatives passed new rules limiting debate on legislation.

a. Structure and competencies

Ethiopia's national parliament has two houses. The House of People's Representatives (the lower house) is responsible for electing the prime minister, legislating in most of the areas reserved for the national government, and raising revenue. It also ratifies international agreements concluded by the executive, approves states of emergency, and approves executive appointments, including members of the council of ministers, national judges, commissioners, and the auditor general. It can question the prime minister and other officials, investigate the executive's conduct, and, at the request of one-third of its members, discuss and take action on executive powers.³³²

The House of the Federation (the upper house) plays an unusual role in that it straddles the judicial and legislative branches. The House of the Federation does not review legislation passed by the House of People's Representatives, but has authority over issues related to Ethiopia's nationalities. It decides on issues related to the rights of nationalities to self-determination, including the right to secession, and is responsible for promoting the equality and unity of Ethiopia's peoples.³³³ It can resolve disputes between regions, including border disputes, and can order national intervention in a region if the constitutional order is threatened. It also decides on the formula for distributing national revenue to regional governments

Prospect for Political Accommodation: House of the Federation

The upper house of parliament, the House of the Federation, aims to accommodate Ethiopia's nationalities at the national level by representing them in proportion to their population. The House of the Federation decides on issues related to self-determination, resolves disputes between regions, and decides on the formula for revenue transfers to the regions.

³³² CONSTITUTION OF THE FDRE, art. 55.

³³³ Strengthening the equality and unity of Ethiopia's peoples includes building the capacity of regions to implement their budgets, promoting balanced socioeconomic development among regions, distributing fairly infrastructure among regions, and promoting cooperation among regions. CONSTITUTION OF THE FDRE, 1995, art. 62; Proclamation 251/2001, art. 37.

and the boundaries of electoral constituencies.³³⁴ The House of the Federation also interprets the constitution when the Council of Constitutional Inquiry forwards cases.³³⁵

However, the House of the Federation has little influence on day-to-day policy making. It meets only twice a year and has few checks on the House of People's Representatives or the executive. It is also controlled by the EPRDF, and some have therefore called into question its ability to impartially interpret the constitution.³³⁶

Regions, *woredas*, and *kebeles* all have legislative councils that are each level's primary governmental body.³³⁷

b. Decision-making rules and procedures

Both houses of parliament make most decisions by majority vote. Approval by a two-thirds majority of a joint session of both houses of parliament is required for electing the president, approving a state of emergency, assigning revenue-raising powers not specified in the constitution, and approving constitutional amendments.³³⁸

Following opposition gains in the 2005 elections, the lower house of parliament passed new rules requiring support from 51 percent of parliamentarians before an initiative could be debated (it had previously been 20 percent) and allowing for the removal of members who use "insulting and defamatory language."³³⁹ This legislation is perceived as intending to restrict opposition parties' influence.

Assessment

The House of the Federation reflects Ethiopia's system of ethnic federalism at the national level by providing representation for nationalities. It also plays a significant role in overseeing the implementation of ethnic federalism, including resolving border disputes and determining the formula for allocating revenue to regional governments.

However, a number of factors combine to limit equity of decision making in practice. First, the House of the Federation meets only twice a year and has been controlled by the EPRDF. Second, the regulations passed by the House of the People's Representatives in the wake of the 2005 elections severely limit debate on legislation. Taken together, these factors significantly

³³⁴ CONSTITUTION OF THE FDRE, 1995, arts. 62, 103. Proclamation 251/2001, arts. 32, 33.

³³⁵ CONSTITUTION OF THE FDRE, arts. 62, 83; Assefa Fiseha, "Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)," *Mizan Law Review* 1, no. 1 (2007): 18–19.

³³⁶ Aalen, "Ethnic Federalism and Self-Determination," 249.

³³⁷ CONSTITUTION OF THE FDRE, 1995, arts. 49, 86, 97.

³³⁸ CONSTITUTION OF THE FDRE, arts. 59, 64, 70, 93, 99, 105..

³³⁹ Abbink, "Discomfiture of Democracy," 185.

restrict the institutional capacity of the legislature and undermine the legislature's representation of diverse interests and equity of decision making.

5. PUBLIC PARTICIPATION

While numerous avenues for public participation exist within Ethiopia's political system in theory, EPRDF policies have severely curtailed such opportunities in practice. The EPRDF effectively has closed space for debate at all levels of government by occupying key positions and actively targeting political opponents.

a. Engagement with the executive

The constitution includes a number of provisions that speak to public participation in civic life, from the community level to the national level. The constitution states that "all persons have the right to participate in national development and, in particular, to be consulted in respect to projects affecting their community."³⁴⁰ The constitution also specifically gives women the right to "full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women."³⁴¹ The constitution also states that "adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units."³⁴²

Yet in practice, the EPRDF has limited the freedoms of expression and of organization and suppressed opposition, particularly since the 2005 elections. Since the EPRDF's political reach extends down to the *kebele* level, political dialogue and debate even in local forums is stifled.³⁴³

After approximately a year characterized by protests against the government, and both killings and detentions attributed to State security forces, a state of emergency was declared throughout the country on 9 October 2016.³⁴⁴ The prime minister asserted that the state of emergency was necessary for peace, stability, and security within the country.³⁴⁵ The declaration included restrictions on freedom of expression, restrictions on peaceful assembly, and the deployment

³⁴⁰ CONSTITUTION OF THE FDRE, 1995, art. 43.

³⁴¹ CONSTITUTION OF THE FDRE, 1995, art.35.

³⁴² CONSTITUTION OF THE FDRE, 1995, art. 50.

³⁴³ International Crisis Group, "Ethiopia: Ethnic Federalism and Its Discontents," 18–22.

³⁴⁴ Human Rights Watch, "Legal Analysis of Ethiopia's State of Emergency" (30 October 2016), <https://www.hrw.org/news/2016/10/30/legal-analysis-ethiopias-state-emergency>.

³⁴⁵ "Ethiopia declares a state of emergency," *euronews* (10 October 2016), <http://www.euronews.com/2016/10/10/ethiopia-declares-a-state-of-emergency>.

of the army throughout the country.³⁴⁶ The restrictions were eased in March 2017 and the state of emergency was lifted on 4 August 2017.³⁴⁷

b. Referendums

Ethiopians have the right to recall elected officials and to petition the government.³⁴⁸ The constitution provides for referendums if a nationality wants to secede from Ethiopia or form a new region within Ethiopia.³⁴⁹ In cases of border disputes between regions within Ethiopia, inhabitants of the disputed area vote in a referendum to decide which region to be part of.³⁵⁰ Referendums can also be held “to assess public interest or make decisions.”³⁵¹

Assessment

In theory, numerous avenues for public participation exist within Ethiopia’s political system, such as the abilities to recall elected officials, secede, and create regions through referendums and the right to participate in development policy creation. However, EPRDF policies have severely curtailed such opportunities in practice. The EPRDF effectively has closed space for debate at all levels of government by occupying key positions and actively targeting political opponents.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

There are no formal legislative provisions for the incorporation of traditional leaders into formal governance; however, the EPRDF has incorporated customary authorities into government and promoted traditional conflict resolution mechanisms. Ethiopia has a system of Sharia courts that parallel the national and regional court systems. However, the accommodating potential of traditional leaders and practices is limited by the perception that the EPRDF uses traditional leaders and customary practices to extend its own control.

³⁴⁶ Human Rights Watch, “Legal Analysis.”

³⁴⁷ Aaron Maasho, “Ethiopia Lifts Emergency Rule Imposed Last October after Months of Unrest,” Reuters (4 August 2017), <https://www.reuters.com/article/us-ethiopia-politics/ethiopia-lifts-emergency-rule-imposed-last-october-after-months-of-unrest-idUSKBN1AK0QV>.

³⁴⁸ CONSTITUTION OF THE FDRE, 1995, arts. 12, 30.

³⁴⁹ CONSTITUTION OF THE FDRE, 1995, arts. 39, 47.

³⁵⁰ In referendums on border disputes, the right to vote is extended to those who have lived in the disputed area more than five years or “whose displacement from the disputable area is proved to be due to reason related to the dispute.” Proclamation 251/2001, arts. 29, 30.

³⁵¹ Proclamation 532/2007, art. 32.

a. Executive roles and interactions

While there are no formal provisions related to traditional and customary arrangements at the executive level, the EPRDF has partially incorporated customary authorities into the State at the local level. Under the EPRDF, the number of recognized clan and tribal leaders has multiplied, and the government often encourages these leaders to use traditional mechanisms for resolving local-level conflicts. However, although traditional leaders and religious authorities have had some scope to mediate conflicts over minor matters, the government controls the proceedings.³⁵² Elders who participate in conflict resolution proceedings are often well compensated by the government for their participation, and thus traditional leaders are often seen as handpicked or co-opted by the government, reducing their legitimacy.³⁵³

b. Judicial activities

The constitution provides for a system of Islamic Sharia courts that parallels the national and regional court systems.³⁵⁴ There are three levels of Sharia courts: First-Instance Court of Sharia, High Court of Sharia, and Supreme Court of Sharia. The *kadis* (judges of Islamic law) for these courts are recruited by the Supreme Council for Islamic Affairs and approved by the Judicial Administration Commission, which also oversees secular courts. Sharia courts follow the same rules of procedure as the secular courts and are staffed and funded by the government. Decisions from Sharia courts cannot be appealed to the secular court system, and vice versa.³⁵⁵ For Ethiopia's Muslims, the Sharia courts have jurisdiction over questions of marriage, family, and inheritance. For their jurisdiction to apply, all parties to the dispute must give their consent.³⁵⁶

The constitution allows the lower house and regional councils to “establish or give official recognition to religious and customary courts.”³⁵⁷ In addition to the national courts, all the regions have recognized regional Sharia courts.³⁵⁸

Challenges faced by Sharia courts include the ambiguity of determining whether parties consent to their jurisdiction, potential conflict between the civil procedures Sharia courts are re-

³⁵² Abbink, “Ethnic-Based Federalism and Ethnicity in Ethiopia,” 603.

³⁵³ Tobias Hagmann and Alemmaya Mulugeta, “Pastoral Conflicts and State-Building in the Ethiopian Lowlands,” *Afrika Spectrum* 43, no. 1 (2008): 26–28.

³⁵⁴ About one-third of Ethiopia's population is Muslim. Sharia courts operated unofficially in Ethiopia for many years, were promoted by the Italians during their brief occupation of the country from 1936 to 1941, and were officially recognized by the Ethiopian government in 1942. Mohammed Abdo, “Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia,” *Mizan Law Review* 5, no. 1 (2011): 77–79.

³⁵⁵ Decisions of Sharia courts can, however, be appealed to the House of the Federation if they relate to questions over interpretation of the constitution. Abdo, “Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia,” 91–93.

³⁵⁶ Proclamation 188/1999, arts. 3–5, 17, 19.

³⁵⁷ CONSTITUTION OF THE FDRE, 1995, art. 78.

³⁵⁸ Girmachew Alemu Aneme, “Introduction to the Ethiopian Legal System and Legal Research,” *Hauser Global Law School Program—GlobeLex* (2010), http://www.nyulawglobal.org/Globalex/Ethiopia.htm#_edn55.

quired to follow and Islamic law, potential inconsistencies in interpretation of Islamic law, and potential conflict with constitutional provisions related to human rights and women's rights.³⁵⁹

Assessment

The EPRDF has fostered a climate of inclusion through traditional and customary arrangements by recognizing traditional leadership and promoting traditional mechanisms of conflict resolution. However, the perception that the EPRDF appoints and compensates elders to extend its own control limits the perceived legitimacy potential of both traditional leaders and the customary practices, such as conflict resolution, in which they engage. In addition, the potential for inclusion is limited by the fact that virtually all traditional leaders recognized by the government, such as Somali-Ethiopian elders, are men.³⁶⁰

Conclusion

Ethiopia's system of ethnic federalism is a unique approach to political accommodation. On paper, the system is highly successful in devolving powers to independent regions, enabling different ethnic groups the right to self-determination, self-government, and cultural and linguistic rights. While some analysts highlight the potential for ethnic federalism to exacerbate ethnic conflict, such tensions have been somewhat managed in Ethiopia even though low-intensity conflict continues in some regions.

However, the future stability of the political system is unclear. In practice, Ethiopia's current political system has been dominated by a single coalition, the EPRDF, which has governed through highly centralized policies and repressive practices. Many of the potentially accommodating mechanisms within the political system are undercut by the EPRDF's control of political institutions and resources. When considered together, ethnic federalism coupled with EPRDF control of the State have resulted in a political system that has a number of accommodating mechanisms that have not been fully used.

³⁵⁹ Abdo, "Legal Pluralism, Sharia Courts."

³⁶⁰ See Tobias Hagmann, "Bringing the Sultan Back In: Elders as Peacemakers in Ethiopia's Somali Region," in *State Recognition and the Democratization of Sub-Saharan Africa: A New Dawn for Traditional Authorities?* eds. Lars Buur and Helene Maria Kyed (Zurich, Switzerland: Basingstoke, 2007): 35, http://www.zora.uzh.ch/41735/2/Tobias_Hagmann_Jan151_TH_final.pdf, and Kjetil Tronvoll and Tobias Hagmann, "Introduction: Traditional Authorities and Multi-Party Elections in Ethiopia," in *Contested Power in Ethiopia: Traditional Authorities and Multi-Party Elections*, eds. Kjetil Tronvoll and Tobias Hagmann (Leiden, the Netherlands: Koninklijke Brill NV): 9.

References

Legal References

- Constitution of the Federal Democratic Republic of Ethiopia, 1995.
- Proclamation 35/2011, Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State.
- Proclamation 59/2001, Revised Constitution of the Amhara National Regional State.
- Proclamation 188/1999, Federal Courts of Sharia Consolidation.
- Proclamation 251/2001, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities.
- Proclamation 359/2002, System for the Intervention of the Federal Government in the Regions.
- Proclamation 361/2003, Addis Ababa City Government Revised Charter.
- Proclamation 416/2004, Dire Dawa Government Charter.
- Proclamation 470/2005, House of People's Representatives Working Procedure.
- Proclamation 471/2005, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation.
- Proclamation 532/2007, Amended Electoral Law.
- Proclamation 573/2008, Revised Political Parties Registration.
- Proclamation 691/2010, Definition of Powers and Duties of the Executive Organs.

Nonlegal References

- Aalen, Lovise. "Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: the Case of Ethiopia." *International Journal on Minority and Group Rights* 13, no. 2/3 (2006): 243–261.
- Aalen, Lovise, and Kjetil Tronvoll. "The 2008 Ethiopian Local Elections: The Return of Electoral Authoritarianism." *African Affairs* 108, no. 430 (2008): 111–120.
- Abbay, Alemseged. "Diversity and State-Building in Ethiopia." *African Affairs* 103, no. 413 (2004): 593–614.
- Abbay, Alemseged. *Identity Jilted, Or, Re-imagining Identity?: The Divergent Paths of the Eritrean and Tigrayan Nationalist Struggles*. Asmara: The Red Sea Press, 2006.
- Abbink, Jon. "Discomfiture of Democracy? The 2005 Election Crisis in Ethiopia and Its Aftermath." *African Affairs* 105, no. 419 (2006): 173–199.
- Abbink, Jon. "Ethnic-Based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years." *Journal of Eastern African Studies* 5, no. 4 (2011): 596–618.
- Abbink, Jon. "The Ethiopian Second Republic and the Fragile 'Social Contract'." *Africa Spectrum* 44, no. 2 (2009): 3–28.
- Abdo, Mohammed. "Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia." *Mizan Law Review* 5, no. 1 (2011): 72–104.
- Aneme, Girmachew Alemu. "Introduction to the Ethiopian Legal System and Legal Research." *Hauser Global Law School Program—Globlex*, 2010.
http://www.nyulawglobal.org/Globalex/Ethiopia.htm#_edn55.

- Ayele, Zemelak. "Decentralization and Local Governance in Ethiopia." Local Government Bulletin Conference. Community Law Center, 23 July 2009. <http://www.communitylawcentre.org.za/clc-projects/local-government/10th-anniversary-of-the-local-government-bulletin/Zemelak%20Ayele.pdf>.
- Brietzke, Paul H. "Ethiopia's 'Leap in the Dark': Federalism and Self-Determination in the New Constitution." *Journal of African Law* 39, no. 1 (1995): 19-38.
- Chanie, Paulos. "Clientelism and Ethiopia's Post-1991 Decentralisation." *The Journal of Modern African Studies* 3, no. 45 (2007): 355-384.
- Center for International Legal Cooperation. "Comprehensive Justice System Reform Program: Baseline Study Report." 2005.
- Clapham, Christopher. *Transformation and Continuity in Revolutionary Ethiopia*. Cambridge: Cambridge University Press, 1988.
- Cohen, John M. "Ethnic Federalism in Ethiopia." *Northeast African Studies* 2, no. 2 (1995): 157-188.
- euronews. "Ethiopia Declares a State of Emergency." 10 October 2016. <http://www.euronews.com/2016/10/10/ethiopia-declares-a-state-of-emergency>.
- Fiseha, Assefa. "Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)." *Mizan Law Review* 1, no. 1 (2007): 1-30.
- Garcia, Marito, and Andrew Sunil Rajkumar. "Achieving Better Service Delivery through Decentralization in Ethiopia." World Bank Working Paper No. 131, 2008.
- Habtu, Alem. "Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution." *Publius* 35, no. 2 (2005): 313-335.
- Hagmann, Tobias. "Bringing the Sultan Back In: Elders as Peacemakers in Ethiopia's Somali Region." In: *State Recognition and the Democratization of Sub-Saharan Africa: A New Dawn for Traditional Authorities?*, edited by Lars Buur and Helene Maria Kyed, 31-51. Zurich, Switzerland: Basingstoke, 2007. http://www.zora.uzh.ch/41735/2/Tobias_Hagmann_Jan151_TH_final.pdf.
- Hagmann, Tobias, and Alemmaya Mulugeta. "Pastoral Conflicts and State-Building in the Ethiopian Lowlands." *Afrika Spectrum* 43, no. 1 (2008): 19-37.
- Human Rights Watch. "Legal Analysis of Ethiopia's State of Emergency." 30 October 2016. <https://www.hrw.org/news/2016/10/30/legal-analysis-ethiopias-state-emergency>.
- International Crisis Group. "Ethiopia: Ethnic Federalism and Its Discontents." Crisis Group Africa Report No. 153. 2009: 1-41.
- Inter-Parliamentary Union. "Ethiopia: Yefedereshein Mekir Bete (House of the Federation)." 1 March 2016. <http://www.ipu.org/parline-e/reports/2108.htm#last>.
- Inter-Parliamentary Union. "Ethiopia: Yehizb Tewokayoch Mekir Bete (House of Peoples' Representatives)." 6 October 2015. http://www.ipu.org/parline-e/reports/2107_A.htm.
- Inter-Parliamentary Union. "Women in National Parliaments." 1 September 2015. <http://www.ipu.org/wmn-e/classif.htm>.
- Kefale, Asnake. "Ethnic Decentralization and the Challenges of Inclusive Governance in Multiethnic Cities: The Case of Dire Dawa, Ethiopia." *Regional and Federal Studies* 24, no. 5 (2014): 1-17.
- Keller, Edmond J., and Lahra Smith. "Obstacles to Implementing Territorial Decentralization: The First Decade of Ethiopian Federalism," in *Sustainable Peace: Democracy and Power-Dividing Institutions After Civil Wars*, edited by Philip Roeder and Donald Rothchild. Ithaca, NY: Cornell University Press, 2005.

- Maasho, Aaron. "Ethiopia Lifts Emergency Rule Imposed Last October after Months of Unrest." Reuters. 4 August 2017. <https://www.reuters.com/article/us-ethiopia-politics/ethiopia-lifts-emergency-rule-imposed-last-october-after-months-of-unrest-idUSKBN1AK0QV>.
- Markakis, John. "The Somali in Ethiopia." *Review of African Political Economy* 23, no. 70 (1996): 567–570.
- Moges, Abu Girma. "An Economic Analysis of Fiscal Federalism in Ethiopia." *Northeast African Studies* 10, no. 2 (2003): 1–31.
- Mohammed, Hashim Tewfik. "Ethiopia: The Challenge of Many Nationalities." *Federations* 1, no. 5 (Summer 2001).
- Plaut, Martin. "Background to War: From Friends to Foes." In *Unfinished Business: Eritrea and Ethiopia at War*, edited by Dominique Jacquin-Berdal and Martin Plaut. Asmara: The Red Sea Press, 2006.
- Quota Project. "Ethiopia," 22 April 2015. <http://www.quotaproject.org/uid/countryview.cfm?country=73#party>.
- Regassa, Tsegaye. "State Constitutions in Federal Ethiopia: A Preliminary Observation." Summary for the Bellagio Conference, 22–27 March 2004.
- Reilly, Benjamin. "Government Structure and Electoral Systems." New York University, Center on International Cooperation. 3 February 2003. <http://cic.nyu.edu/sites/default/files/e20govtstructureelectoralsystemsreilly.pdf>.
- Smith, Lahra. "The Politics of Contemporary Language Policy in Ethiopia." *Journal of Developing Societies* 24, no. 2 (2008): 207–243.
- Smith, Lahra. "Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia." *The Journal of Modern African Studies* 45, no. 4 (2007): 565–594.
- Sommer, Monika M. "Ethiopian Federalism Seen from the Regional State of Gambella." Chap. 12, In *After the Comprehensive Peace Agreement in Sudan*, edited by Elke Grawert, 212–231. Rochester, NY: James Currey, 2010.
- Tronvoll, Kjetil. "The Ethiopian 2010 Federal and Regional Elections: Re-establishing the One-Party State." *African Affairs* 115, no. 461 (2010): 1–16.
- Tronvoll, Kjetil, and Tobias Hagmann. "Introduction: Traditional Authorities and Multi-Party Elections in Ethiopia." In *Contested Power in Ethiopia: Traditional Authorities and Multi-Party Elections*, Edited by Kjetil Tronvoll and Tobias Hagmann. Leiden, the Netherlands: Koninklijke Brill NV, 2012.
- Van der Beken, Christophe. "Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level." *Afrika Focus* 20, no. 1/2 (2007): 105–151.
- Vaughan, Sarah. "The Addis Ababa Transitional Conference of July 1991: Its Origins, History, and Significance." Centre of African Studies, Edinburgh University, 1994.
- World Bank Group. "Ethiopia Public Expenditure Review." Report No: ACS14541 (April 2016): 1–132.
- World Bank Group. "World Bank Open Data Project: Ethiopia: Population, total." <http://data.worldbank.org/indicator/SP.POP.TOTL?locations=ET&view=map>.
- Yilmaz, Serdar, and Varsha Venugopal. "Local Government Discretion and Accountability in Ethiopia." International Studies Program at Georgia State University (2008): 1–25.
- Young, John. "Regionalism and Democracy in Ethiopia." *Third World Quarterly* 19, no. 2 (1998): 191–204.

INDIA

Executive Summary

This case study focuses on India's governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and nonaccommodating arrangements to consider.

As one of the most linguistically, religiously, and ethnically diverse countries in the world, India offers many examples of how to maintain stability through political accommodation. India has a multilevel, asymmetric federal system in which state boundaries are primarily based on linguistic groups. The national government has granted varying degrees of political and fiscal autonomy to different regions and groups, and some tribal areas within states also have limited autonomy. India's legal system incorporates distinct provisions designed to protect and advance the interests of certain minority groups. There are many mechanisms for accommodating traditionally disadvantaged groups and regions, including reserved seats in legislatures, the civil service, and educational institutions for certain castes and tribes; reserved seats in local legislatures for women, resulting in 46 percent women's representation; guarantees of educational autonomy to linguistic and religious minorities; and the continued use of traditional justice systems in some tribal areas. India maintains separate personal laws for Hindus, Muslims, Christians, Parsees, and Jews to try to accommodate the main religious minority groups.

Table 6—Accommodating and Less Accommodating Aspects in India

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
INDIA	<ul style="list-style-type: none"> • Asymmetric and linguistic federalism • Subnational fiscal autonomy • Women's and minority quotas • Separate personal laws for different religions • Tribal areas with tribal justice systems 	<ul style="list-style-type: none"> • Significant numbers appointed or indirectly elected • Limited checks on national executive

Background

With a population of about 1.3 billion, India is the second most populous country in the world and the largest democracy.³⁶¹ It encompasses numerous linguistic, ethnic, and religious minorities, as well as a caste system and tribal structures that remain socially relevant. During British colonial times, rulers established an electoral system to try to accommodate this diversity, with separate electorates and reserved seats for a wide range of groups, including certain castes, Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, and women.³⁶² When India gained independence in 1947, it was partitioned between Hindu-majority India and Muslim-majority Pakistan, resulting in mass displacement and hundreds of thousands of deaths. Some blamed this partition on the system of separate electorates, which they accused of exacerbating divisions.³⁶³

India's 1949 constitution abandoned the separate electorates and put in place a secular, federal system that attempted to protect the rights of linguistic, ethnic, and religious minorities. Although India has remained relatively stable as a whole, the national government has come into regular conflict with linguistic, ethnic, and religious groups seeking independence, autonomy, or development. India's federal system has evolved over time in response to these conflicts. The most significant change came in 1956, when state boundaries were redrawn around the major linguistic groups. In the years since, more linguistic groups have gained their own states. In addition, several states have gained increased autonomy, including the state of Jammu and Kashmir, although the actual degree of autonomy they have asserted has varied over time.

India's National Congress Party has been the dominant political force for most of the period since India's independence. The nature of Congress Party rule has varied significantly from administration to administration, initially promoting policies aimed at increasing accommodation of minority groups followed by a period of centralization and authoritarianism in the 1970s. Since the 1980s, the influence of regional parties has grown. The Hindu nationalist Bharatiya Janata Party, which has often criticized laws related to minority groups, has gained influence in recent years, including a significant victory in the 2014 national parliamentary elections.

³⁶¹ PTI, "India's population to surpass that of China around 2024: UN," *Times of India* (21 June 2017), <https://timesofindia.indiatimes.com/india/indias-population-to-surpass-that-of-chinas-around-2024-un/articleshow/59257045.cms>.

³⁶² Government of India Act, 1935, First Schedule, Table of Seats.

³⁶³ Susanne Hoeber Rudolph and Lloyd I. Rudolph, "Living with Difference in India: Legal Pluralism and Legal Universalism in Historical Context," *The Political Quarterly* 71, no. 1 (2000): 21.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.³⁶⁴ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests. The framework consists of six focal areas or 'Strands', each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where India has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

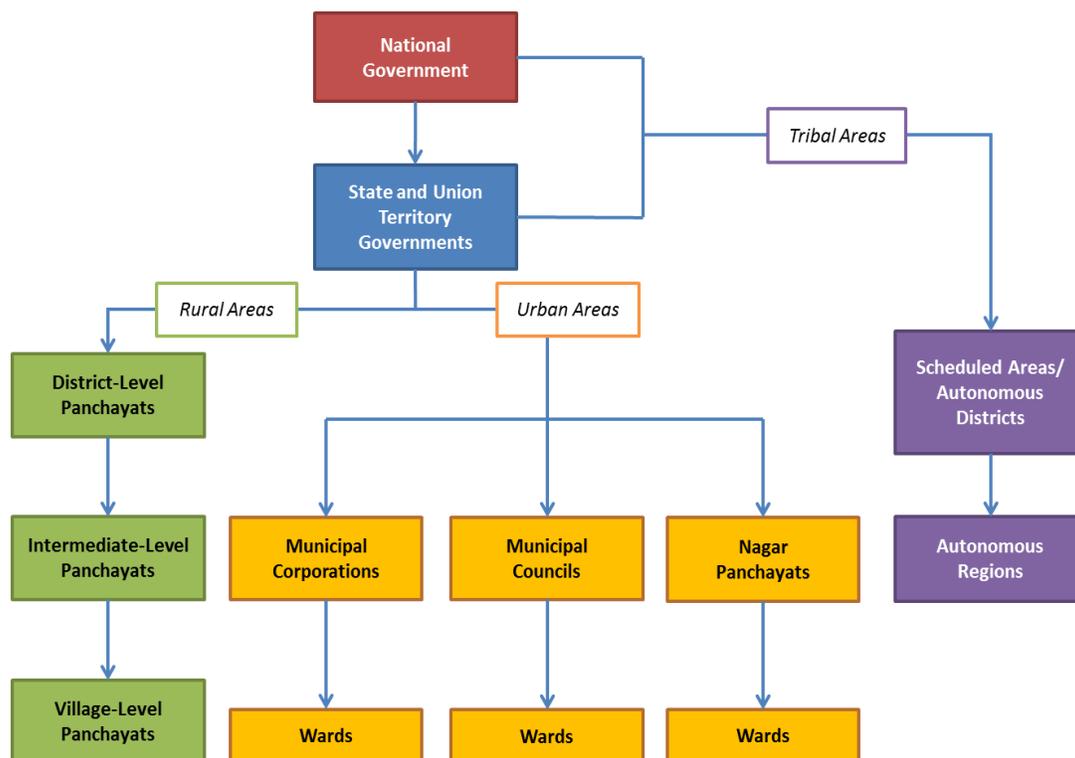
India is a relatively centralized federal state. While state governments are granted many powers and significant fiscal autonomy, national authority supersedes state authority. India's federal system is asymmetric: union territories have less autonomy than states, and some states have more autonomy than others. In addition, autonomous districts and regions provide further autonomy to certain groups within states. India's complex political structure has been, for the most part, successful in accommodating a wide variety of interests in a large territory.

³⁶⁴ Here, 'representatives' is used broadly to mean political, community and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

a. Structure

India is a federal State³⁶⁵ where the national government has significant oversight over subnational governance. India's structure consists of 29 states and seven union territories.³⁶⁶ States are subdivided into *panchayats* (village councils), municipalities (city councils), and autonomous districts and regions.³⁶⁷ (See Figure 7.) The national parliament can divide or merge states and alter their names and boundaries.³⁶⁸ Except for Jammu and Kashmir, states do not have separate constitutions. With a few exceptions, states do not have a role in amending India's constitution.³⁶⁹

Figure 7—India's Federal Structure



³⁶⁵ The constitution officially labels India a "Union of States." INDIA CONST., 1950, art. 1.

³⁶⁶ Since 1956, the national parliament has increased the number of states from 14 to 29, mostly by dividing existing states—often a highly contentious process.

³⁶⁷ INDIA CONST., 1950, art. 243, Sixth Schedule.

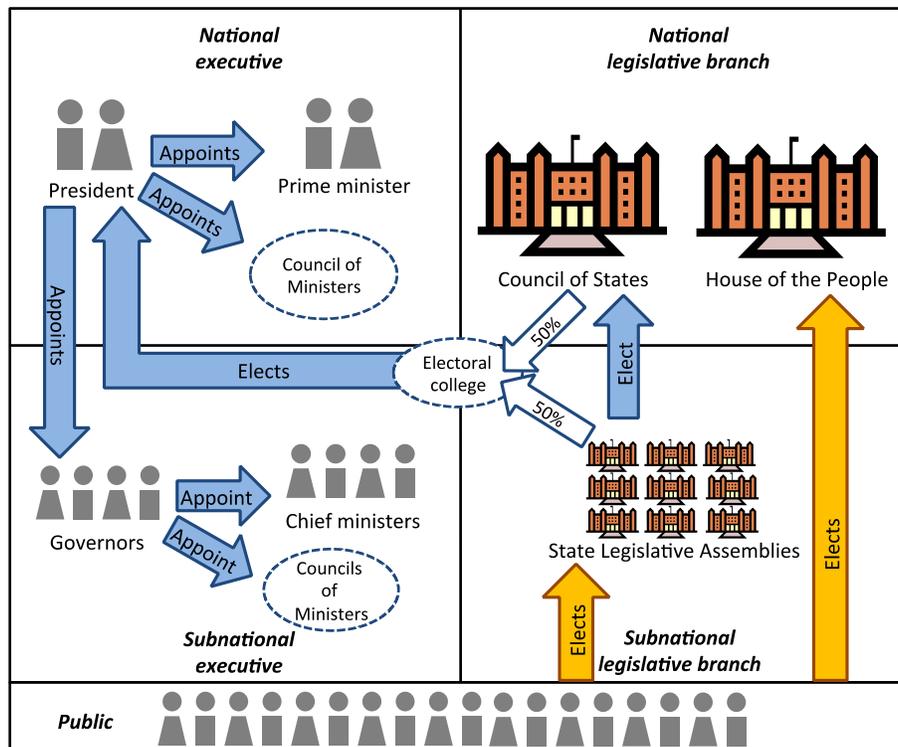
³⁶⁸ Non-binding consultation with the state legislature is required. INDIA CONST., 1950, art. 3.

³⁶⁹ Amendment of certain provisions requires support from both the national parliament and at least half of all state legislatures. Provisions requiring support from states include the election of the president, powers of national and state executives, establishment of the Supreme Court and high courts, distribution of legislative powers between the national parliament and state legislatures, lists of powers reserved for national and state governments, and representation of states in the national parliament. INDIA CONST., 1950, art. 368.

At the national level, India is governed by a bicameral legislature, a president who serves as head of State, and a prime minister who serves as head of government. The legislature is composed of the Council of States, an upper house that represents states' interests, and the House of the People, a lower house that represents the public at large.

States have elected legislative assemblies and governors appointed by the president. Most state legislatures are unicameral, although some have both an upper and lower house.

Figure 8—India's Political Structure



The seven union territories are parallel to states in the federal hierarchy but fall under direct national control. Therefore, most union territories do not have their own executive or legislative bodies. (See *Political Structure—Division of powers*.) Union territories were classified as such for reasons of strategic importance, cultural particularity, or administrative efficacy.³⁷⁰ The national parliament has the power to form new union territories from existing states, turn union territories into states, or merge union territories with existing states.³⁷¹ As a result, the list of union territories has fluctuated over time.³⁷²

³⁷⁰ Sudhir Kumar, *Political and Administrative Setup of Union Territories in India* (New Delhi: Mittal Publications, 1991).

³⁷¹ INDIA CONST., 1950, art. 3.

³⁷² Of the seven current union territories, one (the National Capital Territory of Delhi) has always been a union territory.

Since 1992, India's constitution has provided for additional levels of government below states and union territories: *panchayats* and municipalities.³⁷³ There are multiple sublevels within each of these.

Within states, there are areas that encompass scheduled castes and tribes, and India's constitution contains separate provisions for the administration of these areas.³⁷⁴ Depending on the state, these areas may be governed as 'scheduled areas' or 'tribal areas'. Most states have scheduled areas, which generally encompass one predominant scheduled tribe and fall under state and national executive authority.³⁷⁵ In four states in Northeast India, tribal areas are autonomous districts and regions.³⁷⁶ Unlike scheduled areas, autonomous districts and regions have autonomous councils with a wide range of powers. (See *Political Structure—Division of powers: Between National/State Governments and Scheduled Areas/Autonomous Districts.*)

b. Division of powers

India's federal structure is asymmetric, meaning that specific subnational governments are granted different levels of political, administrative, and fiscal power than others. This asymmetry resulted from groups rejecting the status quo because they felt it did not take account of their interests, which the national government has addressed through a range of approaches: creating new states with the same powers as existing states;³⁷⁷ keeping

Prospect for Political Accommodation: Asymmetric Federalism

India's federal system is asymmetric to try to accommodate different state interests. Several states operate under special constitutional provisions that grant them greater autonomy.

The Muslim-majority state of Jammu and Kashmir is granted special constitutional status, which gives it considerably greater autonomy than other states. Various constitutional provisions also provide somewhat more autonomy to the heterogeneous states of Northeast India.

Union territories, which are parallel to states in the federal structure, also demonstrate asymmetry. These territories are directly administered by the national government and therefore have significantly less autonomy than states.

These horizontal differences in power and authority, combined with linguistic federalism, attempt to deliver stability and prevent regional conflict in an incredibly large and diverse state. However, such distinctions can also reinforce divisions across different groups.

³⁷³ As of 2010, India had approximately 250,000 *panchayats* and municipalities with a combined total of three million elected representatives. Finance Commission of India, *Report of the 13th Finance Commission (2010–2015)*, 2010, art. 10.2.

³⁷⁴ Scheduled castes and tribes are historically disadvantaged castes and tribes, described in the constitution. The president and the national parliament define which castes and tribes are 'scheduled'. Scheduled tribes generally refers to 'untouchables', although art. 17 of the constitution officially abolished untouchability. India has over 700 scheduled tribes, constituting 8.6 percent of the total population and living in about 15 percent of the total area. INDIA CONST., 1950, art. 342 and Ministry of Tribal Affairs, *Annual Report: 2015–2016*, Government of India, Dec 2015, 29–30.

³⁷⁵ Ultimate authority falls to the national executive. INDIA CONST., 1950, art. 339, Fifth Schedule art. 2.

³⁷⁶ These states are Assam, Meghalaya, Tripura, and Mizoram. Autonomous districts may be divided into the smaller subunits of autonomous regions. INDIA CONST., 1950, Sixth Schedule art. 1.

³⁷⁷ For example, in 2014 the government created the state of Telangana (formerly part of the state of Andhra Pradesh) following a prolonged movement demanding separation.

states intact but providing constitutional safeguards to particular geographical areas within those states;³⁷⁸ granting additional authority to some state legislative councils³⁷⁹ or governors;³⁸⁰ granting additional authority to the national executive over certain geographical areas of some states;³⁸¹ and establishing a special legislative committee³⁸² or special regional council³⁸³ to ensure the representation of certain geographical areas in the state legislative assembly. Most of these asymmetric provisions apply to the states of Northeast India, which are ethnically, culturally, and religiously distinct from much of the rest of the country. Aside from these states and Jammu and Kashmir, all other states in India have relatively symmetric powers; the national government has used linguistic federalism rather than asymmetric federalism to address most regional conflicts.³⁸⁴

While provisions on asymmetry aim to protect states, or regions within states, on the basis of being culturally distinct or historically disadvantaged, the history of unrest in many of these same states has sometimes led to decreased autonomy. For example, constitutional amendments have allowed greater national intervention in the majority-Sikh state of Punjab following unrest beginning in the 1980s.³⁸⁵ In seven states in Northeast India, the governor or the national government can declare all or any part of the state to be a ‘disturbed area’; this designation gives the Armed Forces a wide range of powers, including the use of force against illegally assembled or armed persons and to search and arrest without warrants.³⁸⁶ This law has come

³⁷⁸ For example, in 1973, the national parliament amended the constitution to provide for equitable education, employment, and civil service appointment in certain parts of Andhra Pradesh. The constitution (Thirty-Second Amendment) Act, 1973. INDIA CONST., 1950, art. 371D.

³⁷⁹ In Nagaland and Mizoram, the constitution (per amendments in 1963 and 1987, respectively) bans the national parliament from legislating over certain traditional and customary practices and land ownership without the consent of the legislative assembly. INDIA CONST., 1950, arts. 371A, 371G.

³⁸⁰ In Nagaland, the constitution grants the governor “special responsibility with respect to law and order” and the power to block acts of the national parliament or the state legislature from applying to the Tuensang district. INDIA CONST., 1950, art. 371A. In Sikkim, the constitution grants the governor “special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population.” INDIA CONST., 1950, art. 371F.

³⁸¹ In Manipur, the constitution (per an amendment in 1972) grants the national executive the power to direct the state in administering the culturally distinct “Hill Areas.” INDIA CONST., 1950, art. 371C.

³⁸² In Assam and Manipur, the constitution (per amendments in 1969 and 1972, respectively) allows the president to constitute a special committee in the state legislative assembly for members elected from certain regions. INDIA CONST., 1950, arts. 371B, 371 C.

³⁸³ In Nagaland, the constitution (per an amendment in 1963) allows the governor to constitute a regional council tasked with electing representatives from that region to the state legislative assembly. INDIA CONST., 1950, art. 371A. Representation of the People Act, 1950 art. 7.

³⁸⁴ Louise Tillin, “United in Diversity? Asymmetry in Indian Federalism,” *Publius: The Journal of Federalism* 37, no. 1 (2006): 47–48.

³⁸⁵ INDIA CONST., 1950, art. 356.

³⁸⁶ This law originally applied only to Assam and Manipur but has since been extended also to include Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, and Tripura. The Armed Forces (Special Powers) Act, 1958, arts. 3, 4.

under national and international condemnation for potential human rights violations, and the ministry committee responsible for reviewing it in 2004 recommended its repeal.³⁸⁷

The following sections describe the division of powers between national and state governments; the national government and the state of Jammu and Kashmir; the national government and union territories; state and local governments; and national/state governments and scheduled areas/autonomous districts.

Between National and State Governments

Powers exclusive to the national government include defense, foreign affairs, constitution, and organization of the Supreme Court and High Court, transportation, commerce, banking, and oil resources. Powers exclusive to the states include police, public order, public health, agriculture, water supply, land rights, industry, and mines and mineral development. Powers shared between the national and state governments include lower-level courts, social security, and education. The national government assumes all powers not explicitly listed in the constitution.³⁸⁸

Overall, national authority supersedes state authority. If national and state laws are inconsistent, national law prevails.³⁸⁹ State governors are appointed by the president and can send laws passed by state legislative assemblies to the president for consideration.³⁹⁰ The national parliament can override certain state powers. For example, although states can regulate industry, mines, and mineral development, the national parliament can regulate these areas if it declares this to be “expedient in the public interest.”³⁹¹

The national government has several avenues for broadly assuming state powers. If determined to be “necessary or expedient in the national interest,” the Council of States can declare by a two-thirds majority of members present and voting that a service is an ‘all-India service’ and place the regulation of that service under the authority of the national parliament.³⁹² By a two-thirds majority and based on ‘the national interest’, the Council of States can also temporarily allow the national parliament to legislate in any areas specifically reserved for states.³⁹³

The national government has used this power to regulate civil servants, police, and forestry officials who would otherwise fall under state authority. Attempts to regulate additional state

³⁸⁷ Ministry of Home Affairs, *Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958*, 2004, 75–75.

³⁸⁸ A series of constitutional amendments since 1956 has reduced the number of state powers from 66 to 61 while increasing the number of national powers from 97 to 99. H. M. Rajashekara, “The Nature of Indian Federalism: A Critique,” *Asian Survey* 37, no. 3 (1997): 252; INDIA CONST., 1950, arts., 245, 246, 248, Seventh Schedule.

³⁸⁹ INDIA CONST., 1950, art. 251, 254.

³⁹⁰ INDIA CONST., 1950, arts. 200, 201.

³⁹¹ INDIA CONST., 1950, Seventh Schedule.

³⁹² INDIA CONST., 1950, art. 312.

³⁹³ INDIA CONST., 1950, art. 249.

services in 1963 failed when the states refused to cooperate.³⁹⁴ The national parliament has used its power to assume specific state powers three times—in 1950, 1951, and 1986—each time temporarily and to address a specific problem.³⁹⁵

Moreover, the president (with national parliamentary approval) can proclaim three different types of emergency that grant additional powers to the national government.³⁹⁶ First, in a national emergency, the president can issue directives to state governors and the national parliament can assume state powers.³⁹⁷ (See *Executive Branch*.) Second, in a state emergency, the president can impose ‘president’s rule’. Under president’s rule, the national executive and the national parliament can assume any state powers, and the president can temporarily suspend constitutional provisions related to state institutions or authority.³⁹⁸ Third, in a financial emergency, the president can extensively intervene in state finances.³⁹⁹

The national executive has repeatedly assumed state powers by declaring national and state emergencies. The presidency has declared over 100 state emergencies since 1951, often to remove opposition parties from power or suppress local demands for autonomy.⁴⁰⁰ A 1994 Supreme Court decision imposed limits on declaring state emergencies, which significantly reduced their abuse.⁴⁰¹ Since independence, the executive has also declared four national emergencies—three external (due to wars with China and Pakistan) and one internal. The controversial 1975 internal emergency was widely seen as an abuse of this provision and led to the ousting of the ruling party in elections less than two years later.

³⁹⁴ In 1963, the national parliament expanded “all-India services” from the administrative service and police service to include three additional services: the service of engineers, medical and health service, and forest service. Of these three, only the forest service became operational, because states refused to participate in the other two. The All India Services Act, 1951, art. 2. Shriram Maheshwari, “The All-India Services,” *Public Administration* 49, no. 3 (1971): 291.

³⁹⁵ Rajya Sabha Secretariat, “Rajya Sabha at Work,” ed. Yogendra Narain (New Delhi: Government of India Press, 2006): 619–621.

³⁹⁶ While the constitution gives most executive powers to the president, the prime minister exercises these powers in practice. (See *Executive Branch – Structure and competencies*.)

³⁹⁷ Laws passed under such a proclamation cease to have effect six months after the proclamation has expired. A presidential proclamation of emergency expires after one month unless approved by the national parliament and automatically expires after six months. INDIA CONST., 1950, arts. 352, 353, 358.

³⁹⁸ Laws passed under such a proclamation cease to have effect six months after the proclamation has expired. A presidential proclamation of failure of state constitutional machinery expires after two months unless approved by the national parliament and automatically expires after six months. INDIA CONST., 1950, arts. 250, 356.

³⁹⁹ A presidential proclamation of financial emergency expires after two months unless approved by the national parliament. INDIA CONST., 1950, art. 360.

⁴⁰⁰ Krishna K. Tummala, “The Indian Union and Emergency Powers,” *International Political Science Review* 17, no. 4 (1996): 379.

⁴⁰¹ *S. R. Bommai v. Union of India* (1994), Supreme Court of India. On the other extreme, some have accused the national executive of not imposing president’s rule when necessary. For example, during the 2002 riots in Gujarat, the BJP-led national government did not impose president’s rule to quell the violence despite inaction from the BJP-led state government. Mahendra P. Singh and Douglas V. Verney, “Challenges to India’s Centralized National Parliamentary Federalism,” *Publius: The Journal of Federalism* 33, no. 4 (2003): 17–18.

One area where the national government has not intervened in state affairs is language rights. As part of India's system of 'linguistic federalism', states have significant powers related to language. State legislatures can establish official state languages—although the president can direct a state to recognize any language that “a substantial proportion of the population” desires to be recognized.⁴⁰² The national government cannot establish Hindi as the exclusive national language—at the expense of English, which is more widely spoken and preferred in many regions—without the consent of the state legislatures of all non-Hindi-speaking states.⁴⁰³

As a result, 22 official languages are recognized among the various states and union territories of India.⁴⁰⁴ Nonetheless, these official languages do not cover all linguistic minorities; many states operate as if unilingual, even though no state has fewer than 12 language groups, and some have up to 410.⁴⁰⁵

Prospect for Political Accommodation: Linguistic Federalism

Following independence, the boundaries of India's states were based in British colonial administration, and major linguistic groups were divided among states. This structure quickly gave rise to political movements demanding states based around linguistic groups.

In 1956, India's government redrew state boundaries along linguistic lines so that, at least in theory, each state encompasses one major linguistic group.

'Linguistic federalism' accommodates linguistic groups by allowing states to determine their own official languages.

Between National Government and Jammu and Kashmir

The state of Jammu and Kashmir, which has frequently been at the center of internal and international conflict, is the only state with its own constitution. Many provisions of the constitution of India do not apply to it, or apply only with modifications, with the national parliament retaining limited jurisdiction over the state. The state government must approve national laws in the areas of defense, external affairs, and communications in order for them to apply to the state. Unlike for other states, the national parliament cannot introduce legislation altering Jammu and Kashmir's name or boundaries without the consent of the state legislature.⁴⁰⁶ The state legislature has sole authority to amend the state constitution.⁴⁰⁷ Permanent residents of Jammu and Kashmir have certain privileges within their state that are not granted to other In-

⁴⁰² INDIA CONST., 1950, arts. 345, 347.

⁴⁰³ Official Languages Act, 1963 (as amended 1967) art. 3.

⁴⁰⁴ INDIA CONST., 1950, Eighth Schedule.

⁴⁰⁵ Ministry of Minority Affairs, *Report of the National Commission for Religious and Linguistic Minorities* (2007): 33–35.

⁴⁰⁶ The Constitution (Application to Jammu and Kashmir) Order, 1954, Parts I, III.

⁴⁰⁷ Aside from certain articles relating to Jammu and Kashmir's status as “an integral part of the Union of India,” the extent of state powers, the governor, or the administration of elections, the state legislature can amend the state constitution with two-thirds support from the total membership of both houses and the assent of the governor. The Constitution of Jammu and Kashmir, art. 147. The Constitution (Application to Jammu and Kashmir) Order, 1954, Parts XIX, XX.

dians residing there, including preferential employment with the state government, property acquisition, settlement in the state, and scholarships.⁴⁰⁸

Jammu and Kashmir also operates under different emergency provisions than other states. Only national emergencies related to war or external aggression apply to the state, while those related to internal disturbances require the approval of the state government. However, the autonomy of Jammu and Kashmir has steadily eroded since independence. In 1964, the constitutional provision allowing the president to impose 'president's rule' was extended to Jammu and Kashmir, enabling extensive national intervention in state affairs.⁴⁰⁹ Conflict erupted in the late 1980s when the prime minister undermined the state's special autonomous status.⁴¹⁰ Jammu and Kashmir still lacks the special autonomy granted in the constitution, and the conflict there persists. Finally, a 1990 law extended the controversial Armed Forces (Special Powers) Act to Jammu and Kashmir, granting extensive powers to national armed forces not previously granted.⁴¹¹ In these and other ways, the national government's relationship with the state of Jammu and Kashmir has evolved over time.

Between National Government and Union Territories

The president has direct authority over union territories and can unilaterally repeal or amend the application of any national legislation to most of the territories.⁴¹² The president can delegate the administration of union territories to an appointed administrator or lieutenant governor or to the governor of a neighboring state. Since executive authority in states is shared between the governor and chief minister, union administrators have greater authority than the governor of a state.⁴¹³

As with the states, the union territories are governed asymmetrically. Two of them (Puducherry and the National Capital Territory of Delhi) have partial statehood. These two territories have an elected legislative assembly and council of ministers appointed by the president and have representation in the electoral college. The legislative assembly of Puducherry has the powers of a state legislature,⁴¹⁴ as does the legislative assembly of Delhi, with the exception of powers over public security, police, and land.⁴¹⁵ Nonetheless, the national parliament can pass laws governing these union territories in any area, and the presidentially appointed administrator

⁴⁰⁸ Permanent residents are those residents recognized as state subjects or permanent residents under state law prior to 1954. The Constitution (Application to Jammu and Kashmir) Order, 1954, Part III.

⁴⁰⁹ This proclamation can last a maximum of seven years rather than the three-year maximum for most states. The Constitution (Application to Jammu and Kashmir) Order, 1954, Part XVIII.

⁴¹⁰ Atul Kohli, "Can Democracies Accommodate Ethnic Nationalism? Rise and Decline of Self-Determination Movements in India," 1997, 342.

⁴¹¹ The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴¹² INDIA CONST., 1950, art. 240.

⁴¹³ INDIA CONST., 1950, art. 239.

⁴¹⁴ The Government of Union Territories Act, 1963, art. 18.

⁴¹⁵ INDIA CONST., 1950, art. 239AA.

can refer certain laws to the president for approval.⁴¹⁶ Some union territories have sought the partial powers of a state along the lines of Puducherry,⁴¹⁷ while Delhi has unsuccessfully sought to become a fully fledged subnational state.⁴¹⁸ Some culturally distinct regions within states have pressed for union territory status to remove themselves from state authority.⁴¹⁹

Between State and Local Governments

State legislatures can delegate a range of powers to panchayats, including agriculture and land use, small industries, infrastructure, education, health, and social welfare.⁴²⁰ They can delegate a smaller range of powers to municipalities, including urban planning, urban infrastructure, and social welfare.⁴²¹

States vary in which powers they have devolved to the local level. While some states have devolved many powers,⁴²² most panchayats and municipalities have received less autonomy in practice than in law. While panchayats represent a millenniums-old system of self-governing village councils, modern panchayats reflect a top-down approach to decentralization rather than a bottom-up revival of traditional institutions. Panchayats are subservient to state governments and largely implement state-level policies.⁴²³ Moreover, while turnout in panchayat elections has been high, general interest in local institutions has been low.⁴²⁴

Between National/State Governments and Scheduled Areas/Autonomous Districts

Scheduled areas fall under both state and national executive authority.⁴²⁵ The governor can, with the approval of the president, direct that an act of the national parliament or of the state

⁴¹⁶ The Government of Union Territories Act, 1963 art. 25. The Government of National Capital Territory of Delhi Act, 1991, art. 24.

⁴¹⁷ For example, the Andaman and Nicobar Islands. "Assembly sought for Andamans," *The Hindu* (9 April 2012), <http://www.thehindu.com/news/states/other-states/article3294226.ece>.

⁴¹⁸ Jayant Sriram and Shubhomoy Sikdar, "PM non-committal, Delhi's wait for statehood continues," *The Hindu* (13 February 2015), <http://www.thehindu.com/news/cities/Delhi/arvind-kejriwal-meets-narendra-modi/article6885764.ece>. Goa is the most recent union territory to gain full statehood, which it achieved in 1987.

⁴¹⁹ For example, the Ladakh region of Jammu and Kashmir has unsuccessfully sought union territory status to separate itself from Kashmiri authority. *The Hindu*, "UT status to Ladakh will dilute J&K special status: Mehbooba" (16 April 2014), <http://www.thehindu.com/news/national/other-states/ut-status-to-ladakh-will-dilute-jk-special-status-mehbooba/article5919073.ece>.

⁴²⁰ INDIA CONST., 1950, art. 243G, Eleventh Schedule.

⁴²¹ INDIA CONST., 1950, art. 243W, Twelfth Schedule.

⁴²² For example, Kerala is widely cited as having substantively decentralized power to *panchayats*. D Narayana, "Local Governance Without Capacity Building: Ten Years of Panchayati Raj," *Economic and Political Weekly* 40, no. 26 (2005): 2828.

⁴²³ D. Bandyopadhyay, Saila K. Ghosh, and Buddhadeb Ghosh, "Dependency versus Autonomy: Identity Crisis of India's Panchayats," *Economic and Political Weekly* 38, no. 38 (2003): 3989.

⁴²⁴ Ruth J. Alsop, Anirudh Krishna, and Disa Sjoblom, "Inclusion and Local Elected Governments: The Panchayat Raj System in India," *The World Bank* (2001): 27.

⁴²⁵ INDIA CONST., 1950, art. 339, Fifth Schedule art. 2.

legislature not apply to a scheduled area or apply only with exceptions.⁴²⁶ States with scheduled areas or scheduled tribes have a council to advise the government on tribal issues.⁴²⁷

Four states in Northeastern India have autonomous districts and regions (or ‘tribal areas’) with autonomous councils. These councils have a wide range of powers, including primary education, land use, forest management, use of waterways for agriculture, regulation of traditional agricultural techniques, establishment of village or town committees or councils, village or town administration, appointment or succession of chiefs, property inheritance, marriage and divorce, social customs, and village customs and courts.⁴²⁸ These autonomous councils also act as courts of appeal for most cases arising from village courts, although they are still subject to the jurisdiction of India’s Supreme Court and high courts.⁴²⁹

National and state laws apply differently to autonomous districts and regions in each of the four Northeastern states. In all cases, state governments have considerable authority over autonomous districts and regions. The governor, with the approval of the state legislature, can annul acts of autonomous councils deemed “to endanger the safety of India or likely to be prejudicial to public order” for up to 12 months at a time.⁴³⁰ Also with the approval of the state legislature, the governor can dissolve autonomous councils and assume all their powers for up to six months at a time.⁴³¹ However, governors have rarely used their power to govern tribal areas directly or to block national or state laws that conflict with traditional laws from applying to tribal areas.

**Prospect for Political Accommodation:
Autonomous Regions**

Two types of autonomous regions within states aim to accommodate traditional tribal structures. India has accommodated most tribes by creating scheduled areas within states, in which certain customary laws and traditional justice systems apply. However, the national government has created autonomous districts for certain regions that have forcefully pushed for independence, autonomy, or development. These districts differ from state to state, but all have greater autonomy through councils with a broad range of powers.

The extension of panchayats to tribal areas in 1996 has resulted in parallel local government structures, with more locally accepted traditional institutions operating alongside panchayats that often lack local support. The national government has explored overhauls to the complex

⁴²⁶ INDIA CONST., 1950, Fifth Schedule art. 5.

⁴²⁷ INDIA CONST., 1950, Fifth Schedule art. 4.

⁴²⁸ Councils in the three autonomous districts of Assam—Dima Hasao, Karbi Anglong, and Bodoland—have a broader range of powers, including levels of education above primary, a wider range of agriculture, some industry, social welfare, public health, and communication. The autonomous council of Bodoland, where there have been particularly high levels of violent conflict, has an even wider range of powers than those of the other two districts.

⁴²⁹ INDIA CONST., 1950, Sixth Schedule arts. 3, 4, 6.

⁴³⁰ INDIA CONST., 1950, Sixth Schedule art. 15.

⁴³¹ INDIA CONST., 1950, Sixth Schedule art. 16.

system of tribal government, including a more uniform nationwide approach.⁴³² The existence of territorially defined tribal areas is controversial in some multiethnic regions where not all residents are members of the scheduled tribe; in these regions, the marginalization of nontribal members could generate conflict.⁴³³ Conflict has emerged for similar reasons in tribal areas with significant immigrant populations.⁴³⁴

c. Resource distribution and control

Between National and State Governments

The national government in India has control over the most lucrative revenue sources, including corporation, income, and service taxes, as well as customs, excise, and tobacco duties. However, states have broad capacities to raise revenue, including through duties on alcohol and taxes on agricultural income, land, mineral rights, employment, sales, and luxuries.⁴³⁵ In 2012–2013, 61 percent of states' revenues came from their own sources.⁴³⁶

The national government transfers revenue to the states through two primary mechanisms: devolution of revenues from national taxes and duties, and grants.⁴³⁷ Multiple government agencies and ministries oversee revenue transfers. A Finance Commission, appointed by the president every five years, is the primary body tasked with making recommendations on transfers.⁴³⁸ Although the national parliament has ultimate authority over revenue allocation, it has usually approved the Finance Commission's main recommendations.⁴³⁹

Implementation of revenue transfers from the national government to states has fluctuated over time. In terms of vertical transfers (transfers to increase equity of resources between the national and state governments), the Finance Commission has devolved to the states a steadily increasing proportion of national revenues (from about 25 percent under the Third Finance Commission to about 42 percent under the Fourteenth Finance Commission).⁴⁴⁰ Lower income

⁴³² Subodh Ghildiyal, "Govt Plans Overhaul of Administration in Tribal Areas," *The Times of India* (7 July 2012), <http://timesofindia.indiatimes.com/india/Govt-plans-overhaul-of-administration-in-tribal-areas/articleshow/14726110.cms>.

⁴³³ M. Amarjeet Singh, "Ethnic Diversity, Autonomy, and Territoriality in Northeast India: A Case of Tribal Autonomy in Assam," *Strategic Analysis* 32, no. 6 (2008): 1111–1112.

⁴³⁴ Sanjib Baruah, "Citizens and Denizens: Ethnicity, Homelands, and the Crisis of Displacement in Northeast India," *Journal of Refugee Studies* 16, no. 1 (2003): 44.

⁴³⁵ INDIA CONST., 1950, Seventh Schedule List II. The president must recommend any bill affecting the states' ability to levy taxes. INDIA CONST., 1950, art. 274.

⁴³⁶ Finance Commission of India, *Report of the 14th Finance Commission (2015–2020)* (2015): 42.

⁴³⁷ INDIA CONST., 1950, arts. 268–271, 275.

⁴³⁸ As a result, the formula for allocating these transfers changes every five years. INDIA CONST., 1950, art. 280.

⁴³⁹ INDIA CONST., 1950, art. 275; Finance Commission of India, "Finance Commissions: A Historical Perspective," n.d., <http://fincomindia.nic.in/ShowContent.aspx?uid1=2&uid2=1&uid3=0&uid4=0>.

⁴⁴⁰ D. K. Srivastava and C. Bhujanga Rao, *Review of Trends in Fiscal Transfers in India* (Chennai: Madras School of Economics, 2009): xi; *Report of the 14th Finance Commission (2015–2020)*, art. 8.13.

and ‘special category states’ are highly dependent on these transfers, and their dependency has increased over time.

In terms of horizontal transfers (transfers to increase equity of resources among states), the Finance Commission has allocated revenue among states primarily based on their population and on two measures of income—states’ absolute per capita income and their per capita income relative to other states.⁴⁴¹ An increasing proportion of transfers have gone to lower-income states over time. Additionally, 11 states classified as ‘special category states’ have always received more transfers per capita (as much as six times higher than ‘general category’ states).⁴⁴² Grants are the primary mechanism the Finance Commission uses to address horizontal fiscal imbalances, and a significant share of grants has targeted revenue gaps in special category states.

Although the Finance Commission is an autonomous agency, some studies have found that it distributes funds based on political decisions.⁴⁴³ India’s Planning Commission provides additional transfers in the form of grants and loans, also based on formulas. Various government ministries also provide transfers through over 100 discretionary programs. Because India’s transfer system is so complex, some have argued it is difficult for the government to pursue any clear or objective transfer policy, which may contribute to state-level fiscal mismanagement.⁴⁴⁴ Ultimately, significant vertical and horizontal fiscal imbalances remain.⁴⁴⁵

Except for Puducherry and the National Capital Territory of Delhi, union territories do not receive transfers because they are directly financed from the national budget.⁴⁴⁶

Between State and Local Governments

Although the national Finance Commission makes recommendations to states to ensure adequate transfers to local governments, states have authority over delegating revenue-raising

⁴⁴¹ Srivastava and Rao, *Review of Trends in Fiscal Transfers in India* (2009) 5, 12. For specifics on criteria used for allocating revenue, see reports from the Finance Commission of India.

⁴⁴² The ‘special category states’ are the seven Northeast states, Jammu and Kashmir, Himachal Pradesh, and Uttarakhand. Finance Commission of India, “A Study on the Debt Problem of the Special Category States” (Itanagar: Rajiv Gandhi University, 2009): 1.

⁴⁴³ For example, one study indicated that transfers to politically aligned states were 30 percent lower than transfers to the average state (Stuti Khemani, “Does Delegation of Fiscal Policy to an Independent Agency Make a Difference? Evidence from Intergovernmental Transfers in India,” *Journal of Development Economics* 82, no. 2 (2007): 477); another study indicated that transfers to politically aligned swing states were 16 percent higher (Wiji Arulampalam, Sugato Dasgupta, Amrita Dhillon, and Bhaskar Dutta, “Electoral Goals and Center-State Transfers: A Theoretical Model and Empirical Evidence from India,” *Journal of Development Economics* 88, no. 1 (2009): 103).

⁴⁴⁴ M. Govinda Rao, “Fiscal Decentralization in China and India: A Comparative Perspective,” *Asia-Pacific Development Journal* 10, no. 1 (2003): 36.

⁴⁴⁵ Nirvikar Singh, “State Finances in India: A Case for Systemic Reform” (University of California, Santa Cruz, 2006): 6–7.

⁴⁴⁶ The legislative assemblies of Puducherry and the National Capital Territory of Delhi can raise revenues like those of states. INDIA CONST., 1950, arts. 268, 269.

capacity and devolving revenues to *panchayats* and municipalities. As a result, local government revenues vary considerably.⁴⁴⁷ While *panchayats* and municipalities in states or union territories can raise revenue through taxes, duties, tolls, and fees, overall, *panchayats* and municipalities have raised and received little revenue. In 2002–2003, local government expenditures accounted for around 5 percent of total government expenditures, while on average states transferred less than 9 percent of their total revenues to local governments. Some have argued that this low level of fiscal transfers has undermined the effectiveness of *panchayats* and municipalities.⁴⁴⁸

Between National/State Governments and Scheduled Areas/Autonomous Districts

India's scheduled areas cannot raise revenues and are directly financed from the national budget. Autonomous councils have authority to raise revenue through taxes and royalties from licenses and leases related to mineral resources in their territory.⁴⁴⁹

Assessment

India has tried to balance a strong national government with an asymmetric federal system that grants powers to certain disadvantaged and minority groups. This can facilitate equity of representation and decision making, and in many areas it does. However, basing state borders and autonomy on linguistic, cultural, or tribal difference can also reinforce group differences and encourage the articulation of differences to gain political power. Particularly in areas struggling with conflict, this structure has reinforced existing divisions, as seen in the North-eastern states.

The Indian federal model is not particularly decentralized, as the national government still maintains significant power and control over resources. Even in states granted additional powers explicitly, such as Punjab, in practice these are often overridden by provisions that apply in cases of unrest, giving the executive and armed forces a wide range of powers.

⁴⁴⁷ For example, in 2002–2003, the highly decentralized state of Karnataka transferred more than 27 percent of its total revenue to local governments, while Punjab transferred just 1 percent.

⁴⁴⁸ M. A. Oommen, "Fiscal Decentralisation to the Sub-State Level Governments," *Economic and Political Weekly* 41, no. 10 (2006): 897–899.

⁴⁴⁹ INDIA CONST., 1950, Sixth Schedule arts. 8, 9.

2. SYSTEMS OF ELECTION AND SELECTION

Members of India's lower house of national parliament and state assemblies are directly elected using first-past-the-post. The president, upper houses of national parliament, and upper houses of state legislatures are indirectly elected by electoral colleges. The prime minister and governors are appointed by the president. There is an extensive system of reserved seats for scheduled castes and tribes and for women at the local level. As a result, women constitute 46 percent of elected representatives locally.

a. System design

The president is elected by an electoral college consisting of elected members of both houses of national parliament and elected members of the state and union territory legislative assemblies.⁴⁵⁰ The electoral college is split 50–50 between national and state/union territory representatives.⁴⁵¹ The president appoints the prime minister and council of ministers from among members of the national parliament but in practice defers to the leader of the majority party.⁴⁵²

In India's bicameral national parliament, the Council of States (the upper house) is mostly elected indirectly, while the House of the People (the lower house) is mostly elected directly. In the Council of States, state and union territory legislative assemblies elect 238 members through single transferable vote,⁴⁵³ and the president nominates 12 members for their "special knowledge or practical experience" in literature, science, art, or social science.⁴⁵⁴ In the House of the People, voters in states and union territories elect 530 members by simple plurality vote from single-member constituencies (also known as 'first-past-the-post' or FPTP); the national parliament chooses up to 20 members to represent union territories; and the president can appoint two members to represent the Anglo-Indian community.⁴⁵⁵

⁴⁵⁰ INDIA CONST., 1950, art. 54.

⁴⁵¹ The five union territories without legislative assemblies do not have representation in this electoral college to elect the president. Voting takes place on the basis of single transferable vote. INDIA CONST., 1950, art. 55.

⁴⁵² INDIA CONST., 1950, art. 75.

⁴⁵³ Single transferable vote is a form of PR in which voters rank candidates in order of preference. Candidates need to reach a set share of the votes, and a voter's vote gets transferred to a lower-preference candidate if the preferred candidate has no chance of being elected or already has enough votes.

⁴⁵⁴ INDIA CONST., 1950, art. 80. For union territories without legislative assemblies, members are selected by electoral colleges. Representation of the People Act, 1950 art. 27A, 27H.

⁴⁵⁵ A single-member constituency is an electoral district from which only one representative is elected to a legislature or elected body. INDIA CONST., 1950, art. 81. The constitution defines an Anglo-Indian as "a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein..." Colloquially, it is also used to refer to people of mixed British and Indian descent. Representation of the People Act, 1950 art. 4 and INDIA CONST., 1950, art. 366.

Because of the FPTP system for the House of the People, parties can win seats highly disproportionate to their share of the popular vote.⁴⁵⁶ Nonetheless, given the context in India, this system has often allowed a diverse range of groups to win representation. While single-member constituencies are generally unfavorable to broadly dispersed minorities, most of India's linguistic minorities—and, to a lesser extent, some of its religious minorities—are geographically concentrated and thus can still win seats in the national parliament. Moreover, reserved seats for scheduled castes—which are geographically dispersed—and for scheduled tribes (see *Special provisions*) ensure representation in the national parliament.

On the state level, governors are appointed by the president.⁴⁵⁷ The governor appoints the chief minister and council of ministers from among members of the state legislative assembly but in practice defers to the leader of the majority party.⁴⁵⁸ The legislative assembly is directly elected using FPTP.⁴⁵⁹ For states with bicameral legislatures, the upper house (legislative council) is selected by several different constituencies.⁴⁶⁰

Representatives to *panchayats* and municipalities are directly elected from single-member constituencies.⁴⁶¹ Members of autonomous district and regional councils are also directly elected.⁴⁶²

b. Political parties

Political parties are not required to register, although they receive benefits if they do, such as free television and radio airtime. Candidates do not need to be members of political parties to be on the ballot.⁴⁶³

Some argue that the historically dominant National Congress Party played an important role in encouraging political accommodation in the years following independence by promoting policies that benefited disadvantaged and minority groups and through its broad-based member-

⁴⁵⁶ A dramatic example occurred in 1984 when the Indian National Congress (I) won 49 percent of the popular vote but more than 78 percent of the elected seats in the House of the People. The Indian National Congress has never won a majority of the popular vote but nonetheless won a majority of seats in the House of the People every election from 1989 to 2009. Election Commission of India, *Statistical Report on General Elections, 1984* (New Delhi: Election Commission of India, 1985): 85.

⁴⁵⁷ INDIA CONST., 1950, art. 155.

⁴⁵⁸ INDIA CONST., 1950, art. 164.

⁴⁵⁹ INDIA CONST., 1950, art. 332. The state of Nagaland is an exception. Representation of the People Act, 1950 art. 7. The national government can nominate up to three representatives to the legislative assemblies of union territories. The Government of Union Territories Act, 1963 art. 3.

⁴⁶⁰ Members of legislative councils are selected in five different ways. All elected members are chosen on the basis of PR through single transferable vote. INDIA CONST., 1950, art. 171.

⁴⁶¹ INDIA CONST., 1950, arts. 243C, 243K, 243R.

⁴⁶² In addition to the elected members, the state governor can appoint up to four members. The constitution does not specify the manner for electing council members. INDIA CONST., 1950, Sixth Schedule art. 2.

⁴⁶³ Representation of the People Act, 1951, arts. 29A, 33.

ship. India's first president, Jawaharlal Nehru, has been credited by some with making the Congress Party a force for stability through his commitment to its internal democracy and broad inclusivity.⁴⁶⁴

In recent decades, India has moved from a dominant-party toward a multiparty system. Some have linked this increased electoral competition to an increase in Hindu–Muslim riots.⁴⁶⁵ Many new parties are based on ethnic, caste, or regional loyalties and thus lack a broad national base. Moreover, Hindu nationalist parties—including the Baratiya Janata Party, which won a national parliamentary majority in 2014—could challenge policies that seek to accommodate minorities.⁴⁶⁶

c. Special provisions

The constitution reserves seats for scheduled castes and tribes in the House of the People, state legislative assemblies, *panchayats*, and municipal councils and corporations. The number of reserved seats is approximately equivalent to these groups' proportion of the population.⁴⁶⁷ As a result, some states have no or very few constituencies reserved for scheduled castes and tribes, while some small states have only one constituency, which is reserved for a scheduled tribe. The reserved seats rotate among the single-member constituencies so that no constituency is permanently reserved for one group.

At the local level, one-third of *panchayat* and municipal council seats are reserved for women, as are one-third of chairperson seats in *panchayats*.⁴⁶⁸

All states have implemented the reserved seats. As a result, over one million women serve on *panchayats* nationwide and they constitute 46 percent of elected representatives in the *panchayat* system.⁴⁶⁹ The reservations have broadly expanded political representation. A 2008 study found that 80 percent of women representatives were elected through reserved seats,

⁴⁶⁴ Rajni Kothari, *Rethinking Democracy* (New Delhi: Orient Longman Private Limited, 2005).

⁴⁶⁵ Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge: Cambridge University Press, 2004).

⁴⁶⁶ Arend Lijphart, "The Puzzle of Indian Democracy: A Consociational Interpretation," *American Political Science Review* 90, no. 2 (1996): 262–264.

⁴⁶⁷ The president, in consultation with states and union territories, may specify which castes, races, tribes, tribal communities, or groups within tribal communities to list as scheduled. As of 2015, approximately 7.5 percent of seats in the House of the People are reserved for scheduled tribes, while 15 percent are reserved for scheduled castes. INDIA CONST., 1950, arts. 330, 332, 341, 342.

⁴⁶⁸ This requirement applies to both the total number of seats and to the seats reserved for scheduled castes and tribes. INDIA CONST., 1950, arts. 243D, 243T.

⁴⁶⁹ PTI, "Women Constitute 46 Percent Representation in Panchayati System: Minister," *The New Indian Express* (17 December 2015), <http://www.newindianexpress.com/nation/Women-Constitute-46-Percent-Representation-in-Panchayati-System-Minister/2015/12/17/article3182603.ece>

and also that as many as 80 percent did not come from politically connected families.⁴⁷⁰ However, in large part due to reserved seat rotation each election, 87 percent of women representatives had run in only one election, and only 14 percent of women representatives were reelected.⁴⁷¹ In many districts, women serving on *panchayats* are representative of a wide variety of castes and classes.⁴⁷² Studies have found that this representation translates to *panchayats'* considering issues that previously were not discussed, and to an increase in policy decisions consistent with women's priorities in the communities.⁴⁷³

However, there are still barriers to women's effective decision making within the *panchayats*. Many elected women face politically motivated violence, which is often worse for women from scheduled castes and tribes.⁴⁷⁴ Illiteracy, language barriers, inexperience with the political system, poverty, and noncooperation from the community and elected officials are all cited as hindering full participation.⁴⁷⁵ Additionally, many of the powers *panchayats* are supposed to exert have not been devolved to them, and they receive very little funding that is not already designated for a particular purpose. This means *panchayats* are primarily implementers of national or state policy and are unable to carry out their own projects.⁴⁷⁶ Ultimately, women's impacts on local governance vary considerably across states and regions due to historical and cultural differences and how long *panchayats* have been operational.⁴⁷⁷

The president can nominate two members of the Anglo-Indian community to the House of the People, and governors can nominate one member of the Anglo-Indian community to state legislative assemblies.⁴⁷⁸

⁴⁷⁰ AC-Nielsen ORG-MARG and Ministry of Panchayati Raj (India), "Study on EWRs in Panchayati Raj Institutions," Ministry of Panchayati Raj, Government of India (2008): 158.

⁴⁷¹ AC-Nielsen ORG-MARG and Ministry of Panchayati Raj, "Study on EWRs in Panchayati Raj," 158.

⁴⁷² Louise Harmon and Eileen Kaufman, "Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats," *Berkeley Women's Law Journal* 32, no. 19 (2004): 75–76.

⁴⁷³ Raghavendra Chattopadhyay and Esther Duflo, "The Impact of Reservation in the Panchayati Raj: Evidence from a Nationwide Randomized Experiment" (November 2003): 8–9, <http://economics.mit.edu/files/769> and Harmon and Kaufman, "Dazzling the World," 81–82.

⁴⁷⁴ "Women's Empowerment through Panchayati Raj," Centre for Development and Human Rights (10 February 2015), <http://www.cdhr.org.in/womens-empowerment/womens-empowerment-through-panchayati-raj/>.

⁴⁷⁵ Erik Bryld, "Increasing Participation in Democratic Institutions Through Decentralization: Empowering Women and Scheduled Castes and Tribes Through Panchayat Raj in Rural India," *Democratization* 8, no. 3 (2001): 169; Harmon and Kaufman, "Dazzling the World," 78.

⁴⁷⁶ Pamela Philipose, "Fifty-Fifty: Making Panchayati Raj Reservations for Women Work," *Halabol* (21 January 2012), voices.halabol.com/print/fifty-fifty-making-panchayati-raj-reservations-women-work; Sreevidya Kalaramadam, "Dis/empowering Political Subjects: The Production of "Failed" Elected Women Representatives in India," *Women's Studies International Forum* 35 (2012): 281–283.

⁴⁷⁷ For example, several states decentralized governance to *panchayats* long before the 1993 amendment—with de facto all-women *panchayats* emerging in some instances. Niraja Gopal Jayal, "Engendering Local Democracy: The Impact of Quotas for Women in India's *Panchayats*," *Democratization* 13, no. 1 (2006): 31–32.

⁴⁷⁸ The House of the People currently includes these two appointed members. INDIA CONST., 1950, arts. 331, 333.

Assessment

The use of FPTP to elect members of the House of the People and state legislative assemblies risks creating bodies that are not as representative as their constituents; however, the geographical concentration of certain minorities combined with a complex system of reserved seats has generally allowed for diverse representation within these bodies. Reserved seats for minorities and historically disadvantaged groups has improved equity of representation but also encouraged competition based on identity politics and reinforced existing divisions.

Reserved seats for women at the local level has significantly increased women's participation and, despite barriers to full participation in some areas, has improved representation and inclusion in decision making and started to transform political dynamics.

Since the president and representatives of the Council of States are elected by legislatures, legislative elections play an important role in ensuring that various government bodies represent a broad range of interests. The fact that the president appoints state governors gives the national executive significant control over the state executives. The public thus has little recourse should an executive fail to represent and consider diverse political interests, except indirectly through legislative elections.

3. EXECUTIVE BRANCH

The president serves as head of State and the prime minister serves as head of government. In practice, the prime minister fulfills most executive functions. India's national executive is relatively strong and has at times used emergency powers to exert control over the country, but the lower house of parliament can remove the prime minister through a vote of no confidence. Governors, presidentially appointed national representatives, serve as heads of subnational states, and chief ministers serve as heads of government. Almost 50 percent of posts in India's civil service are reserved for scheduled castes and tribes and 'other backward classes'.

a. Structure and competencies

The president of India serves as head of State, and the prime minister serves as head of government. As head of State, the president has the power to command the armed forces, appoint key public officials, grant pardons, prorogue (discontinue) either house of the national parliament or dissolve the House of the People, and issue temporary decrees when the national parliament is in recess.⁴⁷⁹ The president serves a five-year term and is eligible for unlim-

⁴⁷⁹ The president appoints the attorney general, all judges of the Supreme Court, the comptroller and auditor general, members of the election commission, and state governors. These appointments do not require national parliamentary approval, although two-thirds support from MPs present and voting is required to remove Supreme

ited reelection, although no president has served more than two terms.⁴⁸⁰ Although the constitution vests executive authority in the president, the prime minister fulfills most executive functions.⁴⁸¹ The national executive can greatly expand its authority by issuing a proclamation of emergency (see *Political Structure—Division of powers*).

Historically, the power to issue a declaration of emergency allowed the executive to exert almost authoritarian control over India. This occurred under Prime Minister Indira Gandhi, who was in power from 1966 to 1977 and 1980 to 1984. Gandhi extensively used executive power to issue proclamations of emergency and invoke ‘president’s rule’. This use of executive power damaged relations with states and increased conflict.⁴⁸² For example, a violent conflict with Sikh separatists in Punjab boiled throughout the 1980s as the national executive imposed president’s rule and cracked down on dissent. This conflict ended only when Gandhi’s successors restored federalism through statewide elections.⁴⁸³ Although in general the executive has not played an authoritarian role in Indian politics, the executive has frequently used emergency powers to issue decrees when the national parliament is in recess.⁴⁸⁴

The state-level executive parallels the national executive. The governor serves as head of the subnational state, and the chief minister serves as head of government.⁴⁸⁵ The president appoints the governor and can dismiss him or her, making the governor a state-level representative of the national government.⁴⁸⁶ On the state level, the governor and chief minister have comparable executive functions to their national counterparts.⁴⁸⁷

b. Checks on the executive

A proclamation of emergency can last no longer than one month unless approved by a majority of the membership and two-thirds of members present and voting in both houses of the

Court judges, the comptroller and auditor general, and the election commissioners. INDIA CONST., 1950, arts. 53, 72, 76, 85, 86, 123, 124, 148, 155, 324.

⁴⁸⁰ INDIA CONST., 1950, arts. 56–57.

⁴⁸¹ The only power the constitution explicitly grants the prime minister and council of ministers is “to aid and advise the President.” INDIA CONST., 1950, art. 74. The constitution lays out the extent of executive powers in art. 73.

⁴⁸² James Manor, “Center-state relations,” in *The Success of India’s Democracy*, ed. Atul Kohli (Cambridge: Cambridge University Press, 2001), 79–80.

⁴⁸³ Kohli, “Can Democracies Accommodate Ethnic Nationalism?” 338.

⁴⁸⁴ From 2004 to 2014, the executive issued an average of six decrees per year, including in situations that might not be considered ‘extraordinary’, as required. Prianka Rao, “National Parliament as a Law Making Body,” PRS Legislative Research (2014).

⁴⁸⁵ Art. 162 of the constitution lays out the extent of the executive power of the state.

⁴⁸⁶ INDIA CONST., 1950, arts. 153–156.

⁴⁸⁷ The governor’s powers include appointing key state-level officials such as the advocate-general, granting pardons for crimes against state laws, proroguing either house of the state legislature and dissolving the legislative assembly, and unilaterally promulgating temporary ordinances when the state legislature is in recess. INDIA CONST., 1950, arts. 161, 165, 174, 175, 213).

national parliament, and it must be reapproved every six months.⁴⁸⁸ The House of the People can force the prime minister and council of ministers to resign through a vote of no confidence, and the national parliament can impeach the president with a two-thirds majority of both houses.⁴⁸⁹

The national parliament also has two primary ways of overseeing the executive. First, members of parliament can use ‘question hour’, which occurs at every sitting of the Council of States, as well as debates on the floor of the national parliament to question ministers. Second, parliament has committees that monitor the work of each ministry, monitor government expenditures, examine assurances given by ministers, and investigate specific issues.⁴⁹⁰

c. Inclusivity

India reserves posts for scheduled castes and tribes in the civil service: 7.5 percent of posts are reserved for scheduled tribes and 15 percent for scheduled castes.⁴⁹¹ Since 1990, additional seats have been reserved for ‘other backward classes’.⁴⁹² Taken together, scheduled castes and tribes and ‘other backward classes’ constitute more than 50 percent of the total population of India, but the Supreme Court ruled in 1963 that reservations must account for less than 50 percent of the total membership of any body.⁴⁹³ As a result of these reserved posts, scheduled castes and tribes now form an important political force.

India’s executive is majoritarian—the majority party selects the prime minister and the entire council of ministers, effectively excluding the opposition. However, the executive has often reflected India’s diversity due to informal mechanisms. While the National Congress Party has been in power most of the time since independence, India’s presidents have been representative of the country’s religious, geographical, and linguistic diversity, and the president and vice

⁴⁸⁸ INDIA CONST., 1950, art. 352.

⁴⁸⁹ INDIA CONST., 1950, arts. 61, 75.

⁴⁹⁰ Joyita Ghose, “National Parliamentary Oversight of the Executive,” PRS Legislative Research (2014) and Parliamentary Bulletin II, No. 52453 (11 November 2014), http://164.100.47.5/newsite/bulletin2/Bull_No.aspx?number=52453.

⁴⁹¹ Scheduled castes and tribes are also reserved spots in state-funded educational institutions. INDIA CONST., 1950, arts. 15, 16, 46, 335; The Central Education Institutions (Reservation in Admission) Act, 2006.

⁴⁹² This is a technical term used throughout Indian legal documents. ‘Other backward classes’ represent those castes immediately above the untouchables in the caste hierarchy. The government reserved 27 percent of civil posts for ‘other backward classes’ in 1990. Ministry of Personnel, Public Grievances, and Pensions, “Reservation for Other Backward Classes in Civil Posts and Services under the Government of India,” Office Memorandum No. 36012/31/90-Estt. (7 August 1990). In 2006, it extended this 27 percent reservation to state-funded educational institutions and constitutionally enshrined the government’s right to enact reservations for these classes in addition to scheduled castes and tribes. The Central Education Institutions (Reservation in Admission) Act, 2006. INDIA CONST., 1950, art. 338.

⁴⁹³ As such, reservations stand at 49.5 percent, although some states have exceeded this maximum. *M. R. Balaji and Others v. State of Mysore (1963)*, Supreme Court of India.

president traditionally come from different regions.⁴⁹⁴ The council of ministers has generally represented religious and linguistic groups and geographical regions proportionately.⁴⁹⁵

Assessment

India's strong executive can undermine the federal structure, especially when making use of emergency powers and executive appointments. Legislative checks on the executive and provisions for inclusion of marginalized groups in the executive and legislative branches can mitigate this to some extent.

4. LEGISLATIVE BRANCH

India has a bicameral national legislature. The indirectly elected Council of States (upper house) represents state interests, while the directly elected House of the People (lower house) has greater control over legislation in certain areas and situations. The council of states can serve as a check on national overreach. Most states have unicameral legislatures, although some have both upper and lower houses, in which case the directly elected lower house has greater control over legislation.

a. Structure and competencies

The national parliament is bicameral: it consists of a Council of States (indirectly elected upper house) and House of the People (directly elected lower house).⁴⁹⁶ The Council of States has 250 members who serve staggered six-year terms. It cannot be dissolved.⁴⁹⁷ The House of the People has a maximum of 552 members, and representation is proportionate to state population.⁴⁹⁸ Members of the House of the People serve five-year terms, with the House dissolving every five years. The House of the People can postpone its dissolution under a proclamation of emergency.⁴⁹⁹

The House of the People has greater authority than the Council of States in three ways. First, in a joint session of the national parliament, the House of the People has more influence because it accounts for two-thirds of the national parliament's total membership. Second, although

⁴⁹⁴ Of 13 presidents, nine have been Hindu, three Muslim, and one Sikh (broadly reflecting the proportion of these three religions within India's population), and presidents have come from eight different states spanning north to south and spoken nine different native languages.

⁴⁹⁵ V. A. Pai Panandiker and Ajay K. Mehra, *The Indian Cabinet: A Study in Governance* (Delhi: Konark Publishers, 1996).

⁴⁹⁶ INDIA CONST., 1950, art. 79.

⁴⁹⁷ Of these 250 members, 12 are appointed by the president and 238 are indirectly elected from the states and union territories. INDIA CONST., 1950, arts. 80, 83.

⁴⁹⁸ Of these members, 530 represent the states, up to 20 represent the union territories, and no more than two are appointed by the president to represent the Anglo-Indian community. INDIA CONST., 1950, art. 331.

⁴⁹⁹ INDIA CONST., 1950, art. 83.

both houses can introduce bills, only the House of the People can introduce money bills (those concerning taxation or government spending and bills relating to allocating revenue), and the Council of States cannot block their passage.⁵⁰⁰ Third, only the House of the People can pass a vote of no confidence against the government.⁵⁰¹

The Council of States has the exclusive power to mandate the national parliament to temporarily assume certain state-level powers or to establish 'all-India' services (see *Political Structure*).⁵⁰² The Council of States can also approve proclamations of emergency when the House of the People is dissolved.⁵⁰³

Most states have unicameral legislatures with a single chamber called the legislative assembly.⁵⁰⁴ Seven states have a bicameral legislature with an upper house, the legislative council.⁵⁰⁵ The legislative assembly can override the legislative council and pass any bill unilaterally.⁵⁰⁶

b. Decision-making rules and procedures

Parliament makes most decisions by a majority of members present and voting in both houses.⁵⁰⁷ The Council of States cannot block the passage of money bills.⁵⁰⁸ Parliament passes the majority of bills introduced by the executive, often with little debate, because members are required to vote along party lines.⁵⁰⁹

To impeach the president, remove a Supreme Court justice, approve a proclamation of emergency, or amend the constitution, approval by a two-thirds majority of members in both houses is required.⁵¹⁰ Approval by a two-thirds majority of members present and voting in the

⁵⁰⁰ INDIA CONST., 1950, art. 109.

⁵⁰¹ INDIA CONST., 1950, art. 75.

⁵⁰² INDIA CONST., 1950, arts. 249, 312.

⁵⁰³ INDIA CONST., 1950, arts. 352, 356.

⁵⁰⁴ Membership in these assemblies can range from 60 to 500 members. Members are elected to five-year terms from single-member constituencies. INDIA CONST., 1950, arts. 170, 172. The Constitution also allows for the creation of legislative assemblies in union territories, and such assemblies exist in Puducherry and the National Capital Territory of Delhi. The Government of Union Territories Act, 1963 art. 3. The Government of National Capital Territory of Delhi Act, 1991 art. 3.

⁵⁰⁵ These states are Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, and Uttar Pradesh. With the approval of the national parliament, any state legislative assembly can abolish or create a legislative council with a majority of the total membership, including two-thirds of members present and voting. Legislative councils have at least 40 members but no more than one-third of the membership of the legislative assembly. Members serve staggered six-year terms. INDIA CONST., 1950, arts. 168, 169, 171.

⁵⁰⁶ Moreover, as with the House of the People on the national level, only the legislative assembly can introduce bills related to money. INDIA CONST., 1950, arts. 197, 198, 207.

⁵⁰⁷ INDIA CONST., 1950, art. 100.

⁵⁰⁸ INDIA CONST., 1950, art. 109.

⁵⁰⁹ Kaushiki Sanyal, "The Executive versus the Legislature," PRS Legislative Research (2009): 3.

⁵¹⁰ INDIA CONST., 1950, arts. 61, 124, 352, 368.

Council of States is required to mandate parliament to temporarily assume state-level powers or to establish 'all-India' services.⁵¹¹

c. Checks on the legislature

The president can dissolve the House of the People and call for early elections, but the Council of States cannot be dissolved.⁵¹²

Assessment

India's House of the People is generally representative of India's diversity due to the composition of geographical districts and the reserved seats for scheduled castes and tribes. The Council of States provides national representation to states' interests and serves to protect the states from certain national parliamentary decisions. As a result, state representatives in the national legislature can block the national government from undermining the federal system. However, India's strong executive limits parliament's authority to some extent.

5. PUBLIC PARTICIPATION

Ministries and national parliamentary committee sessions are often open to the public. They also occasionally invite comments on draft legislation, although this is not required. India's Right to Information Act increases public access to information from government bodies. The Delimitation Commission is the only government body constitutionally required to engage in public consultations. At the local level, the gram sabha serves as a form of direct democracy. Since many mechanisms are voluntary or inconsistently implemented, participation is often situational.

a. Engagement with the executive

India expanded avenues for public participation in 2005 with the passage of the Right to Information Act. This act requires all branches of government to make documents easily accessible to the public and to respond to public requests for information.⁵¹³ Implementation of the Act has been uneven. Nonetheless, increasing civil society use of the law to expose government mismanagement indicates its potential as a platform for expanded public participation.⁵¹⁴

⁵¹¹ INDIA CONST., 1950, arts. 249, 312.

⁵¹² INDIA CONST., 1950, arts. 83, 85.

⁵¹³ Right to Information Act, 2005. This act does not apply to Jammu and Kashmir, which is governed by a similar act passed by the state legislative assembly, the Jammu and Kashmir Right to Information (Amendment) Act, 2009.

⁵¹⁴ Alasdair Roberts, "A Great and Revolutionary Law: The First Four Years of India's Right to Information Act," *Public Administration Review* 70, no. 6 (2010): 925. Akash Kapur, "Prying Open India's Vast Bureaucracy," *New York Times* (17 June 2010), <http://www.nytimes.com/2010/06/18/world/asia/18iht-letter.html>.

Although not legally required, the executive often engages the public at various stages of the legislative process, but the level of engagement varies significantly depending on the law under consideration. Government ministries sometimes publish draft legislation and solicit comments or invite stakeholders to consultations, although this is not legally required.

The only government body constitutionally required to engage in public consultations is India's Delimitation Commission, which determines how many seats each state receives in the House of the People, determines which seats to reserve for scheduled castes and tribes, and oversees the drawing of electoral district boundaries. The Delimitation Commission is required to publish its proposals for constituency boundaries, set a period for public comment on these proposals, hold public hearings in each state, and publish the final boundaries.⁵¹⁵ During India's delimitation exercise conducted from 2002 to 2007, the Delimitation Commission followed the constitutional provisions related to public participation and accepted broad public input.⁵¹⁶

b. Production of legislation

National parliamentary committees often invite comments on draft legislation. Various commissions periodically review laws that have already been passed and invite public comments on whether to amend or repeal them.⁵¹⁷ However, the national parliament is not required to submit legislation to committees, and the committees are not legally required to consult the public. Civil society groups have drafted several pieces of legislation. The Right to Information Act applies to both the executive and legislative branches.

c. Local-level decision making

The *gram sabha*, or 'people's forum', is a traditional avenue for public participation embedded in the *panchayat* system and formally recognized in the constitution. A *gram sabha* is a body consisting of all registered voters in any given village-level *panchayat*. It convenes to make decisions by majority vote on local issues. State legislatures determine the powers and functions of *gram sabhas*⁵¹⁸ and as a result, *gram sabhas* operate differently from state to state.⁵¹⁹ In prac-

⁵¹⁵ Delimitation Act, 2002, arts. 9, 10.

⁵¹⁶ The Delimitation Commission published draft proposals in the official gazette and media; publicized the date, time, and venue for public sittings; and invited suggestions for what would be discussed at these sittings. Ultimately, it held 130 public sittings in 24 states (public sittings were not held in several states in which the delimitation process was postponed to prevent political conflict) with a total of 122,000 attendees, tabulated and examined all public comments, and published the final delimitation order in the official gazette and two newspapers. Delimitation Commission of India, *Changing Face of Electoral India: Delimitation 2008* (New Delhi: M/s Viba Press, 2008): 6–9.

⁵¹⁷ Harsimran Kalra, "Public Engagement with the Legislative Process," PRS Legislative Research (2011).

⁵¹⁸ INDIA CONST., 1950, arts. 243, 243A.

⁵¹⁹ For example, some states convene *gram sabhas* twice per year, while other states convene them four times; some states hold all *gram sabhas* statewide on the same day, while others spread them out over the course of a month; and some states require minimum quorums for meetings while others do not.

tice, participation has been low, particularly among women. Several states have supplemented *gram sabhas* with lower-level ward *sabhas*—village meetings for populations ranging from 250 to 1,000 people—and some have found that these are more effective in raising issues and increasing the participation of women.⁵²⁰

d. Referendums

India's constitution does not mention referendums, but India has held one subnational referendum. The national parliament passed legislation allowing a referendum to determine whether the union territory of Goa, Daman, and Diu would remain a union territory, split, or merge with neighboring states.⁵²¹

Assessment

Voluntary engagement with the public, the Right to Information Act, and *gram sabhas* all provide opportunities for public participation. However, their uneven application and the fact that few opportunities for participation are legislated mean most mechanisms for public engagement are not applied evenly. Engagement thus relies on a case-by-case basis and on the good faith of those in government.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

India has provisions for traditional and customary arrangements in several key areas: reserved seats for scheduled castes and tribes; constitutional protection and support for linguistic and religious minorities, particularly in the education system; enactment of distinct personal laws for key religious groups; and establishment of autonomous tribal areas with tribal justice systems in certain states. These protections can help take account of diverse interests but also emphasize certain distinctions, while at times excluding other groups.

a. Executive roles and interactions

India reserves posts in the civil service for scheduled castes and tribes and 'other backward classes' (see *Executive Branch—Inclusivity*). These reservations also apply to State-funded academic institutions.

The constitution also provides for the creation of specific government institutions to oversee the welfare of the scheduled castes and tribes. The president is charged with appointing a Na-

⁵²⁰ Malini Nambiar, "Making the Gram Sabha Work," *Economic and Political Weekly* 36, no. 33 (2001): 3114–3117.

⁵²¹ The legislation allowed for an 'opinion poll', but it was essentially a referendum because its result was binding. Aureliano Fernandes, "Goa's Democratic Becoming and the Absence of Mass Political Violence," *Lusotopie* (2003): 334–335; The Goa, Daman and Diu (Opinion Poll) Act, 1966.

tional Commission for Scheduled Castes and a National Commission for Scheduled Tribes. These commissions are tasked with monitoring and recommending improvements to constitutional and legal safeguards for scheduled groups, investigating complaints about deprivation of their rights, and overseeing their socioeconomic development.⁵²² The constitution also requires that governors of certain states appoint a minister for tribal welfare.⁵²³

b. Legislative roles and interactions

India reserves seats in the House of the People, state legislative assemblies, *panchayats*, and municipal councils and corporations for scheduled castes and tribes (see *Systems of Election and Selection—Special provisions*).

c. Judicial activities

India has separate personal laws for Hindus, Muslims, Christians, Parsees, and Jews. Modern Hindu law grew out of colonial Anglo-Hindu law and is enshrined in four Hindu Code Bills adopted shortly after independence. These bills uniformly codify Hindu law throughout India, although Hindu practice varies by region. The Code Bills are based on Hindu principles but apply also to Buddhists, Jains, and Sikhs (explicitly), as well as anyone who is not a Muslim, Christian, Parsee, or Jew.⁵²⁴

Any Muslim in India can submit to Muslim law in matters related to personal law.⁵²⁵ Unlike Hindu personal law, Muslim personal law is not codified but is based on traditional Islamic law (Sharia). The non-governmental All India Muslim Personal Law Board (founded in 1973) advises on Sharia law, but Sharia law is administered by secular courts. As a result, non-Muslim judges regularly interpret and rule on Islamic law.⁵²⁶

Prospect for Political Accommodation: Religious Personal Laws

Personal laws govern matters such as marriage, inheritance, and adoption. India aims to accommodate several religious minorities, including Muslims, by allowing them to follow their own religious personal laws.

Although there are separate personal laws, criminal and civil laws remain secular and apply universally to all groups in India. In addition, because of India's secular judicial system, religious personal laws are tried in secular courts.

⁵²² INDIA CONST., 1950, arts. 338, 338A.

⁵²³ This requirement applies only to the states of Chhattisgarh, Jharkhand, Madhya Pradesh, and Orissa. INDIA CONST., 1950, art. 164.

⁵²⁴ Hindu Marriage Act, 1955. Hindu Succession Act, 1956. Hindu Minority and Guardianship Act, 1956. Hindu Adoptions and Maintenance Act, 1956, art. 2.

⁵²⁵ Muslim Personal Law (Shariat) Application Act, 1937, arts. 2, 3.

⁵²⁶ Marc Galanter and Jayanth Krishnan, "Personal Law Systems and Religious Conflict: A Comparison of India and Israel," in *Religion and Personal Law in Secular India: A Call to Judgment*, ed. Gerald James Larson (Bloomington: Indiana University Press, 2001): 274–276.

Some have argued that the legal system's default to Hindu law—as well as the fact that much of the common civil code reflects Hindu principles—gives the impression that Hindu law is more accepted and more secular than Muslim law. This perceived bias toward Hindu law may contribute to the idea that Muslim law is 'backward' and can only become secular if 'Hinduized'.⁵²⁷

Nonetheless, Muslims have largely resisted attempts to codify their personal law, partly out of aversion to Hindus legislating on Islam and partly out of fear that this legislation would seek to 'reform' Islamic law.⁵²⁸ Even uncodified, Muslim personal law has proven resistant to challenges. Most notably, following a landmark case in which the Supreme Court upheld common civil law over Muslim law,⁵²⁹ the national parliament responded to Muslim outrage by largely reversing the secular judgment.⁵³⁰

Other objections to how the implementation of personal law functions have been raised. Many Sikhs, Jains, and Buddhists object to being categorized under Hindu law when they do not identify as Hindu. Other groups, such as Baha'i and nonbelievers, are not categorized at all and thus by default are subject to Hindu law.

States with scheduled areas or scheduled tribes have councils to advise on tribal affairs.⁵³¹ In most states, these councils have only advisory power, but in states with autonomous areas, their powers include administering customary personal law and creating, developing procedures for, and enforcing the decisions of village councils and courts (see *Political Structure—Division of powers*).⁵³² In two states, the constitution bans the national parliament from legislating on the religious or social practices or customary law of the main ethnic group without the consent of the legislative assembly.⁵³³ These provisions create a local-level system of customary personal law and traditional justice in certain regions.

⁵²⁷ Madhu Kishwar, "Codified Hindu Law: Myth and Reality," *Economic and Political Weekly* 29, no. 33 (1994): 2159.

⁵²⁸ Granville Austin, "Religion, Personal Law, and Identity in India," in *Religion and Personal Law in Secular India: A Call to Judgment*, ed. Gerald James Larson (Bloomington: Indiana University Press, 2001): 22.

⁵²⁹ *Mohd. Ahmed Khan v. Shah Bano Begum and Ors. (1985)*, Supreme Court of India.

⁵³⁰ The national parliament reversed the judgment through The Muslim Women (Protection of Rights on Divorce) Act, 1986, which, in accordance with Sharia law, largely withdrew the right of Muslim women to receive alimony.

⁵³¹ INDIA CONST., 1950, Fifth Schedule art. 4.

⁵³² INDIA CONST., 1950, Sixth Schedule arts. 3, 4.

⁵³³ This is true for Nagaland and Misoram. INDIA CONST., 1950, arts. 371A, 371G.

SPECIAL FEATURE: EDUCATION FOR MINORITY GROUPS

The constitution gives minority groups, including religious and linguistic minorities, the right to establish and administer educational institutions. The constitution also requires that states strive to “provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups” and bans discrimination in financial support to any educational institution “on the ground that it is under the management of a minority, whether based on religion or language.”

Source: *INDIA CONST., 1950, arts. 30, 350A*

d. Territorial autonomy

In scheduled areas and autonomous districts and regions, traditional institutions and customary laws remain in place. Councils in autonomous districts and regions have a range of powers, including land management, appointment or succession of chiefs, personal law, social customs, and village customs and courts.⁵³⁴ (See *Political Structure—Division of powers.*)

Assessment

Reserved seats for scheduled castes and tribes, constitutional protection and support for linguistic and religious minorities, enactment of distinct personal laws for key religious groups, and establishment of autonomous tribal areas with tribal justice systems all contribute to inclusion and equity of decision making in India. In scheduled areas and autonomous districts and regions, the special rights and powers granted to councils increase the decision-making influence of those who have been historically marginalized.

India’s recognition of a number of distinct personal laws seeks to preserve the religious and cultural practices of minority groups that otherwise might not be protected. However, this system has also been criticized for the fact that by default, Hindu law applies, and not all groups within India are allowed to follow their own personal laws.

Conclusion

Despite India’s diversity, it has been argued that a number of factors facilitate the implementation of provisions that promote political accommodation. One factor is the extraordinary diversity itself; the diversity of groups has prevented any one group from emerging as dominant. Moreover, the presence of significant diversity even within groups has caused intragroup dis-

⁵³⁴ Councils in the three autonomous districts of Assam—Dima Hasao, Karbi Anglong, and Bodoland—have a broader range of powers, including levels of education above primary, a wider range of agriculture, some industry, social welfare, public health, and communication. The autonomous council of Bodoland, where there have been particularly high levels of violent conflict, has an even wider range of powers than those of the other two districts.

parities often to overshadow intergroup disparities. The geographical concentration of certain groups has facilitated granting these groups autonomy and providing them representation through reserved seats. When violence has erupted, India's large size has prevented local or regional conflicts from seriously challenging central authority. India also has a longstanding sense of nationalism and tradition of accommodation, embodied by the National Congress Party and traditional village *panchayats*.⁵³⁵

India has taken advantage of these factors to accommodate various groups through a federal system, and this system has largely succeeded in maintaining stability. The combination of a strong State and the leadership of Prime Minister Jawaharlal Nehru led to the effectiveness of federalism in the early years of independence. The creation of many new states along linguistic lines has helped accommodate distinct linguistic groups demanding greater autonomy.

In practice, however, provisions on federalism have not always been fully implemented, and at times the national executive has used emergency powers to assert control over subnational states. Since the late 1980s, India's federal system has regained strength, and most states have gained greater autonomy. Increased electoral competition has undermined the hegemony of the National Congress Party and forced recent governing coalitions to incorporate regional parties that more directly represent subnational interests. In addition, several autonomous government institutions have increasingly bolstered state autonomy. In many places however, relations between the national, state, and local levels and between minority and majority groups remain tenuous.

References

Legal References

- The All India Services Act, 1951.
- The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.
- The Armed Forces (Special Powers) Act, 1958.
- The Central Education Institutions (Reservation in Admission) Act, 2006.
- INDIA CONST., 1950.
- The Constitution (Application to Jammu and Kashmir) Order, 1954.
- The Constitution of Jammu and Kashmir, 1956.
- The Constitution (Seventh Amendment) Act, 1956.
- The Constitution (Thirty-Second Amendment) Act, 1973.
- Delimitation Act, 2002.
- The Goa, Daman and Diu (Opinion Poll) Act, 1966.

⁵³⁵ Lijphart, "The Puzzle of Indian Democracy," 263.

The Government of National Capital Territory of Delhi Act, 1991.
 The Government of Union Territories Act, 1963.
 Hindu Adoptions and Maintenance Act, 1956.
 Hindu Marriage Act, 1955.
 Hindu Minority and Guardianship Act, 1956.
 Hindu Succession Act, 1956.
 Instrument of Accession (Jammu and Kashmir), 1947.
 The Jammu and Kashmir Representation of the People Act, 1957.
 Jammu and Kashmir Right to Information (Amendment) Act, 2009.
 The Ladakh Autonomous Hill Development Council Act, 1995.
 Muslim Personal Law (Shariat) Application Act, 1937.
 The Muslim Women (Protection of Rights on Divorce) Act, 1986.
 Official Languages Act, 1963 (as amended 1967).
 Panchayats (Extension to the Scheduled Areas) Act, 1996.
 Reorganisation of States Act, 1956.
 Representation of the People Act, 1950.
 Right to Information Act, 2005.
 Supreme Court of India. *Mohd. Ahmed Khan v. Shah Bano Begum and Ors.* (1985).
 Supreme Court of India. *M. R. Balaji and Others v. State of Mysore* (1963).
 Supreme Court of India. *S. R. Bommai v. Union of India* (1994).

Nonlegal References

AC-Nielsen ORG-MARG and Ministry of Panchayati Raj (India). "Study on EWRs in Panchayati Raj Institutions." Ministry of Panchayati Raj, Government of India (2008).
<http://www.panchayatgyan.gov.in/documents/30336/0/12+Study+on+EWRs+in+Panchayati+Raj+Institutions.pdf/a7c2c0a3-3782-4716-979e-94d701c37bff>.

Alsop, Ruth J., Anirudh Krishna, and Disa Sjoblom. "Inclusion and Local Elected Governments: The Panchayat Raj System in India." The World Bank, 2001.

Arulampalam, Wiji, Sugato Dasgupta, Amrita Dhillon, and Bhaskar Dutta. "Electoral Goals and Center-State Transfers: A Theoretical Model and Empirical Evidence from India." *Journal of Development Economics* 88, no. 1 (2009): 103–119.

Austin, Granville. "Religion, Personal Law, and Identity in India." In *Religion and Personal Law in Secular India: A Call to Judgment*, edited by Gerald James Larson, 15–23. Bloomington: Indiana University Press, 2001.

Bandyopadhyay, D., Saila K. Ghosh, and Buddhadeb Ghosh. "Dependency Versus Autonomy: Identity Crisis of India's Panchayats." *Economic and Political Weekly* 38, no. 38 (2003): 3984–3991.

Baruah, Sanjib. "Citizens and Denizens: Ethnicity, Homelands, and the Crisis of Displacement in North-east India." *Journal of Refugee Studies* 16, no. 1 (2003): 44–66.

- Bryld, Erik. "Increasing Participation in Democratic Institutions through Decentralization: Empowering Women and Scheduled Castes and Tribes through Panchayat Raj in Rural India," *Democratization* 8, no. 3 (2001): 149–172.
- Centre for Development and Human Rights. "Women's Empowerment through Panchayati Raj." 10 February 2015. <http://www.cdhr.org.in/womens-empowerment/womens-empowerment-through-panchayati-raj/>.
- Chattopadhyay, Raghavendra, and Esther Duflo. "The Impact of Reservation in the Panchayati Raj: Evidence from a Nationwide Randomized Experiment." November 2003. <http://economics.mit.edu/files/769>.
- Delimitation Commission of India. *Changing Face of Electoral India: Delimitation 2008*. New Delhi: M/s Viba Press, 2008.
- Dutta, Ananya. "Pact Signed for Gorkhaland Territorial Administration." *The Hindu* (19 July 2011). <http://www.thehindu.com/news/national/pact-signed-for-gorkhaland-territorial-administration/article2246756.ece>.
- Election Commission of India. *Statistical Report on General Elections, 1984*. New Delhi: Election Commission of India, 1985.
- Fernandes, Aureliano. "Goa's Democratic Becoming and the Absence of Mass Political Violence." *Lusotopie* (2003): 331–349.
- Finance Commission of India. "Finance Commissions: A Historical Perspective." n.d., <http://fincomindia.nic.in/ShowContent.aspx?uid1=2&uid2=1&uid3=0&uid4=0>.
- Finance Commission of India. *Report of the 11th Finance Commission (2000–2005)*. 2000.
- Finance Commission of India. *Report of the 12th Finance Commission (2005–2010)*. 2005.
- Finance Commission of India. *Report of the 13th Finance Commission (2010–2015)*. 2010.
- Finance Commission of India. *Report of the 14th Finance Commission (2015–2020)*. 2015.
- Finance Commission of India. "A Study on the Debt Problem of the Special Category States." Itanagar: Rajiv Gandhi University, 2009.
- Galanter, Marc and Jayanth Krishnan. "Personal Law Systems and Religious Conflict: A Comparison of India and Israel." In *Religion and Personal Law in Secular India: A Call to Judgment*, edited by Gerald James Larson, 270-300. Bloomington: Indiana University Press, 2001.
- Ghildiyal, Subodh. "Govt Plans Overhaul of Administration in Tribal Areas." *The Times of India*, 7 July 2012. http://articles.timesofindia.indiatimes.com/2012-07-07/india/32577543_1_tribal-areas-tribal-commission-union-tribal-affairs-minister.
- Ghose, Joyita. "Parliamentary Oversight of the Executive." PRS Legislative Research. 2014.
- Gupta, U. N. *Indian Parliamentary Democracy*. New Delhi: Atlantic Publishers and Distributors, 2003.
- Harmon, Louise, and Eileen Kaufman. "Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats." *Berkeley Women's Law Journal* 32, no. 19 (2004): 32–105.
- The Hindu*. "Assembly Sought for Andamans." 9 April 2012. <http://www.thehindu.com/news/states/other-states/article3294226.ece>.

- The Hindu*. "UT Status to Ladakh Will Dilute J&K Special Status: Mehbooba." 16 April 2014.
<http://www.thehindu.com/news/national/other-states/ut-status-to-ladakh-will-dilute-jk-special-status-mehbooba/article5919073.ece>.
- Inter-State Council Secretariat. "Formations." n.d.
http://intersatecouncil.nic.in/formations.html#subnav1_2.
- Jaffrelot, Christophe. "The Impact of Affirmative Action in India: More Political than Socioeconomic." *India Review* 5, no. 2 (2006): 173–189.
- Jayal, Niraja Gopal. "Engendering Local Democracy: The Impact of Quotas for Women in India's Panchayats." *Democratization* 13, no. 1 (2006): 15–35.
- Kalaramadam, Sreevidya. "Dis/empowering Political Subjects: The Production of "Failed" Elected Women Representatives in India." *Women's Studies International Forum* 35 (2012): 276–285.
- Kalra, Harsimran. "Public Engagement with the Legislative Process." PRS Legislative Research. 2011.
- Kapur, Akash. "Prying Open India's Vast Bureaucracy." *New York Times*, 17 June 2010.
<http://www.nytimes.com/2010/06/18/world/asia/18iht-letter.html>.
- Khemani, Stuti. "Does Delegation of Fiscal Policy to an Independent Agency Make a Difference? Evidence from Intergovernmental Transfers in India." *Journal of Development Economics* 82, no. 2 (2007): 464–484.
- Kishwar, Madhu. "Codified Hindu Law: Myth and Reality." *Economic and Political Weekly* 29, no. 33 (1994): 2145–2161.
- Kohli, Atul. "Can Democracies Accommodate Ethnic Nationalism? Rise and Decline of Self-Determination Movements in India." *The Journal of Asian Studies* 56, no. 2 (1997): 325–344.
- Kothari, Rajni. *Rethinking Democracy*. New Delhi: Orient Longman Private Limited, 2005.
- Kumar, Sudhir. *Political and Administrative Setup of Union Territories in India*. New Delhi: Mittal Publications, 1991.
- Lijphart, Arend. "The Puzzle of Indian Democracy: A Consociational Interpretation." *American Political Science Review* 90, no. 2 (1996): 258–268.
- Mahapatra, Dhananjay. "Supreme Court Refuses to Unlock 4.5% Subquota." *The Times of India*, 12 June 2012, <http://timesofindia.indiatimes.com/india/Supreme-Court-refuses-to-unlock-4-5-subquota/articleshow/14035200.cms>.
- Maheshwari, Shriram. "The All-India Services." *Public Administration* 49 (1971): 291–308.
- Manor, James. "Center-state Relations." In *The Success of India's Democracy*, edited by Atul Kohli, 78–102. Cambridge: Cambridge University Press, 2001.
- Ministry of Home Affairs. *Report of the Committee to Review the Armed Forces (Special Powers) Act. 1958*.
- Ministry of Minority Affairs. *Report of the National Commission for Religious and Linguistic Minorities*. 2007.
- Ministry of Personnel, Public Grievances, and Pensions. "Reservation for Other Backward Classes in Civil Posts and Services under the Government of India." Office Memorandum No. 36012/31/90-Estt. 7 August 1990.
- Ministry of Tribal Affairs. *Annual Report: 2010–2011*.
- Nair, Shalini. "Soon, Law for 50% Woman Quota in Local Bodies." *The Indian Express*, 21 May 2016.
<http://indianexpress.com/article/india/india-news-india/soon-law-for-50-woman-quota-in-local-bodies-2811593/>.

- Nambiar, Malini. "Making the Gram Sabha Work." *Economic and Political Weekly* 36, no. 33 (2001): 3114–3117.
- Narayana, D. "Local Governance Without Capacity Building: Ten Years of Panchayati Raj." *Economic and Political Weekly* 40, no. 26 (2005): 2822–2832.
- National Commission for Scheduled Castes. "Genesis." n.d. <http://ncsc.nic.in/index2.asp?sid=160>.
- Oommen, M. A. "Fiscal Decentralisation to the Sub-State Level Governments." *Economic and Political Weekly* 41, no. 10 (2006): 897–903.
- Panandiker, V. A. Pai, and Ajay K. Mehra. *The Indian Cabinet: A Study in Governance*. Delhi: Konark Publishers, 1996.
- Parliament of India. "Lok Sabha." n.d. <http://loksabha.nic.in/>.
- Parliament of India. "Parliamentary Committees." n.d. <http://www.parliamentofindia.nic.in/ls/intro/p21.htm>.
- Philipose, Pamela. "Fifty-Fifty: Making Panchayati Raj Reservations for Women Work." Halabol, 21 January 2012. voices.halabol.com/print/fifty-fifty-making-panchayati-raj-reservations-women-work.
- PTI. "India's Population to Surpass That of China around 2024: UN." *Times of India*, 21 June 2017. <https://timesofindia.indiatimes.com/india/indias-population-to-surpass-that-of-chinas-around-2024-un/articleshow/59257045.cms>.
- PTI. "Women Constitute 46 Percent Representation in Panchayati System: Minister." *The New Indian Express*, 17 December 2015. <http://www.newindianexpress.com/nation/Women-Constitute-46-Percent-Representation-in-Panchayati-System-Minister/2015/12/17/article3182603.ece>.
- Rajashekara, H. M. "The Nature of Indian Federalism: A Critique." *Asian Survey* 37, no. 3 (1997): 245–253.
- Rajya Sabha Secretariat. "Rajya Sabha at Work." Edited by Yogendra Narain. New Delhi: Government of India Press, 2006.
- Rao, M. Govinda. "Fiscal Decentralization in China and India: A Comparative Perspective." *Asia-Pacific Development Journal* 10, no. 1 (2003): 25–45.
- Rao, Prianka. "Parliament as a Law Making Body." PRS Legislative Research. 2014.
- Roberts, Alasdair. "A Great and Revolutionary Law: The First Four Years of India's Right to Information Act." *Public Administration Review* 70, no. 6 (2010): 925–933.
- Rudolph, Susanne Hoeber, and Lloyd I. Rudolph. "Living with Difference in India: Legal Pluralism and Legal Universalism in Historical Context." *The Political Quarterly* 71, no. 1 (2000): 20–38.
- Sanyal, Kaushiki. "The Executive Versus the Legislature." PRS Legislative Research. 2009.
- Sanyal, Kaushiki. "Strengthening Parliamentary Committees." PRS Legislative Research. 2011.
- Singh, M. Amarjeet. "Ethnic Diversity, Autonomy, and Territoriality in Northeast India: A Case of Tribal Autonomy in Assam." *Strategic Analysis* 32, no. 6 (2008): 1101–1114.
- Singh, Mahendra P., and Douglas V. Verney. "Challenges to India's Centralized Parliamentary Federalism." *Publius: The Journal of Federalism* 33, no. 4 (2003): 1–20.
- Singh, Nirvikar. "State Finances in India: A Case for Systemic Reform." University of California, Santa Cruz, 2006.

- Sriram, Jayant, and Shubhomoy Sikdar. "PM Non-committal, Delhi's Wait for Statehood Continues." *The Hindu*, 13 February 2015. <http://www.thehindu.com/news/cities/Delhi/arvind-kejriwal-meets-narendra-modi/article6885764.ece>.
- Srivastava, D. K., and C. Bhujanga Rao. *Review of Trends in Fiscal Transfers in India*. Chennai: Madras School of Economics, 2009.
- Tillin, Louise. "United in Diversity? Asymmetry in Indian Federalism." *Publius: The Journal of Federalism* 37, no. 1 (2006): 45–67.
- Tummala, Krishna K. "The Indian Union and Emergency Powers." *International Political Science Review* 17, no. 4 (1996): 373–384.
- Wilkinson, Steven I. *Votes and Violence: Electoral Competition and Ethnic Riots in India*. Cambridge: Cambridge University Press, 2004.

MALAYSIA

Executive Summary

This case study focuses on Malaysia's governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and non-accommodating arrangements to consider.

Malaysia is an ethnically and religiously diverse country that has had a history of intergroup tensions. Malaysia is a highly centralized, asymmetric federation, where Islam is the official religion and freedom of religion is allowed. It has mostly maintained stability through its centralized federal system, which has successfully spurred consistent economic growth, recognition of religious diversity, and incorporation of traditional leaders; this has helped increase accommodation. However, non-Malay and non-Muslim groups continue to express concerns about fair representation and protection of their rights. The national government holds significant powers and controls the vast majority of revenue streams so that most states have little autonomy, except with respect to Islam, where states have exclusive authority. The states of Sabah and Sarawak are exceptions, since they have constitutionally recognized powers and sources of revenue that are not afforded to other states, although many of these powers have not been fully implemented. Malaysia incorporates into its governance system a system of hereditary rule that dates back to at least the 15th century.

Table 7—Accommodating and Less Accommodating Aspects in Malaysia

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
MALAYSIA	<ul style="list-style-type: none"> • Centralized, asymmetric federalism • Subnational control over Islam • Consistent economic growth • Integration of traditional leaders into executive levels 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • First-past-the-post and high numbers appointed • Limited checks on national executive • Special rights for majority Malays • Limited space for public participation

Background

Malaysia is a former British colony that gained independence in 1957 after negotiations over self-rule. The country is geographically divided between the Malaysian Peninsula (known as West or peninsular Malaysia) and territory on the island of Borneo (East Malaysia). Approximately 80 percent of the population lives in West Malaysia, while the rest of the population lives in the states of Sabah and Sarawak in East Malaysia.⁵³⁶

In 2016, the population of Malaysia was approximately 31.7 million people.⁵³⁷ There are four main ethnic groupings in the country: Ethnic Malays,⁵³⁸ Malaysians of Chinese and Indian descent, and other indigenous groups. Ethnic Malays constitute a little over 50 percent of the population while other indigenous groups account for approximately 19 percent of the total population.⁵³⁹ Chinese-Malaysians constitute approximately 23 percent, and Indian-Malaysians make up approximately 7 percent of the population.⁵⁴⁰

Ethnic and religious identities have been significant in Malaysian politics historically and today. At independence, ethnic differences translated into economic segregation, with Malays generally being politically strong but economically weak and Chinese Malaysians economically strong but politically marginalized.⁵⁴¹ The 1957 Federal Constitution of Malaysia is the result of a negotiated compromise and aims to protect Malay rights and customs while also recognizing the rights of all citizens in a multiethnic State.⁵⁴² Political representation, including political parties, has thus tended to be organized along ethnic lines.⁵⁴³ The United Malays National Organization (UMNO) formed in the late 1940s to protect Malay interests in negotiations with the British over self-rule and has remained the dominant party.⁵⁴⁴ UMNO, the Malaysian Chinese Association (MCA), and the Malaysian Indian Congress (MIC) together formed a coalition that has held power since independence, the Barisan Nasional (BN, National Front [hereafter BN]).⁵⁴⁵

⁵³⁶ Bridget Welsh, "Malaysia's Elections: A Step Backwards," *Journal of Democracy* 24, no. 4 (October 2013): 137.

⁵³⁷ Department of Statistics, Malaysia, "Current population estimates, Malaysia, 2014–2016," Government of Malaysia, 22 July 2016, https://www.statistics.gov.my/index.php?r=column/cthemByCat&cat=155&bu_id=OWlxdEVoYlJCS0hUZzJyRUcvZEYxZz09&menu_id=L0pheU43NWJwRWVSZkIWdzQ4TlhUUT09.

⁵³⁸ The constitution defines 'Malay' as a person who professes the religion of Islam, speaks the Malay language, conforms to Malay custom, and has Malay parents or was born in Malaysia. MALAYSIA FEDERAL CONSTITUTION, 1957, art. 160(2).

⁵³⁹ The State counts these two groups together as "*bumiputera*" (*sons of the soil*). Welsh, "Malaysia's Elections," 137.

⁵⁴⁰ Department of Statistics, Malaysia, "Current population estimates."

⁵⁴¹ Ben Thirkell-White, "Political Islam and Malaysian Democracy," *Democratization* 13, no. 3 (2006): 423.

⁵⁴² Jaclyn Ling-Chien Neo, "Malay Nationalism, Islamic Supremacy and the Constitutional Bargain in the Multi-ethnic Composition of Malaysia," *International Journal on Minority and Group Rights* 13 (2006): 96.

⁵⁴³ Welsh, "Malaysia's Elections," 137.

⁵⁴⁴ Francis E. Hutchinson, "Malaysia's Federal System: Overt and Covert Centralization," *Journal of Contemporary Asia* 44, no. 3 (2014): 425–427.

⁵⁴⁵ Hutchinson, "Malaysia's Federal System," 425, 428.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.⁵⁴⁶ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests. The framework consists of six focal areas or 'Strands', each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where Malaysia has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

Malaysia is a highly centralized, asymmetric federation. The constitution grants the federal government extensive political powers and sources of revenue. The powers and resources extended to the states of Sabah and Sarawak allow for the possibility of a more accommodating political structure; however, even there the federal government has limited the states' authority through financial control. A notable exception is with regard to Islamic law, which falls to the states, and over which states have been able to maintain a considerable amount of control.

⁵⁴⁶ Here, 'representatives' is used broadly to mean political, community and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

a. Structure

Malaysia is a highly centralized, asymmetric federation with a constitutional monarch. The federation was established in 1957 and today is composed of 13 states and three federal territories. Each of the states has its own government, while the territories are administered directly by the federal government. The states of Sabah and Sarawak joined the federation most recently and negotiated a set of constitutional provisions upon entrance into the federation in 1963 that grants them considerably more autonomy than the peninsular Malay states. (See *Division of powers.*)

Nine of the 13 states are governed through systems of hereditary rule based on a sultanate structure that dates back to at least the 15th century.⁵⁴⁷ The heads of these states are known as rulers. In the remaining four states, a governor serves as the head of the state. The state-level executive branch also includes a chief minister and an executive council. Legislative authority at the state level is vested in unicameral legislatures.

At the federal level, the executive includes the king, a prime minister, and a cabinet. The monarchy is a rotating office, where each of the nine hereditary rulers serves a five-year term. Legislative authority falls to the House of Representatives (the lower house of parliament) and the Senate (the upper house). Members of the Senate are either appointed by the king or elected by state legislative assemblies. Members of the House of Representatives are popularly elected from single-member districts. (See *Systems of Election and Selection.*)

The Conference of Rulers (*Majlis Raja-Raja*) is a federal body that consists of the nine hereditary rulers and four appointed governors. The main function of the Conference is to elect the king and deputy king. The Conference also serves as an advisory body to the federal government.

⁵⁴⁷ Andrew Harding, "Sovereigns Immune? The Malaysian Monarchy in Crisis," *The Round Table* 83, no. 327 (1993): 305.

The federal legislature can also make laws with respect to state competencies in certain circumstances, such as for the purpose of promoting uniformity of law in two or more states.⁵⁴⁹ During state emergencies, the federal government can make laws at the state level and can even amend state constitutions.⁵⁵⁰

Exclusive state powers include local administration and service provision, land tenure, agriculture and forestry, public works, and management of Islamic and cultural sites and customs.⁵⁵¹ Shared powers between the federal and state governments include social welfare, town and country planning, public health, housing, and water supplies and services.⁵⁵² In the case of any conflict, federal law prevails over state law.⁵⁵³

The states of Sabah and Sarawak, however, have more autonomy than other states in the federation. The constitution was amended upon their entrance to create several provisions for the states and their constituents. For example, constitutional amendments regarding citizenship, allocation of seats in the House of Representatives, and other matters within the two states cannot be passed without the respective state's approval.⁵⁵⁴ The two states maintain control over native law and custom; ports and harbors; and the Sabah railway.⁵⁵⁵ Additional shared powers between the two states and the federal government include personal law;⁵⁵⁶ shipping; fisheries; production, distribution, and supply of water power; and charities and charitable trusts.⁵⁵⁷ Sabah and Sarawak also receive more grants and sources of revenue than other states.⁵⁵⁸

Islamic Law

Except in the federal territories of Kuala Lumpur, Labuan, and Putrajaya, maintenance of Islamic law falls exclusively to the states.⁵⁵⁹ Thus, states have exclusive power over family and personal law for Muslims and to punish offenses against Islam committed by Muslims. The two highest courts in Malaysia, the High Court in Malaya and the High Court in Sabah and Sarawak, do not have jurisdiction over any matters that fall within the jurisdiction of the Sharia courts.⁵⁶⁰

⁵⁴⁹ Such laws must first be approved by the legislative assemblies of the states affected before coming in force. See MALAYSIA FEDERAL CONSTITUTION, 1957, art. 76, cl. 3.

⁵⁵⁰ Hutchinson, "Malaysia's Federal System," 426.

⁵⁵¹ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List II.

⁵⁵² MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List III.

⁵⁵³ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 75.

⁵⁵⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 161e, cl. 2.

⁵⁵⁵ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List IIa.

⁵⁵⁶ Personal law relates to marriage, divorce, guardianship, maintenance, adoption, legitimacy family law, gifts or succession, testate or intestate. See MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List IIIa (10).

⁵⁵⁷ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List IIIa.

⁵⁵⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, Tenth Schedule, Part IV and V.

⁵⁵⁹ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List II, cl. 1.

⁵⁶⁰ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 121(1a).

This division of powers in relation to Islam has led to some states adopting restrictive Islamic laws. The states of Penang and Johore impose stiff penalties for those convicted of Islamic criminal offenses.⁵⁶¹ Perlis passed a law on apostasy for converts, and Selangor started arresting Muslims who worked in establishments that served alcohol for “insulting Islam.”⁵⁶² At the same time, while Islam is the official religion in Malaysia (see *Traditional and Customary Arrangements*), the constitution does not require state constitutions to reflect that, and three states have not proclaimed it as their official religion.⁵⁶³

However, while states maintain legislative competence over Islamic law, as the practice of Islam has become a more salient part of the political debate, the federal government has exerted increasing administrative control over implementation of Islamic policies.⁵⁶⁴ In the 1980s and 1990s, federal officials from the ruling UMNO party implemented a series of reforms to streamline federal and state Islamic bureaucracies. The federal government’s Center for Islamic Policy Development was elevated to a department under the prime minister, now known as the Department of Islamic Development of Malaysia (JAKIM).⁵⁶⁵ It drafts legislation for states to consider, often emphasizing procedural aspects to limit judicial discretion.⁵⁶⁶ JAKIM created a public service scheme to train and employ Sharia judges and officials, who were previously employed by state religious departments.⁵⁶⁷ The federal legal service aims to standardize application of Sharia and ensure consistent, quality legal services.⁵⁶⁸ Over time, most judges have switched from being employed directly by states to enrolling in JAKIM’s federal service, which opponents contend allows the ruling party to disseminate their views on religious law across the states in the name of administrative coordination.⁵⁶⁹ The process of issuing *fatwa* in Malaysia is also highly centralized, limiting the ability of subnational religious authorities to make independent rulings.⁵⁷⁰

This tension between states and the federal government means there is a constant negotiation on questions of Islamic law. Attempts in the states of Kelantan and Terengganu to implement

⁵⁶¹ Fauzi, “Implementing Islamic Law,” 167.

⁵⁶² Patricia A. Martinez, “The Islamic State or the State of Islam in Malaysia,” *Contemporary Southeast Asia* 23, no. 3 (2001): 482–83.

⁵⁶³ The three are Penang, Malacca, and Sarawak. Ahmad Fauzi Abdul Hamid, “Implementing Islamic Law within a Modern Constitutional Framework: Challenges and Problems in Contemporary Malaysia,” *Islamic Studies* 48, no. 2 (2009): 161.

⁵⁶⁴ Ahmad Fauzi Abdul Hamid, “Syariahization of Intra-Muslim Religious Freedom and Human Rights Practice in Malaysia: The Case of Darul Arqam,” *Contemporary Southeast Asia* 38, no. 1 (2016): 30–31.

⁵⁶⁵ Ahmad Fauzi Abdul Hamid, “The Changing Face of Political Islam in Malaysia in the Era of Najib Razak, 2009–2013,” *Journal of Social Issues in Southeast Asia* 30, no. 2 (2015): 309.

⁵⁶⁶ Martinez, “The Islamic State or the State of Islam,” 477; Kikue Hamayotsu, “Once a Muslim, always a Muslim: the politics of state enforcement of Syariah in contemporary Malaysia,” *South East Asia Research* 20, no. 3 (2012): 408.

⁵⁶⁷ Hamayotsu, “Once a Muslim,” 408.

⁵⁶⁸ Hamayotsu, “Once a Muslim,” 409.

⁵⁶⁹ Fauzi, “Syariahization,” 30; Hamayotsu, “Once a Muslim,” 409.

⁵⁷⁰ Fauzi, “Syariahization,” 34.

laws allowing for punishments of crimes according to Islamic law have been thwarted by the federal government.⁵⁷¹ And policies proclaimed at the federal level require support at the state level for implementation.

c. Resource distribution and control

Malaysia has a highly centralized system of revenue allocation. The federal government receives the vast majority of revenue through tariffs; a variety of taxes that include income, property, production, and consumption taxes; and natural resource extraction.⁵⁷² The federal government revenue allocation before intergovernmental transfers came to 90.7 percent in the period 2006–2010.⁵⁷³

The states have few opportunities to raise their own revenue and rely heavily on the federal government for funding. Financial resources for the states are strictly limited to revenue from lands, mines, and forests; license and court fees; rents on state property; and Islamic religious revenue.⁵⁷⁴ These sources of revenue do not provide enough funding to carry out the powers designated to the state. For example, in the 1990s, state revenues totaled approximately 80 percent of their expenditures.⁵⁷⁵ Thus, states must seek supplemental funding from the federal government.

Royalties on natural resource extraction is another source of revenue for some states. Terengganu, Sabah, and Sarawak have received royalties for offshore natural gas and oil resources. However those funds only amount to five percent of revenue from natural gas and oil, while the federal government and private companies that finance exploration, development, and production of oil and gas split the remaining profits.⁵⁷⁶ There have been several calls to allocate a larger share of resources from natural resource extraction to the states, particularly given the states' limited revenue generating opportunities.

The federal government transfers money to states through three mechanisms: grants, loans, and development funds. There are two annual grants stipulated in the constitution, the Capital Grant, based on population, and the State Road Grant, based on the cost of maintaining

⁵⁷¹ By withholding federal funds or refusing to amend the constitution. Fauzi, "Implementing Islamic Law," 173, 176.

⁵⁷² Francis Kok Wah Loh, "Restructuring Federal-State Relations in Malaysia: From Centralised to Co-operative Federalism?" *The Round Table* 99, no. 407 (April 2010): 133.

⁵⁷³ Hutchinson, "Malaysia's Federal System," 426.

⁵⁷⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, Tenth Schedule, Part III.

⁵⁷⁵ Hutchinson, "Malaysia's Federal System," 431.

⁵⁷⁶ In 2000, the federal government stopped providing royalties to Terengganu. The state subsequently tried to sue the government for withholding funds, but the court found that the gas deposits on the continental shelf were outside Terengganu's territorial jurisdiction. Sabah and Sarawak continue to receive funds, as their claim to the continental shelf was included when they joined the federation. See Wee Chong Hui, "Oil and Gas Management and Revenues in Malaysia," Presentation from *Oil and Gas in Federal Countries*, Forum of Federations (Edmonton, Alberta, 10 October 2008): 6.

roads in a given state.⁵⁷⁷ Significantly, the federal government has provided loans to states instead of direct grants in recent years.⁵⁷⁸ Development funds are a third source of significant financial support, but they are disbursed to states at the discretion of the federal government.⁵⁷⁹ Fiscal transfers to states are a mechanism through which the federal government can influence states directly since the provision of loans instead of outright grants makes states indebted to the federal government and the discretionary disbursements of development funds can be used to influence state policy and politics through financial rewards or punishment.

SPECIAL FEATURE: STATE-SPONSORED ECONOMIC PLANNING AND GROWTH

In May 1969, ethnic-based riots broke out in Kuala Lumpur between Malays and Chinese-Malaysians, with socioeconomic inequality between the two groups as the main driver. As a result of the riots, the federal government enacted a series of economic and preferential policies, known as the National Economic Policy (NEP), to try to reduce poverty and correct economic imbalances resulting from British colonial rule (for more on the preferential policies, see *Executive—Inclusivity*).[†] The main objectives of the NEP and resulting policies were to guarantee representation of Malays in education and employment; eradicate poverty, especially among Malays; and reduce economic inequality between ethnic groups, ultimately aiming to strengthen national identity, reduce tensions, and thus maintain political stability.[‡] The State started to play a big role in Malaysia's economy that continues to this day.

From 1970 to 1995, the Malaysian economy grew an average of 7.9 percentage points a year[§] and economic inequality between Malays and Chinese-Malaysians narrowed.[#] Both overall poverty and Malay-specific poverty has decreased significantly.^{*} However, wealth disparities between classes have increased across all major ethnic groups, as has the income gap between rural and urban households.^{††}

It is unclear whether preferential policies have helped to decrease inequality and poverty.^{‡‡} While a growing middle class seems to be increasingly pluralistic and willing to work across ethnic lines in service of economic growth, preferential policies also help maintain ethnic identity association.^{§§}

In general, most ethnic groups in Malaysia have benefitted from the strong Malaysian economy.^{##} This distributed economic expansion has moderated ethnic tensions, despite the potential for preferential policies to heighten them.^{**} The fact that the centralized State government has consistently pursued a coordinated, long-term economic policy has been cited as contributing to its economic success.^{†††}

⁵⁷⁷ MALAYSIA FEDERAL CONSTITUTION, 1957, Tenth Schedule, arts. 1–3.

⁵⁷⁸ Hutchinson, "Malaysia's Federal System," 431–432.

⁵⁷⁹ Loh, "Restructuring Federal-State Relations in Malaysia," 133–135.

† Max U Montesino, "Cross-cultural conflict and affirmative action: Inter- and intra-ethnic dilemmas of Malaysia's heterogeneous workplace," *International Journal of Cross Cultural Management* 12, no. 1 (2011): 117.

‡ M. Shamsul Haque, "The Role of the State in Managing Ethnic Tensions in Malaysia: A Critical Discourse," *American Behavioral Scientist* 47, no. 3 (2003): 252.

§ Sirimal Abeyratne, "Economic Development and Political Conflict: Comparative Study of Sri Lanka and Malaysia," *South Asia Economic Journal* 9, no. 2 (2008): 406.

Montesino, "Cross-cultural conflict and affirmative action," 128.

* Montesino, "Cross-cultural conflict and affirmative action," 129; Haque, "The Role of the State," 254.

†† Haque, "The Role of the State," 257.

‡‡ Haque, "The Role of the State," 254.

§§ Montesino, "Cross-cultural conflict and affirmative action," 131; Haque, "The Role of the State," 255–256.

Abeyratne, "Economic Development and Political Conflict," 409.

** Abeyratne, "Economic Development and Political Conflict," 412.

††† Abeyratne, "Economic Development and Political Conflict," 406; Md Nasrudin Md Akhir, Keum Hyun Kim, and Chung-Sok Suh, "Structure and agency in the Malaysian government's policies for economic development," *The Economic and Labour Relations Review* 24, no. 4 (2013): 512.

Assessment

Malaysia is a highly centralized State, and individual states have limited powers and resources. Additionally, the federal government has at times undermined state policy through constitutional amendments and fiscal policy. In theory the states of Sabah and Sarawak have greater powers and financial resources than other states, however in practice they have had difficulties collecting the revenues they are owed from the federal government, hindering their ability to properly deliver services. On the other hand, perhaps because of its centralized structure, the Malaysian State has been able to implement a series of economic development plans that boosted growth and delivered economic benefits to all major ethnic groups in Malaysia, easing tensions that may have otherwise resulted in violent conflict.

States have been able to maintain more control over Islamic law, where they have exclusive authority. However where states have tried to implement legislation that would restrict citizens' rights, the federal government has exerted increasing administrative control, resulting in a constant debate between the states and federal government where each provides a check on the other.

2. SYSTEMS OF ELECTION AND SELECTION

Members of the House of Representatives and state legislative assemblies are elected using the first-past-the-post system. All other positions are appointed, indirectly elected, or inherited. The political coalition in power has influenced electoral districts to retain control since independence. However, opposition parties have won an increasing number of seats in the two most recent elections, indicating that citizens view electoral politics as an important means of expressing their political preferences.

a. System design

Within the executive, the prime minister is appointed by the king from the majority party in the House of Representatives, and must be a citizen by birth.⁵⁸⁰

The rulers within the Conference of Rulers elect a king (*Yang di-Pertuan Agong*) and deputy king (*Timbalan Yang di-Pertuan Agong*) from among themselves for a five-year term.⁵⁸¹ In practice, the monarchy is a rotating office among the rulers.⁵⁸²

The House of Representatives (the lower house in the national parliament) and the state legislative assemblies are the only institutions whose members are directly elected. In these elections, representatives are elected by plurality vote from single-member constituencies (also known as ‘first-past-the-post’ or FPTP). There are 222 members of the House of Representatives.⁵⁸³

The Senate (the upper house in parliament) includes 70 members, 44 of whom are appointed by the king in consultation with the prime minister.⁵⁸⁴ Four of those members must be representatives from the federal territories.⁵⁸⁵ State legislative assemblies elect the remaining 26 members (each state elects two members via majority vote).⁵⁸⁶

Under the 1957 constitution, most senators were elected by the state assemblies. A 1963 amendment changed the ratio of senators appointed versus those elected by the states so that more were appointed.⁵⁸⁷ The fact that almost two-thirds of the Senate is appointed by the executive means that rather than the Senate representing the states, it has consistently aligned with the executive.⁵⁸⁸

⁵⁸⁰ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 43(2a)(7).

⁵⁸¹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 32(3).

⁵⁸² MALAYSIA FEDERAL CONSTITUTION, 1957, Third Schedule, arts. 1–4.

⁵⁸³ Government of Malaysia, Elections Act 1958, Act 19, August 28, 1958, art. 13.

⁵⁸⁴ Qualifications for appointment include those who “have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines.” Senators do not have to be members of a political party. MALAYSIA FEDERAL CONSTITUTION, 1957, art. 45(1).

⁵⁸⁵ Two members are from Kuala Lumpur, one member is from Labuan, and one member is from Putrajaya. MALAYSIA FEDERAL CONSTITUTION, 1957, art. 45(1).

⁵⁸⁶ See Seventh Schedule, Article 2 of MALAYSIA FEDERAL CONSTITUTION. Seats are decided by majority vote; each member of a state legislative assembly has as many votes as there are seats. If there is a tie, a winner is chosen by lot.

⁵⁸⁷ John Funston, “Malaysia: Developmental State Challenged,” In John Funston (Ed.), *Government and Politics in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2001): 180.

⁵⁸⁸ Rainer Grote and Tilmann Röder, *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (Oxford: Oxford University Press, 2012): 308.

At the state level, hereditary rulers govern nine of the 13 states. The constitution allows them to choose their own successors.⁵⁸⁹ Four of the states have governors instead of rulers, who are appointed by the king.⁵⁹⁰

b. System administration

The Election Commission is mandated to conduct elections for the House of Representatives and the Legislative Assemblies of the states.⁵⁹¹ The king appoints the members of the Election Commission after consultation with the Conference of Rulers.⁵⁹²

The constitution includes specific provisions that guide how electoral districts are drawn. One constitutional requirement is that the size of constituencies in electoral districts should be relatively equal.⁵⁹³ However, the constitution also states that rural voters face disadvantages and thus constituencies should be weighted accordingly.⁵⁹⁴ Although the constitution originally required that constituencies differ no more than 15 percent in population size, constitutional amendments in 1962 and 1973 did away with this requirement.⁵⁹⁵ Modification of electoral districts has led to extremely uneven population distribution between districts, to the advantage of ethnic Malays and the coalition in power.⁵⁹⁶ In 2013, the Pakatan Rakyat (PR, People's Alliance) opposition coalition won 50.9 percent of the popular vote compared to 47.4 percent for the ruling BN.⁵⁹⁷ However, BN retained its majority in parliament and the premiership because of the way in which the population was distributed among constituencies. Additionally, there were substantial irregularities in early voting, vote counting, and voter rolls in the 2013 elections.⁵⁹⁸

c. Special provisions

There are no provisions in Malaysia's constitution or electoral legislation to promote representation of minorities or women. There has been some attention to increasing the number of women political representatives, but at the national level the percentage of women in parliament has remained steady at approximately ten percent since 2000.⁵⁹⁹ There has been sup-

⁵⁸⁹ MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 1 (2e).

⁵⁹⁰ States with governors are Malacca, Penang, Sabah, and Sarawak. MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 19a (1)(2).

⁵⁹¹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 113.

⁵⁹² MALAYSIA FEDERAL CONSTITUTION, 1957, art. 114.

⁵⁹³ MALAYSIA FEDERAL CONSTITUTION, 1957, Thirteenth Schedule, Part I (2c)

⁵⁹⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, Thirteenth Schedule, Part I (2c).

⁵⁹⁵ ACE Electoral Knowledge Network, "Malaysia: Malapportioned Districts and Over-Representation of Rural Communities," in *The ACE Encyclopaedia: Boundary Delimitation* (2012): 160.

⁵⁹⁶ ACE Electoral Knowledge Network, "Malaysia: Malapportioned Districts," 160.

⁵⁹⁷ Welsh, "Malaysia's Elections," 136.

⁵⁹⁸ Welsh, "Malaysia's Elections," 140–141.

⁵⁹⁹ The World Bank Open Data, "Proportion of Seats Held by Women in National Parliaments: Malaysia," World Bank Group, <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=MY>.

port for increased participation of women in decision-making roles within some individual political parties, specifically the PKR (People's Justice Party) and the DAP (Democratic Action Party).⁶⁰⁰ The PKR officially incorporated a 30 percent quota for women in decision-making roles into its constitution.⁶⁰¹

Assessment

The system of election and selection in Malaysia does not contribute significantly to improving equity of representation. The FPTP system, coupled with significant Senate appointments and electoral districts that may be changed by the political coalition in power, enables minority voices to be crowded out. This drawback to the electoral design was highlighted in the results of the 2013 election when the BN lost the popular vote but retained a majority in parliament.

Despite the drawbacks in electoral design, Malaysian citizens seem to view elections as a means of expressing their political preferences. The opposition coalition won significantly more seats in the 2013 elections than in 2008, and the need for electoral reform galvanized civil society protests beginning in 2007 and continuing in more recent years.⁶⁰² (See *Public Participation*.)

3. EXECUTIVE BRANCH

Executive authority in Malaysia is divided between the king, prime minister, and the cabinet at the national level. Hereditary rulers govern nine of the 13 states, while governors head the other four. In practice, the role of the king is largely ceremonial and the prime minister has accumulated extensive powers. A number of 'special rights' are reserved for Malays, which have improved Malay representation and economic opportunity, although often to the exclusion of non-Malays.

a. Structure and competencies

Executive authority is vested in the king, prime minister, and cabinet.⁶⁰³ The king is head of State and commander in chief, and the prime minister is head of the government.⁶⁰⁴

The powers of the king are limited given that the constitution requires the king to “act in accordance with the advice of the Cabinet or Minister...under the general authority of the Cabi-

⁶⁰⁰ Cecilia Ng, “The Hazy New Dawn: Democracy, Women, and Politics in Malaysia,” *Gender, Technology and Development* 14, no. 3 (2010): 315.

⁶⁰¹ Ng, “The Hazy New Dawn,” 315.

⁶⁰² Welsh, “Malaysia’s Elections,” 138.

⁶⁰³ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 39.

⁶⁰⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, arts. 32 (1) and 41.

net.”⁶⁰⁵ However, the king has discretion over the selection of the prime minister and can refrain from dissolving parliament despite a request from the prime minister.⁶⁰⁶ The king also is responsible for protecting the special status of Malays and indigenous peoples of Sabah and Sarawak as well as “legitimate interests” of other communities.⁶⁰⁷ In practice, the king has come to be a largely ceremonial post.

The prime minister advises the king on appointments of members of the cabinet from either the House or the Senate.⁶⁰⁸ As head of the cabinet, the prime minister can ask the king to dismiss any of its members.⁶⁰⁹

A unique body within the Malaysian executive is the Conference of Rulers. It consists of the nine hereditary rulers and the four governors of each state. The primary function of the Conference of Rulers is to elect the king.⁶¹⁰ Many of the Conference’s other responsibilities are consultative in nature: members discuss questions of national policy at their discretion and the implementation of religious acts and observances.⁶¹¹ The Conference must be consulted on changes to the special status of Malays and indigenous peoples of Sabah and Sarawak.⁶¹² (See *Traditional and Customary Arrangements*.)

The state-level executive includes a hereditary ruler in nine of the 13 states and a governor in the other four states. The state-level executive operates similarly to the federal-level executive. A ruler holds absolute discretion in selecting the chief minister from among the legislative assembly, but otherwise must follow the advice of the chief minister and executive council.⁶¹³ A ruler may also withhold his or her consent on a request to dissolve the legislative assembly. Additionally, the rulers serve as religious leaders within their states and exercise autonomy in regards to decisions as head of Islam or relating to Malay custom. (See *Traditional and Customary Arrangements*.) Governors perform the same functions as rulers except they do not exercise religious authority. Governors serve four-year terms and can be removed from office by the king after a two-thirds majority vote by the state legislature.⁶¹⁴

⁶⁰⁵ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 40 (1).

⁶⁰⁶ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 40 (2).

⁶⁰⁷ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 153 (1).

⁶⁰⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 43 (2).

⁶⁰⁹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 33 (6).

⁶¹⁰ Only the nine rulers, not the governors, participate in the election. MALAYSIA FEDERAL CONSTITUTION, 1957, Fifth Schedule (7).

⁶¹¹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 38 (2) (3).

⁶¹² MALAYSIA FEDERAL CONSTITUTION, 1957, art. 38 (5).

⁶¹³ MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 1 (2).

⁶¹⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 19a (2).

b. Checks on the executive

The prime minister and the cabinet ultimately are responsible to the House of Representatives; if the House of Representatives passes a vote of no confidence, then the entire cabinet must resign.⁶¹⁵ However, the House of Representatives has never passed a vote of no confidence, in part because the BN has held a two-thirds majority in the House after almost every election since independence. As a result of BN's legislative dominance and other factors, the department of the prime minister has accumulated extensive powers.⁶¹⁶

Based on the constitutional design, various members of the executive serve as a system of checks and balances on each other. As noted above, the king has discretion over the selection of the prime minister, and the Conference of Rulers select and can remove a king from power.

In practice, members of the executive have not served as checks on each other. The Conference of Rulers has never removed a king and the king is a largely ceremonial post in comparison to the prime minister. Under Dr. Mahathir Mohamad, who served as prime minister from 1981 to 2003, the executive was strengthened significantly in comparison to other political institutions.⁶¹⁷

c. Inclusivity

Individuals who are recognized as Malay receive special constitutional recognition and are eligible for certain privileges, or 'special rights', including quotas or affirmative action policies for positions in public service, scholarships, business opportunities, and other educational/training programs.⁶¹⁸ In the civil service, the ratio between Malays and non-Malays is 4:1.⁶¹⁹ Additionally, many of the founding members of the UMNO were civil servants, and the UMNO continued to cultivate relationships within the civil service in the postindependence period.⁶²⁰ Thus, through different channels, Malays hold privileged positions in society, generally, and within the civil service, specifically.

Special rights for Malays were established to try to manage ethnic tensions and to counter economic and professional benefits Chinese-Malaysians and Indian-Malaysians received under

⁶¹⁵ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 33 (4).

⁶¹⁶ See H.F. Rawlings, "The Malaysian Constitutional Crisis of 1983," *The International and Comparative Law Quarterly* 35, no. 2 (April 1986): 248–249 for discussion of the relationship between BN's legislative dominance and the prime minister's attempts to curtail the powers of the king and Conference of Rulers. Also see Hutchinson, "Malaysia's Federal System," 430 and Bridget Welsh, "Malaysia in 2004: Out of Mahatir's Shadow?" *Asian Survey* 45, no. 1 (January/February 2005): 154 for characterizations of 'Mahathirism'.

⁶¹⁷ Welsh, "Malaysia in 2004," 154. Also see Hutchinson, "Malaysia's Federal System," 430 and Loh, "Restructuring Federal-State Relations in Malaysia," 133 on the increased role of the prime minister's department.

⁶¹⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 153.

⁶¹⁹ Haque, "The Role of the State," 247.

⁶²⁰ Hutchinson, "Malaysia's Federal System," 428.

the British colonial period.⁶²¹ Since the institution of preferential policies, Malay representation in the public service and various professional services has increased considerably, so much so that significant public sectors are dominated by Malays, and Malays are overrepresented in the public education system.⁶²² Ethnic Indians, by contrast, are among the poorest and most politically underrepresented, which many argue is a result of the preferential policies.⁶²³ While most Malays approve of the system of special rights, Chinese- and Indian-Malaysians see them as discriminatory, and preferential policies seem to have contributed to an entrenchment of ethnic identities.⁶²⁴ Major ethnic conflict has not broken out since the ethnically based riots in 1969; however, consistent economic growth and Malaysia's strict prohibitions against racial violence are more likely the reasons for relative stability than Malaysia's system of preferential policies.⁶²⁵ In fact, had these policies been implemented in a stagnant economic environment, feelings of exclusion might have led to increased tensions.⁶²⁶ (See *Political Structure—Special Feature: State-sponsored Economic Planning and Growth*.)

Individuals who qualify as 'natives' or members of groups indigenous to the states of Sabah and Sarawak are also eligible for privileges according to the constitution.⁶²⁷ However, while specific individuals from these groups may receive privileges, the indigenous populations of Sabah and Sarawak have not benefitted collectively in the ways that Malays have.

Assessment

On paper, Malaysia's executive branch appears to favor equity of representation and decision making. Executive authority is divided between the king, the prime minister, and the cabinet, and there is a system of checks and balances between different political offices. The inclusion of the Conference of Rulers within the executive ensures that traditional leaders are represented at the federal level.

In practice, the king is largely ceremonial and not representative of much of the population. The powers of the prime minister have greatly expanded, and there are few effective checks and balances on the executive.

⁶²¹ Haque, "The Role of the State," 244–245.

⁶²² Chinese- and Indian-Malaysians tend to go to private schools. Haque, "The Role of the State," 252–253 and Montesino, "Cross-cultural conflict and affirmative action," 125.

⁶²³ Montesino, "Cross-cultural conflict and affirmative action," 125.

⁶²⁴ Montesino, "Cross-cultural conflict and affirmative action," 125 and Haque, "The Role of the State," 256, 258.

⁶²⁵ Haque, "The Role of the State," 256 and Montesino, "Cross-cultural conflict and affirmative action," 122–123.

⁶²⁶ Abeyratne, "Economic Development and Political Conflict," 412.

⁶²⁷ In Sarawak, a 'native' is defined as a citizen who is a descendant of a recognized indigenous group. In Sabah, a 'native' is a citizen who is the child or grandchild of persons belonging to an indigenous group in Sabah and was born in Sabah or whose father was born in Sabah. MALAYSIA FEDERAL CONSTITUTION, 1957, art. 161A(6).

4. LEGISLATIVE BRANCH

Malaysia's parliament is composed of the House of Representatives and the Senate. The Senate represents the states and federal territories. The two chambers are responsible for introducing and approving legislation, while the king enacts legislation. The ruling coalition BN dominated parliament for decades; however, electoral victories in 2008 and 2013 made parliament more representative and inclusive.

a. Structure and competencies

At the federal level, the constitution vests legislative authority in a bicameral parliament and the king.⁶²⁸ The House of Representatives and the Senate are primarily responsible for introducing and approving legislation, while the king's role is to enact legislation after both chambers complete the review process.

The House of Representatives (the lower house) has 222 members who are popularly elected for five-year terms.⁶²⁹ It is led by a speaker and two deputies.⁶³⁰ The Senate (the upper house) has 70 members who serve three-year terms.⁶³¹ Senators are not permitted to serve more than two terms.⁶³² The Senate is led by a president and deputy who are elected from among the members of the House.⁶³³

At the state level, the legislative process includes a ruler/governor and a unicameral legislative assembly.⁶³⁴ The legislative assemblies vary in size; however, they share the same legislative powers. Legislation can be introduced by members of the assembly or members of the executive council. Only the executive council member responsible for finance may introduce money bills.⁶³⁵ Once a bill is passed by the assembly, it is referred to the ruler or governor for enactment.⁶³⁶

⁶²⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 44.

⁶²⁹ The term may be cut short, if the House is dissolved by the king.

⁶³⁰ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 57 (1a).

⁶³¹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 45, cl. 1.

⁶³² MALAYSIA FEDERAL CONSTITUTION, 1957, art. 45 (3a).

⁶³³ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 56, cl. 1.

⁶³⁴ MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 3.

⁶³⁵ Money bills are those concerning taxation or government spending and relating to allocating revenue. MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 11 (2).

⁶³⁶ MALAYSIA FEDERAL CONSTITUTION, 1957, Eighth Schedule, art. 11 (1).

b. Decision-making rules and procedures

A bill may originate in either chamber of parliament. Once a bill is passed in the first chamber, it is referred to the other chamber for approval and then sent to the king to approve.⁶³⁷ The king has 30 days to approve a bill or to return it to parliament for further consideration.⁶³⁸ If returned to parliament, the bill must be reconsidered by each house. If passed by both houses, it returns to the king, who has another 30 days to assent to it. After 30 days, regardless of whether the king has assented to the bill, it becomes law.⁶³⁹

Decisions in both the House of Representatives and Senate are made by majority vote, with the president or speaker providing the tiebreaking vote as needed.⁶⁴⁰ Constitutional amendments require a two-thirds majority to be approved.⁶⁴¹ Parliament may not introduce bills relating to Islamic law, Malay custom, native law, or custom in Sabah and Sarawak without first consulting the state government(s) concerned.⁶⁴² Members of the cabinet have the right to take part in parliamentary proceedings, but do not have voting rights.⁶⁴³

Parliament has frequently amended the constitution due to the BN's maintaining a two-thirds majority. Parliament passed 34 constitutional amendment acts, which each included many individual amendments, in the period 1957 to 1994.⁶⁴⁴ Significantly, BN lost its two-thirds majority in the 2008 elections and has not regained it in subsequent elections.⁶⁴⁵

c. Checks on the legislature

The king serves as a check on the legislature given that his approval is required to enact legislation. However, this is not ultimate veto power, as legislation can be passed by a normal majority in both houses. It is unclear the extent to which the king withholds assent in practice.

The ability of parliament to amend the constitution with approval of a two-thirds majority has had a significant impact on the Malaysian political system since BN has almost always held a two-thirds majority. In this period, BN parliamentarians passed a significant number of constitutional amendments, many of which benefitted their political coalition.

⁶³⁷ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 66 (2) (3).

⁶³⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 66 (4).

⁶³⁹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 66 (4b).

⁶⁴⁰ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 62 (3) states that if the Speaker of the House was not originally a member of the House, he shall not provide the tie breaking vote.

⁶⁴¹ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 159 (3).

⁶⁴² MALAYSIA FEDERAL CONSTITUTION, 1957, art. 76 (2).

⁶⁴³ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 61.

⁶⁴⁴ Harold Crouch, "The Institutional Pillars of the State," in *Government and Society in Malaysia* (Ithaca and London: Cornell University Press, 1996): 138.

⁶⁴⁵ Hutchinson, "Malaysia's Federal System," 428.

Assessment

Malaysia's 222-member House is one of the two political institutions where constituents elect representatives directly, and the members of the Senate are supposed to be broadly representative of the states and federal territories. However, given that almost two-thirds of the Senate is appointed, members are not always representative and the Senate is often seen as a rubber stamp for the executive. For decades, the BN dominated parliament and used its control of the legislature to entrench its political coalition. The electoral victories of PR in 2008 and 2013, however, has made parliament a more representative, inclusive institution.

5. PUBLIC PARTICIPATION

There are few channels through which the public can participate meaningfully in the Malaysian political system. Laws discourage participation in political life, and there are relatively few opportunities for citizens to elect political representatives. However, some citizens and civil society groups began to demand electoral reforms in 2007, with results to date indicating that opportunities for citizens to voice their interests may slowly increase.

a. Engagement with the executive

There are no formal provisions in the constitution for public participation. The proceedings of the Conference of Rulers are secret and are not published.⁶⁴⁶

b. Production of legislation

Not only are there no provisions in the constitution for public participation, but in fact laws have been used to suppress public participation since independence. The Official Secrets Act enables the government to classify information as secret and not available to the public;⁶⁴⁷ the Sedition Act makes it illegal to question the status of Malay rulers and special privileges of the Malay community;⁶⁴⁸ and the Internal Security Act allows for indefinite detention without trial.⁶⁴⁹ All of these laws have been used to suppress public participation historically and in recent years.

Despite these laws, citizens have mobilized significant popular protests to demand electoral reform. In November 2007, more than 30,000 Malaysians demonstrated in the streets.⁶⁵⁰ After

⁶⁴⁶ Virtual Malaysia, "The Conference of Rulers," VirtualMalaysia.com, http://www.virtualmalaysia.com/visit_malaysia/government/conference.cfm.

⁶⁴⁷ Loh, "Restructuring Federal-State Relations in Malaysia," 138.

⁶⁴⁸ Khoo Boo Teik, "Nationalism, Capitalism, and 'Asian Values,'" in *Democracy in Malaysia: Discourses and Practices*, eds. Francis Loh Kok Wah and Khoo Boo Teik (Richmond, Surrey: Curzon Press, 2002): 59.

⁶⁴⁹ Khoo Boo Teik, "Nationalism, Capitalism, and 'Asian Values,'" 59.

⁶⁵⁰ Welsh, "Malaysia's Election's," 138.

the 2008 elections, a coalition of more than 60 civil society groups called the Coalition for Clean and Fair Elections (*Bersih*) organized to promote civic education and continue public demonstrations in 2011 and 2012.⁶⁵¹ The public demands for electoral reform culminated in 22 proposed reforms by a parliamentary committee.⁶⁵² However, the public generally did not trust in the proposed reforms, many of which proved to favor the government in power in the 2013 elections.⁶⁵³

Assessment

There are few channels through which the public can participate meaningfully in the Malaysian political system. There are no formal provisions for public participation, legislation discourages it, and there are relatively few opportunities for citizens to elect political representatives. Yet Malaysians have embraced elections as a significant means of political participation and some have begun to demand electoral reforms. The limited reforms proposed by the parliamentary committee prior to the 2013 elections and the significant support for the opposition coalition in the elections signal that the Malaysian political system may slowly become more participatory as a result of popular demands.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

Islam is the official religion of Malaysia, although the constitution also upholds religious freedom. Hereditary rulers are included in governance institutions at the federal and state levels with some executive and legislative responsibilities. Malaysia has a dual court system of civil courts, with jurisdiction over civil and criminal matters, and Sharia courts, with jurisdiction over personal law for Muslims. These arrangements attempt to mediate between diverse ethnic and religious interests, although, in practice, they have often increased tensions.

⁶⁵¹ Welsh, "Malaysia's Election's," 138.

⁶⁵² Welsh, "Malaysia's Election's," 139.

⁶⁵³ Welsh, "Malaysia's Election's," 139.

SPECIAL FEATURE: ISLAM AND OTHER RELIGIONS IN MALAYSIA

Islam is the official religion of the federation, although the constitution upholds religious freedom, providing every person the rights to profess, practice, and propagate his/her religion within the State.[†] The constitution guarantees freedom from religious discrimination and the right of every religious group to establish religious educational institutions.[‡]

However, Islam and other religions remain highly regulated by Malaysian states. Muslims are required to practice Islam within a set of State-defined rules. For example, only practices falling within a specific type of Sunni Islam are permitted, causing problems for Muslims from other traditions who have other practices, such as Shiites and Sufis.[§] Muslims are not allowed to officially change religions or leave Islam without permission from a Sharia court.[#] The practice of Islam in Malaysia, which was historically pluralist, has become increasingly restrictive.*

There are also a number of laws regulating the practice of religions other than Islam, including restrictions on publishing Malay-language Bibles and limitations on the number of non-Muslim places of worship in a given geographical area.^{††} Many states have also taken advantage of a constitutional clause that allows state law to restrict other religious groups from proselytizing Muslims.^{‡‡} The government's commitment to religious freedom has been questioned on several occasions, particularly regarding Muslims converting to other religions and the general right to practice and propagate other religions.^{§§}

The constitution also specifies in the definition of a Malay person that he or she practices Islam.^{##} This has served to conflate ethnic and religious identity, and as calls for greater incorporation of Islam into the State have become more common, the religious divide between Muslims and non-Muslims (and between Malay and non-Malay) has aggravated ethnic tensions.^{**}

† MALAYSIA FEDERAL CONSTITUTION, 1957, art. 3 (1), 11 (1).

‡ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 12 (1)(2).

§ Fauzi, "Syariahization," 39.

In 2007, the Malaysian Federal Court ruled that Muslims must obtain a certificate from a Sharia court to leave the religion. However, Sharia law does not allow Muslims to leave Islam; instead, the law requires fines, forced rehabilitation, or jail time for such a request. See Baradan Kuppusamy, "No Freedom of Worship for Muslims Says Court," *InterPress Service* (31 May 2007), <http://ipsnews.net/news.asp?idnews=37973>.

* Fauzi, "Syariahization," 35.

†† Sean Yoong, "Malaysian church slams Islamic officials over raid," *Boston Globe* (4 August 2011), http://www.boston.com/news/world/asia/articles/2011/08/04/malaysia_church_slams_islamic_officials_over_raid/?rss_id=Boston.com+%2F+Boston+Globe+--+World+News.

‡‡ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 11(4). Also see Freedom House, "Freedom in the World—Malaysia" (2010), <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7869>.

§§ Freedom House, "Freedom in the World—Malaysia."

MALAYSIA FEDERAL CONSTITUTION, 1957, art. 160(2).

** Jaclyn Ling-Chien Neo, 96.

a. Executive roles and interactions

The king and rulers serve as symbols of Malay identity, due to both the king's responsibility for protecting the special statuses of Malays and of the indigenous peoples of Sabah and Sarawak and to the roles rulers historically played. The rulers also represent their states in dealings with the federal government and can resolve disputes between the two levels.⁶⁵⁴

Islamic religious authority is vested in the rulers.⁶⁵⁵ The constitution recognizes the rulers as the heads of Islam and Malay custom in their respective states, with the king as the head of Islam and Malay custom for his state as well as the states without rulers and the territories.⁶⁵⁶ At the federal level, the inclusion of the Conference of Rulers in the executive integrates traditional and customary arrangements into the government and also recognizes the religious authority of the rulers within the political system.

Prospect for Political Accommodation: Islam and Religious Freedom

While the constitution recognizes Islam as the official State religion, it also protects religious freedom. On paper, Malaysia's treatment of religious and customary arrangements is an example of political accommodation. In practice, there have been widespread accusations against the State for restrictive and discriminatory policies on religious practice.

b. Legislative roles and interactions

The Conference of Rulers serves as an advisory body to parliament. The consent of the conference is necessary for legislation to become law on issues relating to appointments to important posts; laws altering boundaries of states; laws affecting the "privileges, position, honors or dignities of the Rulers"; and "religious acts, observances, or ceremonies" applicable at the national level.⁶⁵⁷ The Conference must also be consulted on any changes to the special status of Malays and other indigenous groups.⁶⁵⁸

c. Judicial activities

Malaysia has a dual court system: civil courts have jurisdiction over civil and criminal matters, as well as non-Islamic customary law where applicable.⁶⁵⁹ Sharia courts have exclusive jurisdiction over a number of competencies, but only as they pertain to Muslims. These competencies include personal and family law, charitable and religious trusts/endowments, Malay customs,

⁶⁵⁴ Harding, "Sovereigns Immune?" 306, 312; Virtual Malaysia, "The Conference of Rulers."

⁶⁵⁵ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 3 (1).

⁶⁵⁶ MALAYSIA FEDERAL CONSTITUTION, 1957, arts. 3, (3)(5) and 34 (1).

⁶⁵⁷ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 38 (6) (2b) (4)

⁶⁵⁸ MALAYSIA FEDERAL CONSTITUTION, 1957, art. 38 (5)

⁶⁵⁹ Jaclyn Ling-Chien Neo, 100 and Yeoh Seng Guan, "Managing sensitivities: Religious pluralism, civil society, and inter-faith relations in Malaysia," *The Round Table: The Commonwealth Journal of International Affairs*, 94:382, 633.

mosques, and punishment for Islamic offenses.⁶⁶⁰ The states are responsible for the organization of these courts and each state has its own system of Islamic religious administration.⁶⁶¹

d. Territorial autonomy

The constitution grants indigenous populations in Sabah and Sarawak access to a set of special land-leasing rights. These states have the authority to recognize indigenous ownership over land, ranging from individual indigenous titles to communal indigenous titles.⁶⁶² In Sarawak, the subnational state recognizes five different ways indigenous communities can claim ownership over land. Subnational state ministers have the power to revoke these rights, however, and systems have been put in place to expropriate land owned by indigenous populations.⁶⁶³ While Sabah and Sarawak have systems to recognize indigenous claims to land, that recognition does not necessarily mean that the land will not be reclassified for development (including timber and palm oil production) in line with Malaysia's ambitious 'New Economic Model' which strives to have Malaysia fully industrialized by 2020.⁶⁶⁴ Furthermore, states do not always recognize indigenous methods of establishing ownership and can require that indigenous peoples meet a number of bureaucratic hurdles, including obtaining documentary proof of ownership, to recognize native customary rights over the land.⁶⁶⁵

Assessment

The inclusion of hereditary rulers in governance institutions at the federal and state levels, along with the integration of Islam into governance structures, reinforces the special protections granted ethnic Malays. Recognition of religious freedom, combined with the parallel use of Sharia and civil law, attempts to accommodate a multitude of faith traditions. However, protections for ethnic Malays, combined with an increase in Islamic laws and religious restrictions,

⁶⁶⁰ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List II (1). Shari'a Courts (Criminal Jurisdiction) Act of 1965 provides Sharia Courts with the power to try Islamic offenses as long as the maximum punishment does not exceed a three-year imprisonment, Rm5000 fine, and six lashes. (See Article 2 of the Act).

⁶⁶¹ MALAYSIA FEDERAL CONSTITUTION, 1957, Ninth Schedule, List II (1).

⁶⁶² Su Mei Toh and Kevin T. Grace, "Case study from Malaysia: Sabah Forest Ownership," *Understanding forest tenure in South and Southeast Asia*, Forestry Policies and Institutions Working Paper 14, Food and Agriculture Organization of the United Nations (2006).

⁶⁶³ The five recognized ways to claim ownership are occupying cleared land, planting land with fruits, occupying cultivated land, using land as a burial ground, and using land for right of way. Ramy Bulan, "Native Customary Land. The Trust as a Device for Land Development in Sarawak," *State, Communities and Forests in Contemporary Borneo*, Fadzilah Majid Cooke ed. (Canberra: ANU E Press, 2006): 49.

⁶⁶⁴ The 'New Economic Model' is a package of reform initiatives that are meant to propel Malaysia toward the goals set forth in 'Vision 2020'. See: Yogeswaran Subramaniam, "Affirmative action and the legal recognition of customary land rights in peninsular Malaysia: the Orang Asli experience," *Australia Indigenous Law Review* 17, no. 1 (2013): 112.

⁶⁶⁵ Ramy Bulan and Amy Locklear, "Legal Perspectives on Native Customary Land Rights in Sarawak," Human Rights Commission of Malaysia (SUHAKAM), 2008, <http://www.suhakam.org.my/wp-content/uploads/2013/12/Legal-Perspectives.pdf>.

have increased tensions between different ethnic groups. Since the rulers are hereditary, male, and ethnically Malay, they are not very representative of the diversity of the country.

Conclusion

The Malaysian State is highly centralized, with the national government afforded significant powers and controlling the vast majority of revenue streams so that most states have little autonomy. While the states of Sabah and Sarawak are exceptions, with constitutionally recognized powers and independent sources of revenue, many of these powers have not been fully implemented. Significant authority has been consolidated in the office of the prime minister, and the king has become a largely ceremonial post. The FPTP electoral system, combined with Malaysia's management of electoral districts, means the ruling party has managed to stay in power since independence. Opportunities for meaningful public participation are limited.

However, one area in which states have been able to maintain more authority is in the maintenance of Islamic law, which is officially within states' exclusive authority. The federal government has, however, exerted increasing administrative control in this realm, resulting in a constant debate between the states and federal government in which each provides a check on the other.

Interestingly, the centralized Malaysian State was able to implement a series of economic development plans that consistently boosted growth for a number of years and delivered economic benefits to all major ethnic groups in Malaysia, easing tensions that other elements of the political system can heighten and which may have otherwise resulted in violent conflict.

References

Legal References

MALAY. CONST., 1957.
 Revenue Growth Grants Act 181 of 1977 (Malay).
 Shariah Courts (Criminal Jurisdiction) Act of 1965 (Malay).
 Town and Country Planning Act 172 of 1976 (Malay).

Nonlegal References

Abeyratne, Sirimal. "Economic Development and Political Conflict: Comparative Study of Sri Lanka and Malaysia." *South Asia Economic Journal* 9, no.2 (2008): 393–417.

Akhir, Md Nasrudin Md, Keum Hyun Kim, and Chung-Sok Suh. "Structure and Agency in the Malaysian Government's Policies for Economic Development." *The Economic and Labour Relations Review* 24, no. 4 (2013): 495–516.

Associated Press. "Malaysia Arrests 14 for 'Bersih' Protest T-shirts." *The Guardian*, 29 June 2011. <http://www.guardian.co.uk/world/2011/jun/29/malaysia-arrests-bersih-t-shirts>.

- Bulan, Ramy. "Native Customary Land. The Trust as a Device for Land Development in Sarawak." In *State, Communities and Forests in Contemporary Borneo*, edited by Fadzilah Majid Cooke, 45-64. Canberra: ANU E Press, 2006.
- Bulan, Ramy and Amy Locklear. "Legal Perspectives on Native Customary Land Rights in Sarawak." Human Rights Commission of Malaysia (SUHAKAM). 2008. <http://www.suhakam.org.my/wp-content/uploads/2013/12/Legal-Perspectives.pdf>.
- Crouch, Harold. "The Institutional Pillars of the State." In *Government and Society in Malaysia*, 130-148. Ithaca and London: Cornell University Press, 1996.
- Fauzi Abdul Hamid, Ahmad. "The Changing Face of Political Islam in Malaysia in the Era of Najib Razak, 2009–2013." *Journal of Social Issues in Southeast Asia* 30, no. 2 (2015): 301–337.
- Fauzi Abdul Hamid, Ahmad. "Implementing Islamic Law within a Modern Constitutional Framework: Challenges and Problems in Contemporary Malaysia." *Islamic Studies* 48, no. 2 (2009): 157–187.
- Fauzi Abdul Hamid, Ahmad. "Syariahization of Intra-Muslim Religious Freedom and Human Rights Practice in Malaysia: The Case of Darul Arqam." *Contemporary Southeast Asia* 38, no. 1 (2016): 28–54.
- Freedom House, "Freedom in the World—Malaysia." 2010. <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7869>.
- Funston, John. "Malaysia: Developmental State Challenged." In John Funston (ed.). *Government and Politics in Southeast Asia*. Singapore: Institute of Southeast Asian Studies, 2001.
- ACE Electoral Knowledge Network. "Malaysia: Malapportioned Districts and Over-Representation of Rural Communities." In *The ACE Encyclopaedia: Boundary Delimitation*, 158-166. 2012.
- Grote, Rainer, and Tilmann Röder. *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*. Oxford: Oxford University Press, 2012.
- Department of Statistics, Malaysia. "Current population estimates, Malaysia, 2014–2016." Government of Malaysia. 22 July 2016. https://www.statistics.gov.my/index.php?r=column/cthemByCat&cat=155&bul_id=OWlxdEVoYlJCS0hUZzJyRUcvZEYxZz09&menu_id=L0pheU43NWJwRWVSZkIWdzQ4TlhUUT09.
- Hamayotsu, Kikue. "Once a Muslim, Always a Muslim: The Politics of State Enforcement of Syariah in Contemporary Malaysia." *South East Asia Research* 20, no. 3 (2012): 399–421.
- Haque, M. Shamsul. "The Role of the State in Managing Ethnic Tensions in Malaysia: A Critical Discourse." *American Behavioral Scientist* 47, no. 3 (2003): 240–266.
- Harding, Andrew. "Sovereigns Immune? The Malaysian Monarchy in Crisis." *The Round Table* 83, no. 327 (1993): 305-314.
- Hodal, Kate. "Malaysia's Leader Warned: Reform Elections or Risk Revolution." *The Guardian*, 10 July 2011. <http://www.guardian.co.uk/world/2011/jul/10/malaysia-leader-reform-elections-revolution>.
- Hock Guan, Lee. "Affirmative Action in Malaysia." *Southeast Asian Affairs* (2005).
- Hui, Wee Chong. "Oil and Gas Management and Revenues in Malaysia," Presentation from *Oil and Gas in Federal Countries*. Forum of Federations. Edmonton, Alberta, 10 October 2008.
- Hutchinson, Francis E. "Malaysia's Federal System: Overt and Covert Centralization." *Journal of Contemporary Asia* 44, no. 3 (2014): 422-442.
- Kuppusamy, Baradan. "No Freedom of Worship for Muslims Says Court." InterPress Service, 31 May 2007. <http://ipsnews.net/news.asp?idnews=37973>.

- Ling-Chien Neo, Jaclyn. "Malay Nationalism, Islamic Supremacy and the Constitutional Bargain in the Multi-ethnic Composition of Malaysia." *International Journal on Minority and Group Rights* 13 (2006): 95-118.
- Loh, Francis Kok Wah. "Federation of Malaysia." In *Foreign Relations in Federal Countries*, edited by Hans Michelmann. Forum of Federations. McGill-Queen's University Press, 2009.
- Martinez, Patricia A. "The Islamic State or the State of Islam in Malaysia." *Contemporary Southeast Asia* 23, no. 3 (2001): 474-503.
- Means, Gordon P. "Malaysia (The Federation of Malaysia)." *Handbook of Federal Countries*. Forum of Federations. 15 June 2005.
- Montesino, Max U. "Cross-cultural Conflict and Affirmative Action: Inter- and Intra-ethnic Dilemmas of Malaysia's Heterogeneous Workplace." *International Journal of Cross Cultural Management* 12, no. 1 (2011): 115-132.
- Ng, Cecilia. "The Hazy New Dawn: Democracy, Women, and Politics in Malaysia." *Gender, Technology and Development* 14, no. 3 (2010): 315.
- Rawlings, H.F. "The Malaysian Constitutional Crisis of 1983." *The International and Comparative Law Quarterly* 35, no. 2 (April 1986): 237-254.
- Singh, Bilveer. "Malaysia in 2009: Confronting Old Challenges through a New Leadership." *Asian Survey* 50, no. 1 (January/February 2010): 173-184.
- Subramaniam, Yogeswaran. "Affirmative action and the legal recognition of customary land rights in peninsular Malaysia: the Orang Asli experience." *Australia Indigenous Law Review* 17, no. 1 (2013): 103-122.
- Teik, Khoo Boo. "Nationalism, Capitalism, and 'Asian Values'." In *Democracy in Malaysia: Discourses and Practices*, edited by Francis Loh Kok Wah and Khoo Boo Teik, 51-73. Richmond, Surrey: Curzon Press, 2002.
- Thirkell-White, Ben. "Political Islam and Malaysian Democracy." *Democratization* 13 no. 3 (2006): 421-441.
- Toh, Su Mei and Kevin T. Grace. "Case study from Malaysia: Sabah Forest Ownership." *Understanding forest tenure in South and Southeast Asia*. Forestry Policies and Institutions Working Paper 14. Food and Agriculture Organization of the United Nations (2006).
- Virtual Malaysia. "The Conference of Rulers." VirtualMalaysia.com.
http://www.virtualmalaysia.com/visit_malaysia/government/conference.cfm.
- Yoong, Sean. "Malaysian Church Slams Islamic Officials over Raid." *Boston Globe*, 4 August 2011.
http://www.boston.com/news/world/asia/articles/2011/08/04/malaysia_church_slams_islamic_officials_over_raid/?rss_id=Boston.com+%2F+Boston+Globe+--+World+News.
- Welsh, Bridget. "Malaysia's Elections: A Step Backwards." *Journal of Democracy* 24, no. 4 (October 2013): 136-150.
- Welsh, Bridget. "Malaysia in 2004: Out of Mahatir's Shadow?" *Asian Survey* 45, no. 1 (January/February 2005): 153-160.
- The World Bank Open Data. "Proportion of Seats Held by Women in National Parliaments: Malaysia." World Bank Group. <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=MY>.

NIGERIA

Executive Summary

This case study focuses on Nigeria’s governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and nonaccommodating arrangements to consider.

Nigeria has struggled to achieve political accommodation since its independence. The country is home to a large, diverse population and there is significant competition over Nigeria’s natural resources, particularly oil wealth. Corruption within the political system is endemic.

Despite these challenges, various mechanisms exist within the political system that support accommodation. For example, the constitution requires equality of representation within government institutions through a clause known as the federal character principle. The national- and state-level executives are elected by majority vote with a parallel consent mechanism, meaning the winning candidate must receive an overall majority plus a percentage of votes across geographical areas. Additionally, states have the authority to decide whether secular, Islamic, or customary law, or a hybrid system is applied by the judiciary, to accommodate Nigeria’s religious diversity.

Table 8—Accommodating and Less Accommodating Aspects in Nigeria

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
NIGERIA	<ul style="list-style-type: none"> • Parallel consent voting for executive leadership[‡] • Diverse and inclusive executive bodies • Mechanisms for public participation[§] • Subnational control over Islam and local judicial systems 	<ul style="list-style-type: none"> • Significant corruption • Limited decentralization • Restricted public participation space • Legislature has low capacity

[‡] The winning candidate is the candidate who receives a majority of votes in the election plus no less than 25 percent of votes cast in at least two-thirds of the states and the federal capital territory (Abuja), or in the case of governors, no less than 25 percent of votes cast in all local government areas in the state.

[§] However, citizens’ ability to recall an elected official can be manipulated by elites to exert influence over a legislator.

Background

Nigeria is a populous country and home to large Muslim and Christian communities. With more than 182 million inhabitants as of 2015,⁶⁶⁶ the country has the largest population on the African continent. As of 2010, Nigeria's estimated Muslim population of 77 million represented approximately 48.8 percent of the country's total population,⁶⁶⁷ and the estimated Christian population of 78 million⁶⁶⁸ represented approximately 49.3 percent of the total population.⁶⁶⁹ Nigeria's religious communities are relatively segregated along geographical lines. The northern region of Nigeria has its roots in an Islamic caliphate and is primarily Muslim; the southern region is primarily Christian, while the middle belt is a mix of Muslim, Christian, and other religions.

There are also hundreds of ethnic groups in Nigeria. The three major groups are the Igbo in the southeast, the Yoruba in the southwest, and the Hausa and Fulani in the north. In the southernmost part of Nigeria, known as the south-south, there is a diverse mix of ethnic and linguistic groups.

Nigeria has experienced political tensions that have escalated to violence in a number of instances since its independence from Britain in 1960. During the civil war from 1967 to 1970, the Igbo attempted to secede from Nigeria but were defeated militarily. In recent years, Boko Haram, an armed Islamic group, has fought to establish itself in northern Nigeria. In the southern Niger Delta area, an abundance of oil resources has fueled competition and conflict. Some conclude that Nigeria has existed in a state of low-grade civil war with persistent violence since the end of the civil war in 1970.⁶⁷⁰ Others describe Nigeria as a "one of the most deeply divided states in Africa" which leads to elevated levels of violence.⁶⁷¹ The military controlled the government for most years from independence until 1999, when it ceded power to civilian leadership. The civilian government remains today, although political tensions and armed violence continue.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss op-

⁶⁶⁶ World Bank, "World Bank Open Data Project: Population, total, Nigeria," <http://data.worldbank.org/indicator/SP.POP.TOTL/countries/NG?display=graph>.

⁶⁶⁷ Pew Research Center, *The Future of World Religions: Population Growth Projections, 2010–2050* (2 April 2015): 74.

⁶⁶⁸ Pew Research Center, *The Future of World Religions*, 63.

⁶⁶⁹ Pew Research Center, *The Future of World Religions*, 62.

⁶⁷⁰ Siri Aas Rustad, "Power-sharing and Conflict in Nigeria: Power-sharing Agreements, Negotiations and Peace Processes," *Center for the Study of Civil War International Peace Research Institute* (2008): 1.

⁶⁷¹ Eghosa E. Osaghae and Rotimi T. Suberu, "A History of Identities, Violence, and Stability in Nigeria," *Center for Research on Inequality, Human Security and Ethnicity*, CRISE working paper No. 6 (January 2005): 4.

tions that can reconcile their different political interests.⁶⁷² These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests. The framework consists of six focal areas or ‘Strands’, each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection
3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how all the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where Nigeria has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

While Nigeria is a federal political system, Nigerian states lack the degree of autonomy that typically characterizes federal systems. The current constitution assigns substantial powers to the national government while reserving no exclusive powers for the states. States’ dependence on the national government for financial resources further limits their autonomy. Although the overarching political structure does not distribute decision-making power, the process of state creation stands out as a means of enabling citizens to have a voice in governance arrangements.

a. Structure

Nigeria is a federal political system that consists of 36 states and the federal capital territory—Abuja (FCT—Abuja).⁶⁷³ The 1999 Constitution of the Federal Republic of Nigeria establishes

⁶⁷² Here, ‘representatives’ is used broadly to mean political, community and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment, or inheritance.

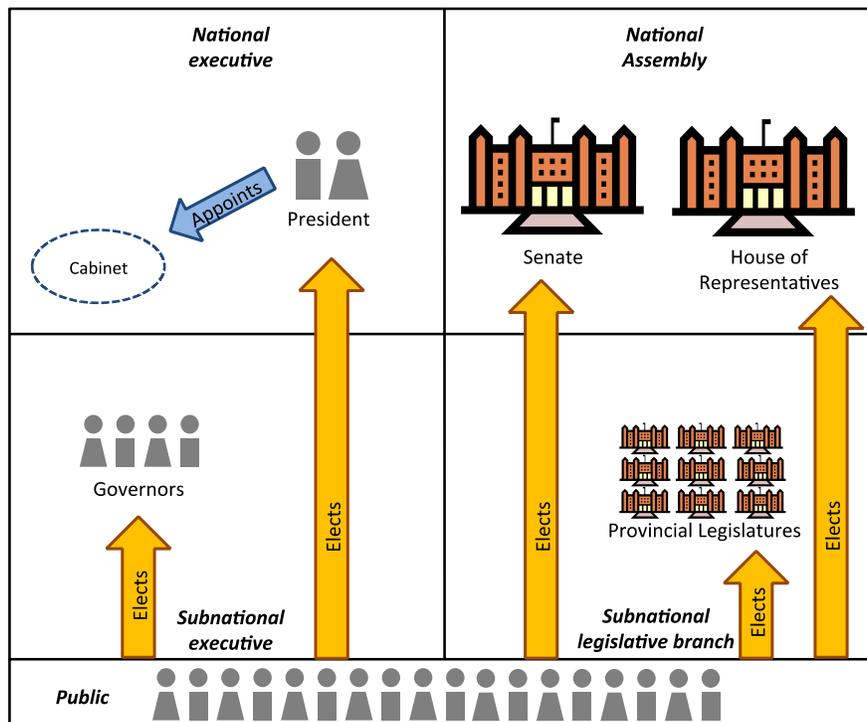
⁶⁷³ CONSTITUTION OF NIGERIA (1999), § 2 cl. 1–2.

three levels of government within the federal system: national, subnational, and local. Branches of government include the national executive, the national legislature, subnational executives, subnational legislatures, and local government councils.

At the national level, the constitution sets out a presidential system.⁶⁷⁴ In addition to the president, the national executive includes the office of the vice president and the cabinet.⁶⁷⁵ The national legislature, known as the National Assembly, is bicameral, with a Senate and a House of Representatives.⁶⁷⁶

At the subnational level, executive authority of each state is vested in the office of an elected governor.⁶⁷⁷ The constitution mandates that each state have its own legislature, or House of Assembly, with 24 to 40 members, depending on the population size of the state.⁶⁷⁸

Figure 10—Nigeria’s Political Structure



The constitution requires that each state establish a legal framework for a system of local government. Democratically elected local government councils are guaranteed under the constitu-

⁶⁷⁴ CONSTITUTION OF NIGERIA (1999), § 5 cl. 1(a).

⁶⁷⁵ CONSTITUTION OF NIGERIA (1999), § 5 cl. 1(a).

⁶⁷⁶ CONSTITUTION OF NIGERIA (1999), § 4 cl. 1.

⁶⁷⁷ CONSTITUTION OF NIGERIA (1999), §§ 5 cl. 2(a), 176, 178.

⁶⁷⁸ CONSTITUTION OF NIGERIA (1999), §§ 90–91.

tion.⁶⁷⁹ The specific processes for the establishment and functioning of the councils is determined by legislation on a state-by-state basis.⁶⁸⁰

b. Division of powers

The constitution assigns substantial powers to the national government. The National Assembly has exclusive power to make laws on a comprehensive list of issues, including legal proceedings between the national and subnational levels, between states, and between the national government and any individual; the military; public debt; taxation of incomes, profits, and capital gains; trade and commerce; and water from inter-state sources.⁶⁸¹

Prospect for Political Accommodation: State Creation

The National Assembly can pass an act to create a new state. The process requires four sequential steps as laid out in the constitution.¹ The National Assembly, the state legislature, local governance councils, and the people who live in the area where the new state would exist all must support the creation of the new state during different steps of the process. State creation provides a means of accommodating interests of local communities and enables citizens to have a voice in the governance arrangements that affect their lives.

Although numerous states were established before the 1999 constitution—there were three states at independence compared to the 36 today—no new states have been created since its adoption. Therefore, state creation is a potential means of Political Accommodation that has not been used within the current political structure.

The comparatively brief list of shared competencies between the national and subnational levels includes providing for public safety and public order; making grants or loans; tax collection; regulating local government council elections; electricity; and post-secondary education.⁶⁸²

Areas over which a state House of Assembly has primary competence include industrial, commercial, or agricultural development, and primary and secondary education.⁶⁸³ Yet if a state law is inconsistent with national law, national law prevails.⁶⁸⁴ Therefore, there are effectively no powers exclusively reserved for states. Given that valid national law prevails over state law and that the majority of powers are assigned to the national government, the political structure is highly centralized.

However, states have been able to maintain more authority over Islamic law. The constitution provides space for the National Assembly and state assemblies to expand the jurisdiction of the Sharia court of appeal through law.⁶⁸⁵ This provision has in

⁶⁷⁹ CONSTITUTION OF NIGERIA (1999), § 7 cl. 1.

⁶⁸⁰ CONSTITUTION OF NIGERIA (1999), § 7 cl. 1.

⁶⁸¹ CONSTITUTION OF NIGERIA (1999), sched. 2, part I.

⁶⁸² CONSTITUTION OF NIGERIA (1999), § 11 cl. 1–2, sched. 2, part II §§ 1, 9, 11, 13, 14.

⁶⁸³ CONSTITUTION OF NIGERIA (1999), sched. 2 part II §§ 18, 30.

⁶⁸⁴ CONSTITUTION OF NIGERIA (1999), § 4 cl. 5.

⁶⁸⁵ See the language in Chapter VII, Part I, Section E of the constitution, such as the wording of Article 262 (1) which refers to “jurisdiction [of the Sharia Court of Appeal] as may be conferred upon it by an Act of the National Assem-

effect given states the ability to legislate the reintroduction of Sharia into the judicial sector as they see fit.⁶⁸⁶ This has led to a variety of justice systems that vary by state. (See *Traditional and Customary Arrangements – Judicial activities*.)

Both the national and state governments have appealed to the Supreme Court to clarify aspects of the relationship between the national government and the states. Between 1999 and 2007, the court issued 15 decisions related to the division of powers under the current constitution.⁶⁸⁷ Many, but not all, decisions recognized the supremacy of the national government, consistent with the constitutional division of powers.⁶⁸⁸ To some observers, the Supreme Court proved its ability to interpret the constitution in a balanced, impartial way through these decisions.⁶⁸⁹

c. Resource distribution and control

The national government has jurisdiction over the vast majority of natural resources in Nigeria, which is significant because the majority of government revenue comes from natural resources. The constitution stipulates that the national government controls all minerals, mineral oils, and natural gas in the land, water, and exclusive economic zone of Nigeria.⁶⁹⁰ Additionally, the Petroleum Act of 1969 vests ownership and control of all petroleum on land, water, and continental shelf areas of Nigeria in the federal State.⁶⁹¹ The national government established the Nigerian National Petroleum Corporation (NNPC) in 1978, and the government participates in joint ventures related to petroleum exploration, concessions, and production through the NNPC.⁶⁹²

Analysis of the role of oil in the Nigerian economy in terms of dollar values further illustrates the impact of the sector on the national budget. Nigeria's GDP was approximately \$515 billion in 2013.⁶⁹³ The oil sector represents approximately 13 percent of GDP but approximately 70 percent of government revenue.⁶⁹⁴ In comparison, tax revenue was less than 5 percent of

bly." Also see Rotimi T. Suberu, "Religion and Institutions: Federalism and the Management of Conflicts over Sharia in Nigeria," *Journal of International Development* 21, no. 4 (2009): 551.

⁶⁸⁶ Suberu, "Religion and Institutions," 551; CONSTITUTION OF NIGERIA (1999), §§ 262, 277.

⁶⁸⁷ Rotimi T. Suberu, "The Supreme Court and Federalism in Nigeria," *The Journal of Modern African Studies* 46, no. 3 (September 2008): 459–478.

⁶⁸⁸ Suberu, "Supreme Court and Federalism," 478.

⁶⁸⁹ Suberu, "Supreme Court and Federalism," 478.

⁶⁹⁰ CONSTITUTION OF NIGERIA (1999), § 44 cl. 3.

⁶⁹¹ *Petroleum Act of 1969* § 1 cl. 1–2.

⁶⁹² International Crisis Group, "Nigeria's Faltering Federal Experiment," Africa Report No. 119 (25 October 2006): 5.

⁶⁹³ World Bank, "World Bank Open Data Project: Nigeria, GDP,"

<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2015&locations=NG&start=1960&view=chart>.

⁶⁹⁴ International Monetary Fund, "Nigeria: Selected Issues Paper," IMF Country Report No. 15/85 (March 2015): 19–20, <https://www.imf.org/external/pubs/ft/scr/2015/cr1585.pdf>.

GDP.⁶⁹⁵ While there has been significant growth in sectors besides oil, and reforms to increase revenue from taxes have been announced, the majority of government revenue continues to be derived from oil.

The constitution provides a framework for the allocation of financial resources. The National Assembly has the legislative power to create provisions for division of public revenue between the national government and the states; among the states; between the states and local government councils; and among local government councils in the states.⁶⁹⁶ Additionally, the constitution includes provisions on how the National Assembly should allocate public funds. The constitution states that the formula should take into account “allocation principles,” including the size of population, equity of the states, internal revenue generation, land mass, and terrain, as well as population density.⁶⁹⁷ As stated in the current constitution, at least 13 percent of revenue is distributed to the natural resource-producing states.⁶⁹⁸

In practice, allocation of public funds has been contentious. The question of how the allocation principles are applied to revenue distribution between states, particularly between states that produce and do not produce oil, has been a source of intense debate. Many oil-producing states argue that they should receive more than the 13 percent minimum requirement for revenue generated from natural resources. Most of the other allocation principles laid out in the constitution are informed by large amounts of data. The lack of consensus around the reliability of population and socioeconomic data has created skepticism around the formulas developed by the national government to distribute revenue between the states.⁶⁹⁹

The question of how revenue is shared between the national government and the states has been another source of intense debate. States have come to depend on the national government for financial resources. In fact, in 2001, Nigeria’s states received an average of 90 percent of their revenue as a transfer from the national government.⁷⁰⁰ Some analysts also argue that states have been created even though they are not fiscally viable and depend entirely on the national government for financial resources.⁷⁰¹ States have appealed to the Supreme Court,

⁶⁹⁵ International Monetary Fund, “Nigeria: Selected Issues Paper,” 27.

⁶⁹⁶ CONSTITUTION OF NIGERIA (1999), sched. 2, part II § 1.

⁶⁹⁷ CONSTITUTION OF NIGERIA (1999), § 160 cl. 2.

⁶⁹⁸ CONSTITUTION OF NIGERIA (1999), § 162 cl. 2. Currently the percent allocated according to the principle of derivation is 13 percent.

⁶⁹⁹ Rotimi T. Suberu, “The Nigerian federal system: performance, problems, and prospects,” *Journal of Contemporary African Studies* 28, no. 4 (2010): 468.

⁷⁰⁰ World Bank, *Nigeria State Finances Study* (April 2003): 51, <http://documents.worldbank.org/curated/en/433941468776705944/Nigeria-States-finances-study>.

⁷⁰¹ Chibuike U. Uche and Ogonnaya C. Uche, “Oil and the Politics of Revenue Allocation in Nigeria,” *African Studies Centre, ACS Working Paper 54/2004* (2004): 38.

among other strategies, in an attempt to increase allocation of revenue from the national government to the states, as well as to increase state control over allocated resources.⁷⁰²

Assessment

The federal structure in Nigeria is centralized and decision making power is concentrated in the national government. States are granted few exclusive powers – a notable exception being over Islamic and customary law – and state law is subordinate to national law. Additionally, states depend on the national government for financial resources, which further limits their autonomy.

2. SYSTEMS OF ELECTION AND SELECTION

Parallel consent mechanisms that require support across geographical areas are used to elect the president and governors. National-level legislators from both houses are elected through first-past-the-post. An informal zoning arrangement implemented by the People's Democratic Party from 1999 through 2010 balanced representation between candidates from the north and the south.

a. System design

The president is elected by a majority system with a parallel consent mechanism, meaning the winning candidate is the candidate who receives a majority of votes in the election plus no less than 25 percent of votes cast in at least two-thirds of the states and FCT-Abuja. There can be a runoff election between two candidates. The winner of the runoff must receive the majority of the votes plus no less than 25 percent of votes cast in at least two-thirds of the states and the capital territory. If a second runoff election is necessary, then the candidate who receives the majority of votes wins.⁷⁰³

From 1999 to 2010, the People's Democratic Party (PDP), the dominant party at the time, implemented a 'zoning arrangement' for nominating presidential candidates. The PDP alternated its presidential nominee between the north and the south every eight years (two terms), with the vice presidential candidate from the other region.⁷⁰⁴ Since the PDP won each presidential election from 1999 until 2011,⁷⁰⁵ this ensured informal power sharing between the north and the south. However, President Umaru Yar'Adua (from the north) died in office in 2010 and Vice

⁷⁰² Suberu, "Supreme Court and Federalism," 460–461.

⁷⁰³ CONSTITUTION OF NIGERIA (1999), § 134.

⁷⁰⁴ Ayo Awopeju, Olufemi Adelusi, and Ajinde Oluwashakin, "Zoning Formula and the Party Politics in Nigerian Democracy: a Crossroad for PDP in 2015 Presidential Election," *Research on Humanities and Social Sciences* 2, no. 4 (2012): 14–15.

⁷⁰⁵ African Elections Database, "Elections in Nigeria," <http://africanelections.tripod.com/ng.html>.

President Goodluck Jonathon (from the south) won the PDP nomination for 2011 elections after finishing out Yar'Adua's term. According to the zoning arrangement, the PDP presidential candidate in the 2011 election should have come from the north.

Zoning seemed to balance the interests of various regional and ethnic groups. However, the zoning arrangement also was criticized as an informal agreement among elites whose primary purpose was to ensure the PDP's dominance, and was thus undemocratic.⁷⁰⁶ The PDP's presidential dominance, and the informal zoning arrangement, came to an end when Muhammadu Buhari of the All Progressives Congress party won the presidential election in March 2015.

Members of both the House of Representatives (the lower house) and the Senate (the upper house) are directly elected by plurality vote from single-member districts (also known as 'first-past-the-post' or FPTP).⁷⁰⁷

At the state level, governors are also elected by a majority system with a parallel consent mechanism, meaning the winning candidate is the candidate who receives a majority of votes in the election plus no less than 25 percent of votes cast in all local government areas in the state.⁷⁰⁸ If this criterion is not met by any one candidate, a runoff election takes place between two candidates: the candidate with the overall highest majority of votes, and the candidate with the majority in the highest number of local government areas. The winner of the runoff must receive the majority of the votes plus no less than 25 percent of votes cast in at least two-thirds of all local government areas in the state. If a second runoff election is necessary, then the candidate who receives the majority of votes wins.⁷⁰⁹

Members of state Houses of Assembly are directly elected from single-member districts as prescribed by legislation of the National Assembly.⁷¹⁰

b. Political parties

Political parties must be open to all Nigerian citizens regardless of "place of origin, circumstance of birth, sex, religion or ethnic grouping."⁷¹¹ The constitution includes mechanisms to ensure that political parties are populated by citizens from all parts of Nigeria. For example, the symbol or logo of a political party cannot speak to one ethnic or religious group in particular.⁷¹²

⁷⁰⁶ John Campbell and Asch Harwood, "Judging Nigeria's Election Season: Can the New Government in Abuja Overcome Nigeria's Many Challenges?" *Foreign Affairs* (15 April 2011), <https://www.foreignaffairs.com/articles/west-africa/2011-04-15/judging-nigerias-election-season>.

⁷⁰⁷ CONSTITUTION OF NIGERIA (1999), §§ 71, 77.

⁷⁰⁸ CONSTITUTION OF NIGERIA (1999), § 179.

⁷⁰⁹ CONSTITUTION OF NIGERIA (1999), § 179.

⁷¹⁰ CONSTITUTION OF NIGERIA (1999), § 117 cl. 1.

⁷¹¹ CONSTITUTION OF NIGERIA (1999), § 222 cl. b.

⁷¹² CONSTITUTION OF NIGERIA (1999), § 222 cl. e.

Additionally, the leadership of a political party has to “reflect the federal character of Nigeria,”⁷¹³ and members of the executive committee must consist of people from at least two-thirds of the states of Nigeria and FCT–Abuja.⁷¹⁴

However, the balance of diversity in political parties works differently in practice than in theory. Ethnicity was a strong base of support for political parties before independence. The regional character of federalism at the time gave political parties an incentive to grow strong bases in their respective regions, in effect creating ethnic group solidarity within regional political parties. Despite the years of military rule, which instituted policies meant to move away from ethnic bases in political parties, political mobilization of ethnicity remains a reality in Nigerian party politics.⁷¹⁵

c. Special provisions

Beyond the requirements for representation in political parties, there are no further provisions in Nigeria’s constitution or electoral legislation to promote the representation of minorities or women.

Assessment

The system of election and selection implemented in Nigeria contributes to increased equity of representation. Parallel consent mechanisms, such as those employed for presidential and gubernatorial elections, support accommodation because a candidate must win support from different constituencies throughout the country or the state in order to be elected into office.

At the national level, in some ways the desire for political accommodation resulted in the implementation of the unofficial zoning arrangement within the PDP, characterized by alternating representation for northern and southern constituencies. The zoning arrangement successfully balanced interests of different constituencies, and citizens expressed a degree of support for the arrangement since they elected presidents from the PDP between 1999 and 2015. However, the fact that the zoning arrangement was a strategy adopted by political elites has been criticized as undermining aspects of the democratic process.

⁷¹³ CONSTITUTION OF NIGERIA (1999), § 223 cl. 1(b).

⁷¹⁴ CONSTITUTION OF NIGERIA (1999), § 223 cl. 2(b).

⁷¹⁵ L. Adele Jinadu, “Inter-party dialogue in Nigeria: Examining the past, present and future,” Lead paper at the inaugural *Democratic Governance for Development Political Parties Dialogue Series* (4 October 2011), Bolingo Hotel, Abuja, Nigeria, 3–5.

3. EXECUTIVE BRANCH

The president is the head of State, the chief executive, and commander in chief. At the state level, executive power is vested in a governor. The federal charter principle, enshrined in the constitution, mandates that the national executive select at least one individual from each state to serve as a minister. The federal character applies to government agencies in general, and thus has promoted diversity and inclusivity within the executive.

a. Structure and competencies

Executive power at the national level is vested in the president. The president is the head of State, the chief executive, and commander in chief of the armed forces.⁷¹⁶ The president's term lasts four years, with a term limit of two terms.⁷¹⁷

Each presidential candidate nominates a candidate from the same political party to serve as vice president if the presidential candidate is elected.⁷¹⁸ The president has the authority to assign to the vice president or any minister of the government responsibility for any government business, including the administration of any department of government.⁷¹⁹

The president can appoint ministers of the government, and the president must appoint at least one minister from each state.⁷²⁰ A minister of the government, appointed by the president, cannot simultaneously hold a position in the National Assembly or any subnational state-level assembly.⁷²¹

Executive power at the state level is vested in a governor.⁷²² The governor's term lasts four years, with a term limit of two terms.⁷²³

b. Checks on the executive

Members of the National Assembly can remove the president or vice president from office for gross misconduct if all of the following conditions are met: 1) at least one-third of the members of the National Assembly present allegations of gross misconduct to the president of the Senate; 2) both houses vote by at least a two-thirds majority to establish a panel to investigate the

⁷¹⁶ CONSTITUTION OF NIGERIA (1999), § 130.

⁷¹⁷ CONSTITUTION OF NIGERIA (1999), §§ 135 cl. 2, 137 cl. 1(b).

⁷¹⁸ CONSTITUTION OF NIGERIA (1999), § 142 cl. 1.

⁷¹⁹ CONSTITUTION OF NIGERIA (1999), § 148 cl. 1.

⁷²⁰ The principle of appointing a minister from each state stems from Article 14, cl. 3 of the constitution. See *Inclusivity* subsection.

⁷²¹ CONSTITUTION OF NIGERIA (1999), § 147 cl. 4.

⁷²² CONSTITUTION OF NIGERIA (1999), § 176 .

⁷²³ CONSTITUTION OF NIGERIA (1999), §§ 180 cl. 2, 182 cl. 1(b) .

allegations; 3) upon investigation, the panel finds the allegations proven; and 4) both houses vote by at least a two-thirds majority to adopt the panel's findings.⁷²⁴ Yet while it is possible for the National Assembly to remove the president or vice president, the National Assembly has not done so.⁷²⁵

c. Inclusivity

The constitution requires the government to ensure an equitable balance among diverse peoples within its institutions and throughout the process of implementing policy. Article 14(3) of the constitution, also known as the federal character principle, states:

*The composition of the Government... shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few state[s] or from a few ethnic or other sectional groups in that Government or in any of its agencies.*⁷²⁶

This clause applies to state and local government councils as well, whose conduct should "...recognize the diversity of the people...and the need to promote a sense of belonging and loyalty among all the people of the Federation."⁷²⁷ The constitution also requires that all ranks of the armed forces "reflect the federal character of Nigeria."⁷²⁸ The National Assembly is responsible for establishing a body to ensure that the composition of the armed forces reflects the federal character of Nigeria.⁷²⁹

Prospect for Political Accommodation: Equality of Representation among States

The president of Nigeria, when appointing his ministers of government, must select at least one person from each state. This requirement stems from the ethos articulated in Article 14(3) in the constitution: "There shall be no predominance of persons from a few States... in any of its [the government's] agencies." By mandating representation of the different subnational entities, the constitution opens up the potential for political accommodation across geographical areas in Nigeria.

The constitution also establishes a Federal Character Commission (FCC) to oversee implementation of the federal character principle across national and subnational public service agencies, the armed forces, and the police.⁷³⁰ The constitution grants the commission the power to prosecute those in charge of government bodies who fail to comply with the federal character

⁷²⁴ CONSTITUTION OF NIGERIA (1999), § 143.

⁷²⁵ Mamman Lawan, "Abuse of powers of impeachment in Nigeria," *The Journal of Modern African Studies* 48, no. 2 (June 2010): 312.

⁷²⁶ CONSTITUTION OF NIGERIA (1999), § 14 cl. 3.

⁷²⁷ CONSTITUTION OF NIGERIA (1999), § 14 cl. 4.

⁷²⁸ CONSTITUTION OF NIGERIA (1999), § 217 cl. 3.

⁷²⁹ CONSTITUTION OF NIGERIA (1999), § 219 cl. b.

⁷³⁰ CONSTITUTION OF NIGERIA (1999), sched. 3, part I C – Federal Character Commission, § 8 cl. 1(a).

principle or formula prescribed by the commission.⁷³¹ Within the context of the executive, the goal of balancing staff diversity is that no one group should dominate the branch.

However, the requirement that the federal character be reflected in the executive and other government institutions opens the question of how to define where an individual is from if government institutions are to include representatives from all states.⁷³² While the FCC is formally empowered to develop this definition,⁷³³ the federal character requirement politicizes geographical origin. In practice, the system employed by the FCC places a heavy emphasis on geographical quotas rather than qualified candidates.⁷³⁴

Assessment

Although it features a powerful president, the Nigerian executive is relatively representative and inclusive. Constitutional provisions ensure representation of all states in the federation at the ministerial level, and the federal character principle promotes diversity and inclusivity within the executive. The establishment of the FCC to ensure implementation of the principle enhances the prospects for accommodating diverse interests in practice.

4. LEGISLATIVE BRANCH

Nigeria's National Assembly is a bicameral legislature composed of the Senate (upper house) and the House of Representatives (lower house). While relatively representative of the population, the National Assembly has struggled to pass legislation and is hampered by the low level of capacity of its members, who tend to be inexperienced.

a. Structure and competencies

Legislative power is vested in the National Assembly, a bicameral legislature that consists of the Senate (upper house) and the House of Representatives (lower house).⁷³⁵ The Senate consists of three members from each state and one member from the FCT–Abuja, for a total of 109 senators.⁷³⁶ The House of Representatives consists of 360 members. A legislative term lasts four years.⁷³⁷

⁷³¹ CONSTITUTION OF NIGERIA (1999), sched. 3, part I C – Federal Character Commission, § 8 cl. 1(c).

⁷³² International Crisis Group, “Nigeria’s Faltering Federal Experiment,” 12–14.

⁷³³ CONSTITUTION OF NIGERIA (1999), sched. 3, part I C – Federal Character Commission, § 8 cl. 1(a).

⁷³⁴ Abdul Raufu Mustapha, “Institutionalising ethnic representation: How effective is the Federal Character Commission in Nigeria?” *Center for Research on Inequality, Human Security and Ethnicity*, CRISE Working Paper No. 43 (June 2007): 11.

⁷³⁵ CONSTITUTION OF NIGERIA (1999), §§ 4 cl. 1, 47.

⁷³⁶ CONSTITUTION OF NIGERIA (1999), § 48.

⁷³⁷ CONSTITUTION OF NIGERIA (1999), § 64 cl. 1.

In practice, Nigeria's legislature is a relatively weak institution. It has struggled to pass legislation, taking years to pass bills,⁷³⁸ and to date it has not fulfilled its government oversight responsibilities effectively.⁷³⁹ The legislature is hampered by the low level of capacity of its members, who tend to be inexperienced.⁷⁴⁰

Each state has a unicameral House of Assembly charged with legislating at the state level.⁷⁴¹

b. Decision-making rules and procedures

Either house can originate a bill. Once both houses pass a bill, the bill is sent to the president. Both the Senate and the House of Representatives must pass a bill, and the president must assent to it, in order for the bill to become law. At the national level, a quorum (the minimum number) of one-third of the members of a house is required to pass laws.⁷⁴²

Bills relating to public funds and taxation are granted a special process in the constitution. If the bill passes in the originating house but does not pass in the other house within two months of the beginning of the fiscal year, then a joint finance committee meets within 14 days after that point to resolve the differences between the two houses.⁷⁴³ Should this joint finance committee not reach a solution, a joint sitting of the National Assembly should convene to hear the bill. Allocation of revenue is a critical, and contentious, function of the National Assembly. (See *Political Structure—Resource distribution and control*.)

c. Checks on the legislature

Presidential assent is required for bills to become law; however, a bill can still become law in cases where the president has withheld consent if the bill is passed by a two-thirds vote in both houses.

Assessment

The National Assembly is a representative institution in the sense that it draws its members from across the states in the federation. However, the legislature suffers from low capacity, and its members struggle to carry out their roles and responsibilities as representatives.

⁷³⁸ Edet J. Tom and Amadu J. Attai, "The Legislature and National Development: The Nigerian Experience," *Global Journal of Arts Humanities and Social Sciences* 2, no. 9 (November 2014): 70.

⁷³⁹ Joseph Yinka Fashagba, "Legislative Oversight under the Nigerian Presidential System," *The Journal of Legislative Studies* 15, no. 4 (2009).

⁷⁴⁰ Tom and Attai "Legislature and National Development," 70.

⁷⁴¹ CONSTITUTION OF NIGERIA (1999), § 90.

⁷⁴² CONSTITUTION OF NIGERIA (1999), § 54.

⁷⁴³ CONSTITUTION OF NIGERIA (1999), § 59.

5. PUBLIC PARTICIPATION

There are a number of public participation mechanisms within the Nigerian political system. One unusual mechanism is that citizens may recall a member of the National Assembly or the House of Assembly through a process of petition and referendum. Whether public participation mechanisms support or undermine political accommodation in Nigeria depends on how they are implemented.

a. Engagement with the executive

The Freedom of Information Act (2011) grants the right to access or request public information and records, including those held by the executive and its ministries.⁷⁴⁴ It also requires public institutions to keep records of its activities, operations, and ensure the information is “widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at [their] offices.”⁷⁴⁵ The act also explicitly grants the right to institute court proceedings to compel a public institution to comply with the act.⁷⁴⁶ Certain records pertaining to international affairs, defense, and law enforcement proceedings are exempt.⁷⁴⁷

The Public Complaints Commission Act (2004) establishes a commission tasked with investigating complaints submitted by the public regarding poor administration in federal, state, or local government authority.⁷⁴⁸ The Public Complaints Commission’s authority does not extend to investigating national- or state-level legislative bodies.⁷⁴⁹

b. Referendums

The public can recall a member of either house of the National Assembly and any House of Assembly through a process of petition and referendum. There does not need to be a legal justification behind the reason for submitting a recall of an elected official. Rather, it is the constituency’s ‘loss of confidence’ in the elected official that triggers a recall.⁷⁵⁰

Two criteria must be met in order to recall an official: 1) more than half of the registered voters in that member’s constituency must sign a petition expressing a loss of confidence in the

⁷⁴⁴ Freedom of Information Act of 2011 §§ 1, 2 cl. 7 (Nigeria).

⁷⁴⁵ Freedom of Information Act of 2011 § 2 (Nigeria).

⁷⁴⁶ Freedom of Information Act of 2011 § 2 cl. 6 (Nigeria).

⁷⁴⁷ Freedom of Information Act of 2011 §§ 11–12 (Nigeria).

⁷⁴⁸ Public Complaints Commission Act 37 of 2004 § 5 (Nigeria).

⁷⁴⁹ Kunle Aina, “The Relevance of Public Complaints Commission to Nigeria’s Democratic Development,” *International Journal of Advanced Legal Studies and Governance* 3, no. 3 (2012): 4–5.

⁷⁵⁰ Ajepe Taiwo Shehu, “Constituency Control of Legislators: Lessons from Nigeria,” *African Journal of International and Comparative Law* 19, no. 1 (2011): 130.

member and present it to the chairperson of the Independent National Electoral Commission; and 2) a simple majority of the registered voters in the member's constituency must approve the petition in a referendum.⁷⁵¹ The Independent National Electoral Commission is required to conduct the referendum within 90 days of the receipt of the petition.

The recall mechanism is a rare provision: only ten other countries or States have provisions for recall of elected officials at a national level.⁷⁵² The infrequent adoption of such a provision reflects its problematic nature. There is an inherent difficulty in striking a balance between a recall process that is easy enough to make citizens feel capable of using it and a recall process that is too easy for citizens to execute, thus creating conditions for improper use.⁷⁵³ While the recall mechanism has not been used widely in Nigeria, the Supreme Court has ruled that the impeachment of two different governors was unconstitutional.⁷⁵⁴ The unconstitutional recall of the governors highlights the potential for abuse of the recall mechanism.

Assessment

There are a number of mechanisms through which citizens can engage in the political process and influence governance. Among these mechanisms, the ability to recall elected officials – even at the national level – is unusual. The provisions that enable citizens to recall an elected official can help to ensure that the representative is accountable to his or her constituency. Yet the recall provision also risks being used by elites to exert influence over a legislator.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

The way in which judicial activities and territorial autonomy are intertwined enhances political accommodation in Nigeria. Specifically, the constitution gives each state the ability to establish Islamic law. The result has been the creation of a wide spectrum of judicial systems, from Islamic law to secular law, on a state-by-state basis that accommodate the diverse interests of local constituencies.

a. Executive roles and interactions

The constitution stipulates that the person who presides over a local government council shall pay regard to the traditional association of the community.⁷⁵⁵ This one mention of “traditional association of the community” is the only reference to traditional arrangements in the constitu-

⁷⁵¹ CONSTITUTION OF NIGERIA (1999), §§ 69, 110.

⁷⁵² International Institute for Democracy and Electoral Assistance, “When citizens can recall elected officials,” in *Direct Democracy: The International IDEA Handbook* (2008), 115.

⁷⁵³ International Institute for Democracy and Electoral Assistance, “When citizens can recall,” 123.

⁷⁵⁴ Lawan, “Abuse of powers of impeachment,” 322.

⁷⁵⁵ CONSTITUTION OF NIGERIA (1999), § 7 cl. 2(b)(iii).

tion. The constitution upholds local government's authority to maintain control over traditional associations and does not go into detail on how traditional associations should be recognized by local government leadership.⁷⁵⁶

Therefore, the constitution does not grant traditional leaders a formal role in the State structure. But despite exclusion from formal State institutions, chiefs continue to play important roles in Nigerian society, including as informal intermediaries between local communities and institutions of the State.⁷⁵⁷ Since in many areas chieftaincies perform many functions at the local level, some argue that traditional authorities should also fall under the authority of the constitution.⁷⁵⁸ The difference between the official and unofficial role of chiefs within State-level political structures highlights the significant gap between how the constitution defines institutions and how institutions function in practice.

b. Judicial activities

The judicial system in Nigeria is a product of the religious diversity in a country with roughly equal Christian and Muslim populations and a minority of the population that practices traditional religions. The geographically varied and blended judicial system reflects the historical legacy of the Islamic caliphate in the northern region of Nigeria and the British colonial influence of English common law. Judicial activities thus are intertwined with territorial autonomy.

States' ability to reintroduce Sharia into the judicial sector has resulted in a legal system that is complex and incorporates combinations of secular law, Islamic law, and customary law in different areas of the country. Zamfara was the first state to reinstate elements of Sharia in 1999, and 11 of 36 states followed. Each of these states has instituted Sharia in its own way, with some states abolishing local native area courts and other states building on the infrastructure of area courts.⁷⁵⁹ No southern state has chosen to adopt Sharia (Nigeria's southern states are majority non-Muslim), and Muslim populations within these states use customary courts for the application of Islamic law in personal cases.⁷⁶⁰

The constitution establishes the legal foundation for a customary court of appeal and a Sharia court of appeal in FCT–Abuja.⁷⁶¹ The jurisdiction of the Sharia court of appeal only applies to

⁷⁵⁶ CONSTITUTION OF NIGERIA (1999), § 7 cl. 2(b)(iii); Charles Mwalimu, *Seeking Viable Grassroots Representation Mechanisms in African Constitutions: Integration of Indigenous and Modern Systems of Government in Sub-Saharan Africa*, (New York: Peter Lang Publishing, 2009): 119.

⁷⁵⁷ Olufemi Vaughan, *Nigerian Chiefs: Traditional Power in Modern Politics, 1890s-1990s*, (Rochester: University of Rochester Press, 2000): 6; Mwalimu, *Seeking Viable Grassroots Representation*, 117.

⁷⁵⁸ Mwalimu, *Seeking Viable Grassroots Representation*, 405–406.

⁷⁵⁹ Suberu, "Religion and Institutions," 553–554.

⁷⁶⁰ Abdulmumini Adebayo Oba, "The Sharia Court of Appeal in Northern Nigeria: The Continuing Crisis of Jurisdiction," *The American Journal of Comparative Law* 52, no. 4 (Autumn 2004).

⁷⁶¹ CONSTITUTION OF NIGERIA (1999), § 260.

Islamic law matters and cases where non-Muslims have consented to the use of Islamic law.⁷⁶² The Sharia court has jurisdiction over Islamic personal law including marriage, inheritance, and guardianship.⁷⁶³ The *kadis* (judges of Islamic law) are appointed by the president upon recommendation by the National Judicial Council.⁷⁶⁴

Assessment

Recognition of traditional leaders in the constitution, albeit limited, combined with the ability of traditional leaders to be informally incorporated into state institutions, has increased equity of representation and decision making in Nigeria. The degree to which the incorporation of traditional leadership enhances inclusion is limited by the fact that the majority of traditional leaders in Nigeria are men.

The flexibility states have to determine what roles Islamic and customary laws play in their judicial systems has led to a wide spectrum of judicial systems according to states' demographics, increasing representation of the diversity of faith traditions within Nigeria.

Conclusion

Nigeria's large, diverse population presents significant challenges for political accommodation. The political system features a number of mechanisms to foster accommodation, including a flexible political structure that allows for the creation of new states, the federal character principle that requires that government institutions reflect the country's diversity, an electoral system for the president and governors that tries to ensure buy-in across geographical areas, and state authority over whether to establish secular, Islamic, customary law, or a hybrid system. These and other governance mechanisms have enabled the country to meet the demands of its diverse, in some ways deeply divided, society.

Yet the structural challenges to political accommodation within Nigeria's political system should not be overlooked. The centralization of powers and control of resources at the national level is contentious. In particular, natural resource management and the distribution of revenue from oil continue to drive conflict, particularly in the south. Additionally, political solutions to episodes of ethnoreligious and ethnoregional violence and widespread corruption within governance remain elusive.⁷⁶⁵ Alternative or enhanced Political Accommodation mechanisms may be necessary to meet these challenges.

⁷⁶² Oba, "The Sharia Court of Appeal," 884.

⁷⁶³ CONSTITUTION OF NIGERIA (1999), § 262.

⁷⁶⁴ CONSTITUTION OF NIGERIA (1999), § 261 cl. 1–2.

⁷⁶⁵ See, for example, Osaghae and Suberu, "A History of Identities."

References

Legal References

- CONSTITUTION OF NIGERIA, 1999.
- Electoral Act 6 of 2010 (Nigeria).
- Freedom of Information Act of 2011 (Nigeria).
- Land Use Act of 1978 (Nigeria).
- Petroleum Act of 1969 (Nigeria).
- Public Complaints Commission Act 37 of 2004 (Nigeria).

Nonlegal References

- African Elections Database. "Elections in Nigeria." <http://africanelections.tripod.com/ng.html>.
- Aina, Kunle. "The Relevance of Public Complaints Commission to Nigeria's Democratic Development." *International Journal of Advanced Legal Studies and Governance* 3, no. 3 (2012): 1–14.
- Akinyele, R. T. "States Creation in Nigeria: The Willink Report in Retrospect." *African Studies Review* 39 No. 2 (Sept. 1996): 71–94.
- Alapiki, Henry E. "State Creation in Nigeria: Failed Approaches to National Integration and Local Autonomy." *African Studies Review* 48, no. 3 (Dec. 2005): 49–65.
- Awopeju, Ayo, Olufemi Adelusi, and Ajinde Oluwashakin. "Zoning Formula and the Party Politics in Nigerian Democracy: a Crossroad for PDP in 2015 Presidential Election." *Research on Humanities and Social Sciences* 2, no. 4 (2012): 11–20.
- Campbell, John, and Asch Harwood. "Judging Nigeria's Election Season: Can the New Government in Abuja Overcome Nigeria's Many Challenges?" *Foreign Affairs*, 15 April 2011. <https://www.foreignaffairs.com/articles/west-africa/2011-04-15/judging-nigerias-election-season>.
- Fashagba, Joseph Yinka. "Legislative Oversight under the Nigerian Presidential System." *The Journal of Legislative Studies* 15, no. 4 (2009): 439–459.
- Goitom, Hanibal. "Nigeria: Election Law." The Law Library of Congress (April 2011).
- Ikporukpo, C.O. "Politics and Regional Policies: The Issue of State Creation in Nigeria." *Political Geography Quarterly* 5 no. 2 (April 1986): 127–139.
- Idemudia, Uwafiokun. "The Resource Curse and the Decentralization of Oil Revenue: The Case of Nigeria." *Journal of Cleaner Production* 35 (2012): 183–193.
- International Crisis Group. "Nigeria's Faltering Federal Experiment." *Africa Report* No. 119 (25 October 2006).
- International Institute for Democracy and Electoral Assistance. "When Citizens Can Recall Elected Officials." In *Direct Democracy: The International IDEA Handbook*. International Institute for Democracy and Electoral Assistance, 2008.
- International Monetary Fund. "Nigeria: Selected Issues Paper." IMF Country Report No. 15/85. March 2015. <https://www.imf.org/external/pubs/ft/scr/2015/cr1585.pdf>.

- Jinadu, L. Adele. "Inter-party Dialogue in Nigeria: Examining the Past, Present and Future." Lead paper at the inaugural Democratic Governance for Development (DGD) Political Parties Dialogue Series, Bolingo Hotel, Abuja, Nigeria, 4 October 2011.
- Lawan, Mamman. "Abuse of Powers of Impeachment in Nigeria." *The Journal of Modern African Studies* 48, no. 2 (June 2010): 311–338.
- Mustapha, Abdul Raufu. "Institutionalising Ethnic Representation: How Effective is the Federal Character Commission in Nigeria?" Center for Research on Inequality, Human Security and Ethnicity. CRISE Working Paper No. 43 (June 2007): 1–25.
- Mwalimu, Charles. *Seeking Viable Grassroots Representation Mechanisms in African Constitutions: Integration of Indigenous and Modern Systems of Government in Sub-Saharan Africa*. Peter Lang Publishing, Inc., New York 2009.
- National Judicial Council Nigeria. "About the Council." Last modified 2011. www.njc.gov.ng/about.php.
- Oba, Abdulmumini Adebayo. "The Sharia Court of Appeal in Northern Nigeria: The Continuing Crisis of Jurisdiction." *The American Journal of Comparative Law* 52, no. 4 (Autumn 2004): 859–900.
- Onwudiwe, Ebere, and Chloe Bertwind-Dart. "Breaking the Cycle of Electoral Violence in Nigeria." United States Institute of Peace, Special Report 263. December 2010.
- Osaghae, Eghosa E., and Rotimi T. Suberu. "A History of Identities, Violence, and Stability in Nigeria." Center for Research on Inequality, Human Security and Ethnicity. CRISE working paper No. 6 (January 2005): 1–27.
- Pew Research Center. *The Future of World Religions: Population Growth Projections, 2010–2050*. 2 April 2015.
- Reynolds, Andrew et. al. "Electoral System Design: The New International IDEA Handbook." International Institute for Democracy and Electoral Assistance, 2005.
- Rustad, Siri Aas. "Power-sharing and Conflict in Nigeria: Power-sharing Agreements, Negotiations and Peace Processes." Center for the Study of Civil War, International Peace Research Institute. Oslo, 2008.
- Sala-i-Martin, Xavier, and Arvind Subramanian. "Addressing the Natural Resource Curse: An Illustration from Nigeria." NBER Working Paper No. 9804. June 2003.
- Shehu, Ajepe Taiwo. "Constituency Control of Legislators: Lessons from Nigeria." *African Journal of International and Comparative Law* 19, no. 1 (2011): 124–144.
- Suberu, Rotimi T. "The Nigerian Federal System: Performance, Problems, and Prospects." *Journal of Contemporary African Studies* 28, no. 4 (2010): 459–477.
- Suberu, Rotimi T. "Religion and Institutions: Federalism and the Management of Conflicts over Sharia in Nigeria." *Journal of International Development* 21, no. 4 (2009): 547–560.
- Suberu, Rotimi T. "The Supreme Court and Federalism in Nigeria." *The Journal of Modern African Studies* 46, no. 3 (September 2008): 459–478.
- Tom, Edet J., and Amadu J. Attai. "The Legislature and National Development: The Nigerian Experience." *Global Journal of Arts Humanities and Social Sciences* 2, no. 9 (November 2014): 63–78.
- Uche, Chibuike U., and Ogbonnaya C. Uche. "Oil and the Politics of Revenue Allocation in Nigeria." African Studies Centre. ACS Working Paper 54/2004 (2004).

Vaughan, Olufemi. *Nigerian Chiefs: Traditional Power in Modern Politics, 1890s-1990s*. (Rochester: University of Rochester Press, 2000).

World Bank. *Nigeria State Finances Study*. April 2003.

<http://documents.worldbank.org/curated/en/433941468776705944/Nigeria-states-finances-study>.

World Bank. "World Bank Open Data Project: Population, Total, Nigeria."

<http://data.worldbank.org/indicator/SP.POP.TOTL/countries/NG?display=graph>.

World Bank. "World Bank Open Data Project: Nigeria, GDP."

<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2015&locations=NG&start=1960&view=chart>.

SOUTH AFRICA

Executive Summary

This case study focuses on South Africa’s governance arrangements analyzed through the lens of Political Accommodation. Political Accommodation considers how governance options can reconcile different political interests to move society toward sustainable peace. The case study examines governance provisions in the constitution and relevant legislation across six focal areas: 1) political structure; 2) systems of election and selection; 3) executive branch; 4) legislative branch; 5) public participation; and 6) traditional and customary arrangements. It discusses implementation of those arrangements, and assesses how the arrangements enable or hinder reconciliation of different interests. The case study highlights both accommodating and nonaccommodating arrangements to consider.

South Africa’s 1996 constitution was drafted through an inclusive participatory process following decades of conflict. It lays out a system that balances inclusion and accommodation while acknowledging the realities of a diverse and deeply divided country emerging from a costly civil war. As a result, the constitution includes robust language protecting individual rights and recognizing South Africa’s many communities while also enabling a relatively centralized federal structure that relies on institutions to implement politically accommodating policies.

South Africa’s constitution, and subsequent political system, is often used as a best-practice example and has a number of accommodating features. Political parties have established voluntary political party quotas to increase representation of marginalized groups, which has led to high levels of women’s representation at the national, provincial, and local levels. South Africa has established some of the most well-developed mechanisms for public engagement with government in the world, including a program called “Taking Parliament to the People.” It features an extensive traditional leadership network that parallels the formal government structure. However, South Africa has been criticized for its centralized political structure and for the fact that implementation of certain measures largely relies on the good faith of political parties and, more specifically, the ruling African National Congress (ANC) party.

Table 9—Accommodating and Less Accommodating Aspects in South Africa

	ACCOMMODATING ASPECTS	LESS ACCOMMODATING ASPECTS
SOUTH AFRICA	<ul style="list-style-type: none"> • Political party quotas for women • Representative legislature • Mechanisms for public participation • Integration of traditional leaders into legislative • Independent court system 	<ul style="list-style-type: none"> • Limited decentralization • Single dominant political party • Limited checks on national executive • Implementation relies on good faith of political parties

Background

As of 2016, South Africa's population was 55.6 million people. The 1996 Constitution of the Republic of South Africa was adopted following decades of conflict between the white-minority government and its apartheid policies and South Africa's black and colored communities.⁷⁶⁶ Following an escalation of violence between government and anti-apartheid forces in the 1980s and growing pressure from international and domestic constituencies, a political dialogue process began in 1990, led by both the ruling National Party and the ANC and their respective leaders, F.W. de Klerk and Nelson Mandela.⁷⁶⁷ South Africa's peace process was unusually representative and inclusive. Although the two leading parties to the conflict shaped the agenda, a broad range of political actors and interested parties contributed to the dialogue, and the process involved a high level of public participation. After several years of multiparty talks and agreement on an interim constitution, the first nonracial, democratic elections were held in April 1994. A new constitution followed two years later.⁷⁶⁸ This case study focuses on the provisions of the 1996 constitution and the legal framework that has been implemented in the intervening 20 years.

Political Accommodation Framework

The purpose of the Political Accommodation methodology is to prevent and resolve violent conflict. The methodology enables people and their representatives to design and discuss options that can reconcile their different political interests.⁷⁶⁹ These include options for governance and political dialogue that can move society toward sustainable peace.

The Political Accommodation governance framework offers a way to locate areas of a political system that drive conflict and provides a structure to guide creation of new governance options that can potentially accommodate competing political interests.

The framework consists of six focal areas or 'Strands', each representing complementary paths that can contribute to political accommodation. The governance Strands are:

1. Political structure
2. Systems of election and selection

⁷⁶⁶ South Africa classifies people by four distinct population groups: black African, colored, Indian/Asian, and white. In 2016, 80.7% of the population was black African, 8.7% colored, 2.5% Indian/Asian, and 8.1% white. Statistics South Africa, "Community Survey 2016: Statistical Release P0301" (Pretoria: 1 July 2016), <http://cs2016.statssa.gov.za/>.

⁷⁶⁷ Eldred de Klerk, "South Africa's Negotiated Transition: Context, Analysis, and Evaluation," in *Owning the Process: Public Participation in Peacemaking*, ed. Catherine Barnes (London: Conciliation Resources, 2002): 18.

⁷⁶⁸ de Klerk, "South Africa's Negotiated Transition," 18.

⁷⁶⁹ Here, 'representatives' is used broadly to mean political, community and traditional leaders who represent, or purport to represent, the interests of a constituency, by election, appointment or inheritance.

3. Executive branch
4. Legislative branch
5. Public participation
6. Traditional and customary arrangements

Decisions in one Strand affect how the others function in practice. Accordingly, it is important to consider their relationships and develop options that represent coherent choices across all the Strands.

This case study examines governance provisions across the six Strands and identifies where South Africa has used specific mechanisms that promote accommodation of different interests.

Six Attributes of Political Accommodation

1. POLITICAL STRUCTURE

South Africa's political structure resembles a federal state. The constitution recognizes four levels of governance, and provinces are granted a number of shared competencies with the national government and are able to pass their own constitutions. However, due in part to a lack of capacity at lower levels of government and weak revenue raising at the province level, South Africa operates more like a centralized state than a federal one. The national government maintains significant control over provincial and municipal policy decisions.

a. Structure

While its constitution does not mention federalism, South Africa resembles a federal State. The constitution explicitly recognizes four levels of government—national, provincial, district municipality, and local municipality.⁷⁷⁰ Provinces are granted a number of shared competencies with the national government and are able to pass their own constitutions.⁷⁷¹ However, in practice, some have argued that South Africa operates more like a centralized State and that the national government maintains significant control over provincial and municipal policy decisions, both in law and in practice.⁷⁷² Thus, despite many elements of a federal State, South Africa's political structure is difficult to categorize.⁷⁷³

⁷⁷⁰ There is also a parallel structure of traditional communities that will be described in the *Traditional and Customary Structures* section. Note that for the purposes of this report, the term 'local governance' refers to both district municipalities and local municipalities.

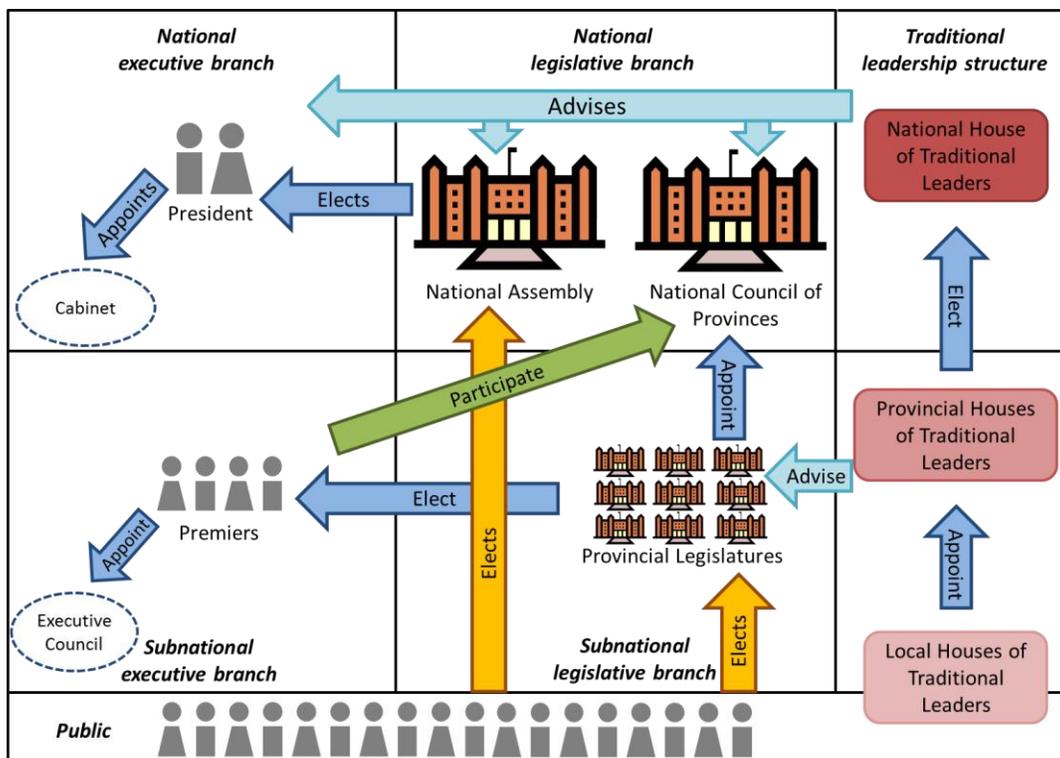
⁷⁷¹ S. AFR. CONST., 1996 § 104 cl. 1.

⁷⁷² Louis A. Picard and Thomas Mogale, *Comparative Assessment of Decentralization in Africa: South Africa Desk Study* (Washington: United States Agency for International Development, 2010): 1; Christina Murray, "Republic of South

At the national level, South Africa is governed by a president and a bicameral parliament. The parliament consists of the National Assembly, which represents the public at large, and the National Council of Provinces (NCOP), which represents the interests of the provinces. Each province has a unicameral parliament led by a premier, and municipalities are managed by a mayor and a municipal council. An organized network of traditional leaders parallels the formal government structure from the local to the national level and advises government bodies on matters pertaining to customary law, customs, traditional leadership, and traditional communities (see

Figure 11). Disputes between national and/or subnational institutions can only be resolved by the Constitutional Court.⁷⁷⁴

Figure 11—South Africa’s Political Structure



Africa," in *A Global Dialogue on Federalism, Vol. 3: Legislative, Executive, and Judicial Governance in Federal Countries* ed. Katy Le Roy and Cheryl Saunders (Montreal: McGill Queen University Press, 2006): 1.

⁷⁷³ Reluctance to use the term ‘federalism’ in the constitution is due in large part to the fact the apartheid government used federalism, particularly its use of Bantustans or separate territories for black inhabitants, to promote racial segregation. More strongly federal arrangements agreed in the Multi-Party Negotiating Process (1992–1993) were kept out of the final constitution due to these concerns. Murray, “Republic of South Africa,” 2 and Picard and Mogale, *Comparative Assessment of Decentralization*, v.

⁷⁷⁴ S. AFR. CONST., 1996 § 167 cl. 4.

b. Division of powers

Most competencies in South Africa are shared between the national and subnational governments. Provinces have few exclusive areas of competency, but there are substantial shared competencies that include agriculture, education, health services, housing, public transport, urban and rural development, and welfare services.⁷⁷⁵ Functional areas exclusive to provincial government include provincial planning, cultural matters, recreation and sport, and roads and traffic.⁷⁷⁶ The national government enjoys exclusive authority over any matter not listed as either a shared competency or as exclusive to provinces.⁷⁷⁷ Disputes over these competencies must be adjudicated by the Constitutional Court.⁷⁷⁸

If the national government and a provincial government enact a conflicting law under a shared functional area, *provincial* law prevails.⁷⁷⁹ However, this is qualified by the fact that *national* law prevails if any of a number of conditions is met, including if the legislation is necessary for national security, economic unity, protection of the common market, or protection of the environment, or if it deals with a matter that cannot be regulated effectively by individual provincial legislation.⁷⁸⁰ The constitution also states that the national parliament may pass legislation outside of its functional area if such action is required by national security, economic unity, essential national standards, the rendering of services, or the prevention of an action that is prejudicial to the interests of another province or the country as a whole.⁷⁸¹ Conflicts between national and subnational laws have been tested, with national laws being found both to prevail over provincial laws and to be unconstitutional.⁷⁸²

In practice, the national government exercises many of the shared powers, meaning that policy making is relatively centralized, and the primary role of provincial and local governments is delivering nationally determined policies and programs.⁷⁸³

National dominance in decision making is also made possible by a lack of capacity at the subnational levels. Most subnational institutions are still developing a functional civil service, and there is a resulting gap between responsibilities mandated by the constitution and the implementation of those responsibilities.⁷⁸⁴ A 2013 study on local governance found that municipal

⁷⁷⁵ S. AFR. CONST., 1996 sched. 4.

⁷⁷⁶ S. AFR. CONST., 1996 sched. 5.

⁷⁷⁷ S. AFR. CONST., 1996 § 44 cl. 1.

⁷⁷⁸ S. AFR. CONST., 1996 § 167 cl. 4.

⁷⁷⁹ S. AFR. CONST., 1996 § 146 cl. 4.

⁷⁸⁰ S. AFR. CONST., 1996 § 146 cl. 2. Section 146 includes an additional five conditions. If any one of these applies, national law prevails over the conflicting provincial law.

⁷⁸¹ S. AFR. CONST., 1996 § 44 cl. 2.

⁷⁸² *Mashava v. President of the Republic of South Africa and Others* 2004 (6) BCLR 1243 (CC) (S. Afr.) and *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* 1999 (15) BCLR 1 (CC) (S. Afr.).

⁷⁸³ Murray, "Republic of South Africa," 1. Picard and Mogale, *Comparative Assessment of Decentralization*, 8.

⁷⁸⁴ Murray, "Republic of South Africa," 2.

governments do not exercise the full independent authority granted to them by the constitution.⁷⁸⁵ Local governments have struggled against capacity shortages (insufficient managerial, financial, technical, and project management skills) and socioeconomic barriers (high poverty and unemployment rates), resulting in poor service delivery.⁷⁸⁶

c. Resource distribution and control

The national government has exclusive competency over mining, marine resources, fresh water resources, national parks, and botanical gardens. The constitution grants shared competencies to national and provincial governments over administration of indigenous forests, the environment, nature conservation, regional planning and development, and urban and rural development (among others).⁷⁸⁷

The constitution calls for equitable division of revenue between the national, provincial, and local levels of government. Provincial and local governments are entitled to a share of national funds in order to provide basic services and perform the competencies assigned.⁷⁸⁸

Provinces are mostly funded through transfers from the national government. From 2011 to 2015, national transfers accounted for more than 90 percent of provincial revenue, and for seven of nine provinces they constituted 96 percent or more of provincial revenue.⁷⁸⁹ The bulk of funds are distributed through a Provincial Equitable Share (PES) formula that takes into account the needs of each province.⁷⁹⁰

Although most funding is provided through the PES and conditional grants, provincial governments have the option to raise their own funds. The national government has authority over income tax, value-added tax, general sales tax, and rates on property and customs duties. Provincial governments are permitted to impose taxes that do not already fall under the national

⁷⁸⁵ In fact, the study found that of the 37 municipalities analyzed, only two were close to actually performing all of the 38 functions required in the constitution. Thomas A. Koelble and Andrew Siddle, "Why Decentralization in South Africa Has Failed," *Governance: An International Journal of Policy, Administration, and Institutions* 26, no. 3 (July 2013): 344–345.

⁷⁸⁶ Koelble and Siddle, "Why Decentralization in South Africa," 344–345. Financial and Fiscal Commission, *Submission on the Division of Revenue 2014/15* (Johannesburg: Financial and Fiscal Commission, 2013): 64.

⁷⁸⁷ S. AFR. CONST., 1996 sched. 4 part A.

⁷⁸⁸ S. AFR. CONST., 1996 §§ 214 cl. 1, 227 cl. 1.

⁷⁸⁹ The following is an average from fiscal years 2011/2012–2014/2015 of the percentage of provincial revenue national transfers comprise for each province: Eastern Cape: 98%; Free State: 96%; Gauteng: 95%; KwaZulu-Natal: 97%; Limpopo: 97%; Mpumalanga: 98%; Northern Cape: 98%; North West: 96%; Western Cape: 93%. Provincial Treasury of KwaZulu-Natal, "Estimates of Provincial Revenue and Expenditure 2015/16," 25, <http://www.treasury.gov.za/documents/provincial%20budget/2015/4.%20Estimates%20of%20Prov%20Rev%20and%20Exp/Default.aspx>.

⁷⁹⁰ Tania Ajam et al., eds., *Technical Report: Annual Submission on the Division of Revenue 2010/11* (Johannesburg: Financial and Fiscal Commission, 2009): 1; *Division of Revenue Bill 2011/2012, Bill 4–2011*, Explanatory Memorandum to the Division of Revenue part 4 (S. Afr.). Need is based on six components: education (48%), health (27%), population (16%), institutional cost (5%), poverty (3%), and economic output (1%).

government's jurisdiction, and may employ flat-rate surcharges on taxes imposed by the national government (except for surcharges on corporate income taxes, value-added taxes, rates on property, or customs duties).⁷⁹¹

In a 2009 assessment of the PES formula, the Financial and Fiscal Commission (FCC) found that because provincial governments receive most of their funding through intergovernmental transfers, the resource distribution system fails to encourage revenue collection at the subnational level, exacerbating dependence on the national government for funds.⁷⁹² Weak subnational revenue collection is also limited by law and historic precedent, and provinces controlled by the dominant ANC party typically rely on distributions from the national government.⁷⁹³ Limited tax bases, public resistance to paying taxes, and weak administrative skills inhibit some provincial governments' abilities to raise funds.⁷⁹⁴ An exception is Western Cape, traditionally controlled by the opposition party the Democratic Alliance, which has a more diverse revenue stream.⁷⁹⁵

Municipalities are allowed to impose taxes on property and surcharges on fees for services provided, as well as other taxes, levies, and duties, as authorized by national legislation.⁷⁹⁶ Most municipalities are primarily funded through national and provincial transfers, although some large cities, such as Johannesburg and Cape Town, are mostly self-financing. National grants account for only 15 percent of Johannesburg's revenue and 8.6 percent of Cape Town's revenue, and for both cities, the majority of revenue comes from service charges and property taxes.⁷⁹⁷

Protests over poor service delivery have become common in low-income areas.⁷⁹⁸ Country-wide strikes and protests linked to poor service delivery and corruption took place prior to the 2011 local government elections.⁷⁹⁹ In a 2009 report, the FCC suggested that the national government has simply failed to address the root causes, citing the need to reassess the overall

⁷⁹¹ S. AFR. CONST., 1996 § 228 cl. 1.

⁷⁹² Ajam et al., *Technical Report*, 8; Financial and Fiscal Commission, *Submission on Division of Revenue 2014/15*, 60.

⁷⁹³ Picard and Mogale, *Comparative Assessment of Decentralization*, 7.

⁷⁹⁴ Picard and Mogale, *Comparative Assessment of Decentralization*, 10, 13. This varies by location. In formerly white areas, 95% tax collection is common, while property and service taxes are much lower in historically black areas and virtually nonexistent in the former Bantustans.

⁷⁹⁵ Picard and Mogale, *Comparative Assessment of Decentralization*, 7.

⁷⁹⁶ S. AFR. CONST., 1996 § 229 cl. 1.

⁷⁹⁷ Robert Cameron, "Vertical Decentralization and Urban Service Delivery in South Africa: Does Politics Matter?" WIDER Working Paper 2012/087 (Helsinki: UNU-WIDER, 2012): 14. It should be noted that Johannesburg is the capital of Gauteng, South Africa's wealthiest province, and Cape Town does not have any populous black townships with high degrees of poverty within its borders.

⁷⁹⁸ Idasa, *Elections and the Management of Diversity in Africa: National Country Report for South Africa* (Pretoria: Idasa, 2012): 24.

⁷⁹⁹ Idasa, *Elections and the Management of Diversity*, 104.

infrastructure of local governments.⁸⁰⁰ Reports also indicate that significant amounts of the money that is distributed disappear due to ghost workers, corruption, and administrative waste.⁸⁰¹

Assessment

South Africa represents an interesting mix of centralized and decentralized governance structures. The structural arrangements adopted in the constitution could have created a relatively decentralized State, but in practice, given the lack of capacity at lower levels of government and weak revenue raising at the province level, the State has operated in a rather centralized manner. This highlights the importance of taking into account the details of the context in designing political structures and of incorporating mechanisms for political accommodation across the other Strands. For example, since many policies are set at the national level, ensuring that the national-level executive and legislature are broadly representative and respond to diverse political interests and that traditional leaders and the public at large can feed into national-level decision making is important for taking account of diverse interests.

2. SYSTEMS OF ELECTION AND SELECTION

Elections for the National Assembly, provincial legislatures, and local councils follow a system of closed party list proportional representation, which has led to relatively representative bodies. There have been few complaints about the transparency and participatory nature of elections; however, the closed list system has come under some criticism that it fosters elected officials' party loyalty instead of accountability to constituents. While electoral law does not require provisions for representation of marginalized groups, political parties have established voluntary quotas that have led to high levels of women's representation at the national, provincial, and local levels.

a. System design

The president and premiers are elected from among the members of National Assembly and provincial legislatures, respectively, by a simple majority vote.⁸⁰²

Elections for the National Assembly (the lower house of parliament), provincial legislatures, and local councils follow a system of closed party list proportional representation (PR).⁸⁰³ Addition-

⁸⁰⁰ Tania Ajam et al., *Technical Report*, xv-xvi.

⁸⁰¹ Picard and Mogale, *Comparative Assessment of Decentralization*, 10.

⁸⁰² S. AFR. CONST., 1996 §§ 128, 86 cl. 1, sched. 3A.

⁸⁰³ See *Electoral Act 73 of 1998* sched. 1A, §§2, 3 (S. Afr.) for the National Assembly; *Electoral Law 73 of 1998* sched. 1A §§ 10–14 (S. Afr.) for the Provincial Legislatures; and S. AFR. CONST., 1996 § 157 cl. 2 for Municipal Councils. Party-list PR is a system in which each party presents a list of candidates for a multimember district. The voters vote for a

ally, for the National Assembly, half of the 400 seats are allocated by provincial lists (with a fixed number of seats reserved for each province), and the other half are allocated by national lists.⁸⁰⁴

The 90 members of the NCOP (the upper house) are selected by the provincial legislatures. Each province nominates ten delegates: four special delegates and six permanent delegates.⁸⁰⁵ One of the four special delegate seats is reserved for the premier, the provincial-level executive. Membership of the provincial delegations is proportional to the number of seats each party holds in the provincial legislature, thereby ensuring the participation of minority parties.⁸⁰⁶ Municipalities of a certain size may establish an executive committee.⁸⁰⁷ The municipal council elects committee members from among its members.⁸⁰⁸ The mayor is elected by the municipal council from among the executive committee members.⁸⁰⁹

There have been few complaints about the transparency and participatory nature of elections in South Africa. National and provincial elections consistently feature genuine multi-party competition and high voter turnout.⁸¹⁰

The outcomes of elections have largely favored the ANC since 1996. In the 2014 elections, the ANC won 249 of the 400 National Assembly seats and also won majorities, or in several cases super-majorities, in eight of nine provincial legislatures, which translates to a controlling majority in both chambers of parliament.⁸¹¹

The PR electoral system has received both praise and criticism regarding its capacity to balance diversity and accountability. PR can foster diversity and the election of smaller parties, but leaving candidate choice and order to the party (closed list) also creates incentives for elected officials to remain accountable to the party instead of to their constituencies. Party officials decide

party, and the winning candidates are taken from the top of the lists to fill seats according to each party's overall share of the vote. In a 'closed-list' system, the party determines candidates' positions on the lists.

⁸⁰⁴ *Electoral Act 73 of 1998* sched. 1A cl. 2 (S. Afr.).

⁸⁰⁵ The special delegates are rotating members of the provincial legislature. The permanent delegates cannot be members of the provincial legislature—they are considered full-time members of the national parliament. S. Afr. CONST., 1996 § 61.

⁸⁰⁶ S. Afr. CONST., 1996 sched. 3 part B: "The number of delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one;" and S. Afr. CONST., 1996 § 61 cl. 2–3.

⁸⁰⁷ Local Government Municipal Structures Act 117 of 1998 §42 (S. Afr.).

⁸⁰⁸ Local Government Municipal Structures Act 117 of 1998 §45 (S. Afr.).

⁸⁰⁹ Local Government Municipal Structures Act 117 of 1998 §48 cl. 1 (S. Afr.).

⁸¹⁰ African Union Commission, *African Union Election Observation Mission to the 7 May 2014 National and Provincial Elections in the Republic of South Africa: Final Report* (August 2014): 53; and Idasa, *Elections and the Management of Diversity*, 53.

⁸¹¹ Electoral Commission of South Africa, "2014 National and Provincial Elections Results," <http://www.elections.org.za/resultsnpe2014/>.

the composition and order of party lists; constituents only cast their vote for the party in general. This has fostered a tradition of party loyalty among elected officials in South Africa.⁸¹²

b. System administration

The Electoral Commission manages elections at all levels of government.⁸¹³ It is composed of five members, including one judge, and its members are nominated by a National Assembly committee and appointed by the president.⁸¹⁴ The Commission's responsibilities include ensuring free and fair elections, maintaining voter rolls, registering political parties, promoting voter education, and declaring election results.⁸¹⁵ The Commission also determines voting districts.

The Electoral Commission shares electoral management responsibilities with the Electoral Court, which includes five members who are appointed by the president on the recommendation of the Judicial Service Commission.⁸¹⁶ While the Electoral Commission is responsible for overseeing general election activities, both the Commission and the Electoral Court play a role in dispute resolution. Either entity may adjudicate a dispute over the final result of an election and can mandate that votes from a particular voting station be excluded from the overall count.⁸¹⁷

c. Political parties

Political parties must formally register with the Electoral Commission to participate in elections. To register, a political party must submit a deed of foundation (which includes signatures of at least 100 registered voters) and a party constitution to the Commission.⁸¹⁸ Registered political parties cannot propagate or incite violence, hatred, or serious offense toward others based on race, gender, sex, ethnicity, sexual orientation, age, disability, religion, culture, or language.⁸¹⁹ Further, party membership or support cannot be based on the grounds of race or ethnicity.⁸²⁰

For a political party to participate in an election, it must submit a list of candidates to the Electoral Commission according to the timetable set by the Commission.⁸²¹ While candidates must

⁸¹² Pierre de Vos, "Key Institutions Affecting Democracy in South Africa," in *Testing Democracy: Which Way is South Africa Going?* eds. Neeta Misra-Dexter and Judith February (Cape Town: Idasa, 2010): 100; and Idasa, *Elections and the Management of Diversity*, 48–49.

⁸¹³ S. AFR. CONST., 1996 art. 190 (1)(a).

⁸¹⁴ Electoral Commission Act 51 of 1996 §6 cl. 1 (S. Afr.).

⁸¹⁵ Electoral Commission Act 51 of 1996 §5 cl. 1 (S. Afr.), Electoral Act 73 of 1998 §§57, 60, 64 (S. Afr.).

⁸¹⁶ Electoral Commission Act 51 of 1996 §19 cl. 1 (S. Afr.).

⁸¹⁷ Electoral Act 73 of 1998 §56 (S. Afr.).

⁸¹⁸ Electoral Commission Act 51 of 1996 §15 cl. 3 (S. Afr.).

⁸¹⁹ Electoral Commission Act 51 of 1996 §16 cl. 1(c) (S. Afr.).

⁸²⁰ Electoral Commission Act 51 of 1996 §16 cl. 1(c) (S. Afr.).

⁸²¹ Electoral Act 73 of 1998 §27 (S. Afr.).

conform to the requirements of office set by the constitution, political parties craft the candidate list according to their own internal rules.

d. Special provisions

The electoral law in South Africa does not include any specific mechanisms to ensure representation of historically underrepresented groups in the legislature or executive (such as representation based on gender, ethnicity, or religion). The Local Government Municipal Structures Act (1998) suggests parties “seek to ensure that” 50 percent of candidates on the party list at the municipal council level be women, and that women and men candidates alternate on the list; however, this is not a binding requirement.⁸²² While not all parties follow this suggestion, as of 2015, 38 percent of local government positions were held by women.⁸²³

Despite the lack of legislative mechanisms, this issue has largely been taken on voluntarily by the main political party. In 1994, the ANC adopted a 30 percent quota for women; every third candidate on their national and provincial lists had to be a woman.⁸²⁴ And, in 2007, the ANC amended its constitution to adopt a 50 percent quota for women.⁸²⁵ As a result of these voluntary quotas, post-apartheid South Africa has consistently featured 30 percent or more women legislators at the national and provincial levels.⁸²⁶ South Africa ranks eighth in the world for women’s representation in a lower or single house of parliament, with 42 percent representation in the National Assembly in 2015.⁸²⁷ As of July 2016, no other political parties have adopted voluntary quotas for women.⁸²⁸

In addition to gender, the ANC party leadership also considers the following in developing its national and provincial party lists: geographical representation; representation of racial groups; party continuity; representation from party affiliates (e.g., the Congress of South African Trade

⁸²² Local Government Municipal Structures Act 117 of 1998 sched. 1 §11 cl. 3, sched. 2 §5 cl. 3, 17 cl. 5 (S. Afr.).

⁸²³ Colleen Lowe Morna, Sifiso Dube, and Lucia Makamure, eds., *SADC Gender Protocol 2015 Barometer* (Johannesburg: Southern Africa Gender Protocol Alliance, 2015): 93.

⁸²⁴ Mavivi Myakayaka-Manzini, “Political Party Quotas in South Africa,” in *The Implementation of Quotas: African Experiences*, ed. Julie Ballington (Stockholm: International IDEA, 2004): 59; Bookie Monua Kethusegite-Juru, “Quotas Systems in Africa: An Overview,” in *The Implementation of Quotas: African Experiences*, ed. Julie Ballington (Stockholm: International IDEA, 2004): 22.

⁸²⁵ African National Congress, *African National Congress Constitution* (Johannesburg: African National Congress, 2007): Rule 6.

⁸²⁶ Myakayaka-Manzini, “Political Party Quotas,” 59. As of 2015, women made up 42 percent of parliament. Morna, et al., *SADC Gender Protocol 2015*, 87.

⁸²⁷ Inter-Parliamentary Union, “Women in national parliaments,” 1 December 2015, <http://www.ipu.org/wmn-e/classif.htm>.

⁸²⁸ Janine Hicks and Colleen Lowe Morna, “Gender equality in elections cannot be left to the whims of political parties,” *Mail & Guardian* (29 July 2016), <https://mg.co.za/article/2016-07-29-00-gender-equality-in-elections-cannot-be-left-to-the-whims-of-political-parties>.

Unions and South African Communist Party); age range of candidates; people with disabilities; and candidates with skills in finance and economic development.⁸²⁹

At least one-third of both traditional (local) councils and of the National House of Traditional Leaders must be women,⁸³⁰ and most legislation governing provincial houses of traditional leaders calls for women's inclusion. (See *Traditional and Customary Arrangements*.) Processes for becoming traditional leaders vary, and many positions are inherited, traditionally by male heirs. However, in some areas norms are changing, and a notable 2008 Constitutional Court judgment ruled that traditional authorities could amend customary law so that it allowed women to inherit traditional leadership positions.⁸³¹

Assessment

The system of election and selection in South Africa contributes to increased equity of representation and decision making. The use of PR in South Africa has led to rather inclusive and representative bodies, although the use of closed party lists also illustrates how closed lists can promote party loyalty over accountability to constituents.

Since the president and premiers are elected from among their respective legislatures, the election of the legislature plays an important role in ensuring that the executive represents a broad range of interests. The public has little recourse should an executive fail to represent and consider diverse political interests, except indirectly through legislative elections.

The use of voluntary political party quotas provides an alternative to legislated provisions for inclusion for a diverse country transitioning out of conflict. One critique of constitutionally reserved seats is that they can reinforce identity differences. Voluntary party quotas are more flexible and can be adjusted as society adapts, although they also depend on parties' willingness to create, implement, and self-police their own policies for promoting diversity. Their success in increasing women's representation in South Africa is due to both women's activism and internal democratic practices within the ANC.

⁸²⁹ Idasa, *Elections and the Management of Diversity*, 56.

⁸³⁰ Traditional Leadership and Governance Framework Act 41 of 2003 §3 cl. 2(b) (S. Afr.); National House of Traditional Leaders Act 22 of 2009 §3 cl. 4 (S. Afr.).

⁸³¹ *Tinyiko Lwandhlamuni Philla Nwamitwa Shilubana and Others v. Sidwell Nwamitwa* 2008 (9) BCLR 914 (CC) (S. Afr.).

3. EXECUTIVE BRANCH

The president is the head of State and commander in chief. Although given the title of ‘president’, this office operates similarly to the role of a prime minister. There are a number of constitutionally mandated legislative checks on the executive; however, in practice, the president is a powerful executive with significant authority over the legislative process. Since no laws mandate inclusion in the executive, it falls to the president to ensure broad representation and inclusion in the cabinet.

a. Structure and competencies

The president is the head of State, head of the national executive, and commander in chief.⁸³² The president is elected from among the members of the National Assembly, representing the dominant party in parliament, and can serve no more than two terms in office.⁸³³

The president reviews and signs bills after they have been approved by parliament. The president may refer legislation back to the National Assembly for reconsideration. If a bill is then resubmitted to the president, the president must either sign the bill or refer it to the Constitutional Court for a decision on its constitutionality.⁸³⁴

In addition to signing bills into law, the president (together with the appointed members of the cabinet) initiates and implements legislation, develops national policy, and coordinates ministries.⁸³⁵ The president appoints all members of the cabinet and assigns their powers and functions. No more than two members may be selected from outside the National Assembly.⁸³⁶

At the provincial level, executive authority is vested in a premier.⁸³⁷ The premier is responsible for signing provincial bills, appointing commissions of inquiry, summoning the legislature for special sessions, and calling referendums in accordance with national legislation.⁸³⁸ The premier also appoints an executive council (consisting of five to ten members of the provincial legislature).⁸³⁹ Together, the premier and executive council are responsible for initiating and implementing provincial legislation, developing and implementing provincial policy, coordinating

⁸³² S. AFR. CONST., 1996 §§ 83 cl. a, 201 cl. 1.

⁸³³ S. AFR. CONST., 1996 § 86 cl. 1, 88 cl. 2. The length of the president’s term depends on how long the legislature that elects the president is in office, so since legislative terms last five years, practically a full term for president is also five years, so long as the president is elected at the beginning of the legislature’s term. Heinz Klug, *The Constitution of South Africa: A Contextual Analysis* (Portland, OR: Hart Publishing, 2010): 194.

⁸³⁴ S. AFR. CONST., 1996 § 84.

⁸³⁵ S. AFR. CONST., 1996 § 85.

⁸³⁶ S. AFR. CONST., 1996 § 91.

⁸³⁷ S. AFR. CONST., 1996 § 125 cl. 1.

⁸³⁸ S. AFR. CONST., 1996 § 127.

⁸³⁹ S. AFR. CONST., 1996 § 132.

the functions of provincial administration, and implementing national policy.⁸⁴⁰ The premier may refer draft legislation back to the provincial legislature for reconsideration or to the Constitutional Court for questions on its constitutionality.⁸⁴¹

b. Checks on the executive

The executive authority of the president and the cabinet is checked by both the parliament and the Constitutional Court. In addition to electing the president, the National Assembly can remove the president from office with a two-thirds vote of its members.⁸⁴² Grounds for removal include serious misconduct or violation of the constitution or laws.⁸⁴³ With a majority vote, the National Assembly may alternatively pass a vote of no confidence in the president, in which case the president and members of the cabinet must resign.⁸⁴⁴ Both chambers of parliament also have the power to summon any individual, including members of the executive, and require any person or institution to report to it.⁸⁴⁵ The cabinet is also ultimately accountable, both collectively and individually, to the parliament.⁸⁴⁶ The National Assembly can dissolve the cabinet with a majority vote of no confidence.⁸⁴⁷

The president's powers vis-à-vis the legislative process are also limited by parliament. The president may return a bill to parliament, but if the draft legislation is reconsidered and passed by the appropriate chamber(s) of parliament, the president must sign the bill into law or refer it to the Constitutional Court to determine its constitutionality.⁸⁴⁸ If the Constitutional Court determines that the legislation is constitutional, the president must sign the bill into law.⁸⁴⁹

Mechanisms for checking executive authority at the provincial level largely mirror those at the national level. The provincial legislatures are responsible for maintaining oversight of the provincial executive and the implementation of legislation.⁸⁵⁰ Members of the executive council are accountable, both collectively and individually, to their respective legislative bodies, and they must provide the legislature with regular reports.⁸⁵¹ A provincial legislature can remove a premier from office either for cause or by a vote of no confidence.⁸⁵²

⁸⁴⁰ S. AFR. CONST., 1996 § 125 cl. 2.

⁸⁴¹ S. AFR. CONST., 1996 § 121.

⁸⁴² S. AFR. CONST., 1996 § 89 cl. 1.

⁸⁴³ S. AFR. CONST., 1996 § 89 cl. 1.

⁸⁴⁴ S. AFR. CONST., 1996 § 102 cl. 2.

⁸⁴⁵ S. AFR. CONST., 1996 §§ 55 cl. 2(b), 56, 66 cl. 2, 69.

⁸⁴⁶ S. AFR. CONST., 1996 § 92 cl. 2.

⁸⁴⁷ S. AFR. CONST., 1996 § 102 cl. 1.

⁸⁴⁸ S. AFR. CONST., 1996 § 79 cl. 1, 79 cl. 4.

⁸⁴⁹ S. AFR. CONST., 1996 § 79 cl. 5, 121 cl. 3.

⁸⁵⁰ S. AFR. CONST., 1996 § 114, 92 cl. 2, 133 cl. 2, 133 cl. 3.

⁸⁵¹ S. AFR. CONST., 1996 § 92 cl. 2, 133 cl. 2–3.

⁸⁵² S. AFR. CONST., 1996 § 130 cl. 3.

In practice, legislative oversight mechanisms have had little effect. Due to the party-centric nature of the PR system, members of parliament are largely accountable to their party; and due to the selection/election process for the president and cabinet, most of the party leadership is concentrated in the executive. These two factors create weak incentives for the legislature to effectively check the executive.⁸⁵³ Further, because the executive wields control within the ANC political party structure, this largely leaves the oversight function to a relatively weak and non-unified opposition in the parliament.⁸⁵⁴ As a result, the executive explicitly and implicitly holds significant authority over the legislative process, in addition to the implementation of laws.

The independent court system, and specifically the strong Constitutional Court, does provide a significant check on executive power.⁸⁵⁵ The Constitutional Court has the final decision in interpreting the constitution, and the courts can declare both laws and executive conduct invalid if they are not in line with the constitution.⁸⁵⁶ The Constitutional Court has ruled on executive action various times, including on legislation promoted by the president creating a corruption-fighting unit that the court found not to be sufficiently independent and mandated that new legislation be written.⁸⁵⁷

The executive largely remains insulated from direct interaction with the public—both in terms of direct elections and public participation.

c. Inclusivity

There are no laws mandating inclusivity in the executive. Despite this, as of 2015, women made up 41 percent of the cabinet.⁸⁵⁸

Assessment

The president is a powerful executive with significant authority over legislative process. There are no formal mechanisms for ensuring inclusivity within the executive; thus, it falls on the president to ensure broad representation and inclusion in the cabinet. However, the legislatures, which are broadly representative of diverse interests, choose the president and premiers.

⁸⁵³ Pierre de Vos, “Key Institutions Affecting Democracy,” 100.

⁸⁵⁴ Idasa, *Elections and the Management of Diversity*, 29.

⁸⁵⁵ Murray, “Republic of South Africa,” 9–10.

⁸⁵⁶ S. AFR. CONST., 1996 §§ 167, 168, 169.

⁸⁵⁷ Pierre de Vos, “The court keeping a check on the South African state,” *The Guardian* (2 December 2011), <https://www.theguardian.com/commentisfree/libertycentral/2011/dec/02/south-africa-jacob-zuma-constitutional-court>.

⁸⁵⁸ Morna, *SADC Gender Protocol 2015*, 82.

4. LEGISLATIVE BRANCH

The South African legislature is composed of a bicameral parliament—the National Assembly, which represents the people, and the National Council of Provinces (NCOP), which represents the provinces. The National Assembly participates directly in the legislative process of all bills, while the NCOP has limited authority regarding legislation that does not affect the provinces. Parliament possesses significant legislative authority, but this is tempered by the strong executive and the Constitutional Court.

a. Structure and competencies

Legislative authority at the federal level is vested in a bicameral parliament, composed of the National Assembly (lower house) and the NCOP (upper house).⁸⁵⁹ The National Assembly represents the people at large and provides a national forum for consideration of legislation, whereas the NCOP represents the provinces and is responsible for ensuring provincial interests are taken into account at the federal level.⁸⁶⁰ This dichotomy between the two chambers is vested in their respective legislative powers; the National Assembly participates directly in the legislative process of all bills, while the NCOP has limited authority regarding legislation that does not affect the provinces.⁸⁶¹

The National Assembly consists of 350–400 members serving five-year terms.⁸⁶² The NCOP consists of delegations from all nine provinces, with ten delegates each (six permanent delegates, four special delegates). Special delegates include the premier and three other members of the provincial legislature.⁸⁶³ Permanent delegates may be selected from among the provincial legislature, yet once they are elected as permanent delegates, they must resign from their provincial seats.⁸⁶⁴ Permanent delegates serve five-year terms that coincide with the terms of the provincial legislatures.⁸⁶⁵

Legislative authority at the provincial level is vested in provincial legislatures. A provincial legislature consists of between 30 and 80 members, depending on the population of a given prov-

⁸⁵⁹ S. AFR. CONST., 1996 § 44.

⁸⁶⁰ S. AFR. CONST., 1996 § 42 cl. 3, 42 cl. 4.

⁸⁶¹ See Schedule 4 for a full list of shared competencies and Section 76 Clause 3 for a list of additional areas of competency. S. AFR. CONST., 1996 §§ 55 cl. 1, 68, 73 cl. 1–4.

⁸⁶² Number of seats is determined by total population; one seat per every 100,000 persons. As of 2015, there are 400 members. *Electoral Law 73 of 1998* sched. 3 cl. 1; S. AFR. CONST., 1996 § 46 cl. 1; Parliament of South Africa, “National Assembly,” http://www.parliament.gov.za/live/content.php?Category_ID=26.

⁸⁶³ S. AFR. CONST., 1996 § 60 cl. 2.

⁸⁶⁴ S. AFR. CONST., 1996 § 62.

⁸⁶⁵ S. AFR. CONST., 1996 § 62 cl. 3.

ince.⁸⁶⁶ Members serve five-year terms, unless a resolution to dissolve is passed.⁸⁶⁷ Permanent delegates to the NCOP may attend and participate in provincial legislative proceedings, but do not have voting rights.⁸⁶⁸

The provincial legislatures have the power to approve a provincial constitution as well as to pass legislation that falls within constitutionally mandated areas of competence.⁸⁶⁹ (See *Political Structure*.)

b. Decision-making rules and procedures

Within the National Assembly, all decisions are made by majority vote, unless specifically mandated by law or the constitution.⁸⁷⁰ Decisions within the NCOP are similarly made by majority vote, with each province having one vote.⁸⁷¹ Some decisions may require special voting rules; for example, each delegate in the NCOP has a vote when the chamber presides over legislation that does not affect the provinces or falls under the shared competencies delineated by the constitution.⁸⁷² All decisions in the provincial legislatures are also made by majority vote.⁸⁷³

Any bill can be introduced in the National Assembly, and may be introduced by a cabinet member, deputy minister, or a member or committee of the Assembly.⁸⁷⁴ Only a member or committee can introduce legislation in the NCOP, and legislation is mostly limited to functional areas that are considered shared competencies between the national and provincial governments.⁸⁷⁵ Neither house can initiate money bills (those concerning taxation or government spending and bills relating to allocating revenue); only the minister of finance may introduce such a bill.⁸⁷⁶

⁸⁶⁶ S. AFR. CONST., 1996 § 105 cl. 2. Number of seats is determined by population, by awarding one seat for every 100,000 persons whose ordinary place of residence is in that province. See also *Electoral law 73 of 1998*, sched. 3 cl. 2.

⁸⁶⁷ S. AFR. CONST., 1996 §§ 108 cl. 1, 109 cl. 1.

⁸⁶⁸ S. AFR. CONST., 1996 § 113.

⁸⁶⁹ See Schedules 4 and 5 for a list of competencies reserved for provincial governments. S. AFR. CONST., 1996 § 104 cl. 1.

⁸⁷⁰ S. AFR. CONST., 1996 § 53 cl. 1.

⁸⁷¹ S. AFR. CONST., 1996 § 65 cl. 1–2.

⁸⁷² S. AFR. CONST., 1996 § 75 cl. 2.

⁸⁷³ S. AFR. CONST., 1996 § 112 cl. 1(c).

⁸⁷⁴ S. AFR. CONST., 1996 § 73 cl. 1–2.

⁸⁷⁵ S. AFR. CONST., 1996 §§ 55 cl. 1, 68, 73 cl. 3–4. See Schedule 4 for a full list of shared competencies and Section 76 Clause 3 for a list of additional areas of competency.

⁸⁷⁶ S. AFR. CONST. 1996 § 73 cl. 2. A Money bill is defined as one that appropriates money, imposes national taxes, levies, duties, or surcharges; abolishes or reduces or grants exemptions from any national taxes, levies, duties or surcharges, authorizes direct charges against the National Revenue Fund. See S. AFR. CONST., 1996 § 77 cl. 1.

Draft legislation must be considered by both chambers of parliament.⁸⁷⁷ However, if the NCOP rejects or provides amendments on an ordinary bill that does not affect the provinces, the National Assembly can pass the bill with or without the NCOP's amendments.⁸⁷⁸

For draft legislation that affects the provinces or falls under shared competencies or other areas delineated by the constitution, the National Assembly cannot bypass the NCOP. Instead, if the two chambers disagree, the bill goes to a mediation committee consisting of members of both chambers.⁸⁷⁹

Constitutional amendments require approval from both chambers, but the decision-making rules depend on which section(s) of the constitution is under review.⁸⁸⁰ Where an amendment concerns specific province(s), the NCOP cannot pass the amendment until it has been approved by the legislature(s) in the given province(s).⁸⁸¹

Once a bill or an amendment is passed by the appropriate chamber(s), the draft is referred to the president for assent.⁸⁸² (See *Executive Branch—Structure and competencies.*)

Constitutional amendments additionally require that the proposed amendment is published in the *Government Gazette* and opened for debate among the provincial legislatures (per the rules of the National Assembly) and for public comment (per the rules of the NCOP).⁸⁸³

In practice, most legislation is initiated by the executive prior to consideration by the appropriate parliamentary committee.⁸⁸⁴ Particularly on more politically charged issues, parliament has been accused of acting as a rubber stamp for executive initiatives.⁸⁸⁵ The Assembly committees responsible for vetting draft legislation have, however, scrutinized draft legislation initiated by the executive and have, in some cases, amended draft legislation on nonpolitically charged issues.⁸⁸⁶ Civil society groups have played a role in influencing this drafting process.⁸⁸⁷

⁸⁷⁷ S. AFR. CONST., 1996 § 73 cl. 5.

⁸⁷⁸ S. AFR. CONST., 1996 § 75.

⁸⁷⁹ S. AFR. CONST., 1996 § 76. See Section 76 Clauses 3–5 for a full list of legislation that falls under these procedures, and see Section 76 Clause 1 for an explanation of what procedures follow the mediation committee's decisions on bills.

⁸⁸⁰ S. AFR. CONST., 1996 §§ 55 cl. 1, 68, 73 cl. 3, 73 cl. 4.

⁸⁸¹ S. AFR. CONST., 1996 § 74 cl. 8.

⁸⁸² S. AFR. CONST., 1996 §§ 74 cl. 9, 75 cl. 1(b)(d), 76 cl. 1(b)(f)(g)(h)(k), 76 cl. 2(b)(c)(f)(g)(h), 79.

⁸⁸³ S. AFR. CONST., 1996 § 74 cl. 5. Public debate facilitated by the NCOP only applies where the proposed amendment is not an amendment that is required to be passed by the NCOP, which includes amendments to any part of the constitution except Chapters 1 and 2, and any matters that affect the Council, alter provincial boundaries, powers, and functions, or institutions; or amend a provision that deals specifically with a provincial matter (S. AFR. CONST., 1996 § 74 cl. 3).

⁸⁸⁴ Pierre de Vos, "Key Institutions Affecting Democracy," 94–116, 98.

⁸⁸⁵ Pierre de Vos, "Key Institutions Affecting Democracy," 98–99.

⁸⁸⁶ Pierre de Vos, "Key Institutions Affecting Democracy," 98–99.

⁸⁸⁷ Pierre de Vos, "Key Institutions Affecting Democracy," 98–99.

The legislative process at the provincial level follows many of the same rules that apply at the national level. Members of the executive council or the provincial legislature can introduce draft legislation, but money bills can only be introduced by a member of the executive council.⁸⁸⁸ Provincial legislatures additionally have the authority to draft and amend provincial constitutions.⁸⁸⁹

c. Checks on the legislature

In general, there are fewer checks on the legislature than on the executive. For example, while parliament can remove members of the executive, the president cannot dissolve the National Assembly. The Assembly can be dissolved if a majority of Assembly members vote to dissolve and three years have passed since the Assembly was elected.⁸⁹⁰ The Constitutional Court, however, has the authority to decide whether the parliament has failed to fulfill a constitutional obligation.⁸⁹¹

Legislative powers are checked by the president and the Constitutional Court. After a bill or constitutional amendment is approved by parliament, the draft is referred to the president for signature and enactment.⁸⁹² If the president has reservations about the constitutionality of the draft legislation, he or she can refer it back to parliament for reconsideration.⁸⁹³ After the draft legislation is reconsidered and passed by the appropriate chamber(s), the president must sign the bill into law or refer it to the Constitutional Court to determine its constitutionality.⁸⁹⁴

The Constitutional Court can intervene in the legislative process if requested by the president.⁸⁹⁵ The Court's decision is final, and the Court may also decide to suspend implementation of the law while it adjudicates.⁸⁹⁶ The Court has found various laws unconstitutional and returned them to parliament. (See *Systems of Election and Selection—Special provisions; Executive Branch—Checks on the executive; and Public Participation.*)

The checks on provincial legislative powers have many of the same features as the laws pertaining to the national level. Provincial legislatures can only be dissolved when supported by a majority of its members.⁸⁹⁷ After a bill is passed by the provincial legislature, the premier can

⁸⁸⁸ S. AFR. CONST., 1996 §§ 119, 120.

⁸⁸⁹ S. AFR. CONST., 1996 § 142.

⁸⁹⁰ S. AFR. CONST., 1996 § 50 cl. 1.

⁸⁹¹ S. AFR. CONST., 1996 § 167 cl. 4(e).

⁸⁹² S. AFR. CONST., 1996 §§ 74 cl. 9, 75 cl. 1(b)(d), 76 cl. 1(b)(f)(g)(h)(k), 76 cl. 2(b)(c)(f)(g)(h), 79.

⁸⁹³ S. AFR. CONST., 1996 § 79 cl. 1.

⁸⁹⁴ S. AFR. CONST., 1996 § 79 cl. 4.

⁸⁹⁵ S. AFR. CONST., 1996 § 80.

⁸⁹⁶ S. AFR. CONST., 1996 § 80 cl. 3, 167 cl. 3(c), 167 cl. 5.

⁸⁹⁷ S. AFR. CONST., 1996 § 109 cl. a.

refer the bill back to the legislature or to the Constitutional Court to assess its constitutionality.⁸⁹⁸

d. Committee processes and arrangements

The constitution provides that the National Assembly and NCOP can determine the rules for the establishment, composition, powers, functions, procedures, and duration of its committees.⁸⁹⁹ The constitution includes guidance for the creation of two parliamentary committees: the joint rules committee and the mediation committee.

The joint rules committee establishes rules and procedures for conducting the business of the National Assembly and NCOP.⁹⁰⁰ The mediation committee helps to resolve disagreements on legislation between the two chambers of parliament. (See *Legislature—Decision-making rules and procedures*.) Mediation committee decisions require at least five votes by the members from the National Assembly and at least five votes by the delegates from the NCOP.⁹⁰¹

There are 52 parliamentary committees, organized into seven general categories.⁹⁰² Joint committees are those that include members from both chambers of parliament. The committees oversee work of the executive, focus on internal management issues, or introduce and consider draft legislation.⁹⁰³

Provincial legislatures can form their own committees and are responsible for establishing the rules and procedures of their committees.⁹⁰⁴ Provincial legislative committees can introduce draft legislation.⁹⁰⁵

Assessment

Due to both the PR system and to political party policies promoting inclusivity, the legislature is broadly representative of diverse interests. The NCOP, representative of the provinces, provides a way for provincial interests to be expressed at the national level. However, the powerful executive and the ruling party exert significant influence over the legislative process, countering the representative effect of the legislature.

⁸⁹⁸ S. AFR. CONST., 1996 § 121.

⁸⁹⁹ S. AFR. CONST., 1996 §§ 57 cl. 2(a), 70 cl. 2(a).

⁹⁰⁰ S. AFR. CONST., 1996 § 45 cl. 1.

⁹⁰¹ S. AFR. CONST., 1996 § 78 cl. 2.

⁹⁰² Parliament of South Africa, "Committees," http://www.parliament.gov.za/live/content.php?Item_ID=137.

⁹⁰³ Parliament of South Africa, "Committees: The Role and Functions of Committees in Parliament," http://www.parliament.gov.za/live/content.php?Category_ID=28.

⁹⁰⁴ S. AFR. CONST., 1996 § 116 cl. 2.

⁹⁰⁵ S. AFR. CONST., 1996 § 119.

5. PUBLIC PARTICIPATION

The South African constitution calls for public participation within the legislative process at all levels and, as a result, South Africa has some of the most well-developed mechanisms for public engagement with governance. Public hearings, the submission of oral and/or written comments, and a program that brings representatives from all levels of government to each of the nine provinces aim to enable genuine public engagement. These mechanisms open avenues for the public to influence governance and express a range of political interests. However, due to access constraints, many constituents remain unable to participate to the full extent of their rights.

a. Engagement with the executive

The constitution requires that constituents have the right to access any information held by the State, which may include information held by the executive and its ministries.⁹⁰⁶ The Promotion of Access to Information Act (2000) introduced protections on certain information, including materials pertaining to national security or defense and certain State financial records.⁹⁰⁷

b. Production of legislation

The constitution calls for public involvement in the legislative process at all levels of government.⁹⁰⁸ Mechanisms to encourage public participation include public hearings and the collection of oral and/or written comments regarding specific pieces of legislation. At the national level, draft bills are published in the *Government Gazette* prior to being introduced in parliament, and typically include an invitation for public comment.⁹⁰⁹ The respective parliamentary committee reviewing the legislation may then call for oral submissions or further written

Prospect for Political Accommodation: Public Participation

The constitution explicitly states that public participation is required in all levels of government. Further, if the public is not engaged on a particular piece of legislation, that legislation may be repealed. As a result, South Africa has developed several mechanisms that allow constituents to engage their representatives. Public hearings and the submission of oral and/or written comments are the most commonly used mechanisms. The National Council of Provinces has also created a program called "Taking Parliament to the People," which brings government representatives to all nine provinces. (See Public Participation—Production of legislation.) There are also some public participation units at the provincial level that provide educational workshops on how the legislative process works.

⁹⁰⁶ S. AFR. CONST., 1996 § 32 cl. 1.

⁹⁰⁷ For a full list of restrictions, see Promotion of Access to Information Act 2 of 2000 §§33-46 (S. Afr.).

⁹⁰⁸ S. AFR. CONST., 1996 § 59.

⁹⁰⁹ See Parliament of the Republic of South Africa, *Rules of the National Assembly*, 6th ed. (Cape Town: Parliament of the Republic of South Africa, 2008), Rule 241; and Parliament of the Republic of South Africa, *Rules of the National Council of Provinces*, 9th ed. (Cape Town: Parliament of the Republic of South Africa, 2008), Rule 186.

submissions, hold public hearings, or initiate other methods for the voicing of public opinion.⁹¹⁰ Public hearings are typically announced five days to three weeks ahead of time via individual invitations and advertisements in newspapers, public spaces, and radio.⁹¹¹

Public participation is also encouraged in the constitutional amendment process. Prior to introducing an amendment in the National Assembly, the amendment must be published in the *Government Gazette* for public comment.⁹¹² Additionally, the amendment must be open for public debate, per the rules and procedures of the NCOP.⁹¹³ Any written comments received are then shared with the speaker of the National Assembly and the chairperson of the NCOP, where appropriate.⁹¹⁴

The importance of public participation in the legislative process has been widely recognized in South Africa. In 2006, the Constitutional Court ruled that if public involvement on a given piece of legislation is not facilitated, the legislation can be found constitutionally invalid and may be struck down.⁹¹⁵ Parliament must provide opportunities for participation, ensure access to information, and facilitate learning and understanding so that ordinary citizens can meaningfully participate.⁹¹⁶ However, in a separate case, the Court acknowledged that while public participation must be included, the submissions received are not binding and parliament may pass legislation even if it goes against public opinion.⁹¹⁷

The NCOP launched a public participation initiative in 2002 called “Taking Parliament to the People.” This program provides constituents with the opportunity to directly engage ministerial and parliamentary representatives from all levels of government. The program visits each province at least once during the NCOP’s five-year term, and includes five days of public hearings, specialized meetings, site visits, and an address by the president. The program brings the public, traditional leaders, and national, provincial, and municipal government representatives together to discuss policy issues and service delivery.⁹¹⁸ Topics of discussion are identified by

⁹¹⁰ See Parliament of the Republic of South Africa, *Joint Rules of Parliament*, 4th ed. (Cape Town: Parliament of the Republic of South Africa, 2008), Rule 23; Parliament of the Republic of South Africa, *Rules of the National Assembly*, 6th ed., Rule 138; and Parliament of the Republic of South Africa, *Rules of the National Council of Provinces*, 9th ed., Rule 103.

⁹¹¹ Susan de Villiers, *A People’s Government, The People’s Voice: A Review of Public Participation in the Law and Policy-Making Process in South Africa* (Pretoria: Idasa, 2001): 44.

⁹¹² S. AFR. CONST., 1996 § 74 cl. 5.

⁹¹³ S. AFR. CONST., 1996 § 74 cl. 5(c). This only applies where the proposed amendment is not an amendment that is required to be passed by the NCOP, which includes amendments to any part of the constitution except Chapters 1 and 2, and any matters that affect the Council, alter provincial boundaries, powers, and functions, or institutions; or amend a provision that deals specifically with a provincial matter (see S. AFR. CONST., 1996 § 74 cl. 3).

⁹¹⁴ S. AFR. CONST., 1996 § 74 cl. 6—also see previous footnote.

⁹¹⁵ *Doctors for Life International v. The Speaker of the National Assembly and Others* 2006 (12) BCLR 1299 (CC) at 3 (S. Afr.).

⁹¹⁶ *Doctors for Life International v. The Speaker of the National Assembly and Others* 2006 (12) BCLR 1299 (CC) at 72 (S. Afr.).

⁹¹⁷ *Merafong Demarcation Forum and Others v. President of the Republic of South Africa and Others* 2008 (10) BCLR 968 (CC) at 2 (S. Afr.).

⁹¹⁸ Parliament of South Africa, “National Council of Provinces concludes its final stage of taking Parliament to the people” (25 October 2007), http://www.parliament.gov.za/live/contentpopup.php?Item_ID=407&Category_ID=

constituents in preliminary meetings and often include road infrastructure, provision of electricity, unemployment, land reform, school infrastructure, and provision of health care.⁹¹⁹

Despite these efforts, many constituents remain unable to participate to the full extent of their rights. Pervasive poverty and inequality remain the most significant barriers to political participation, particularly among historically marginalized groups.⁹²⁰ Access to the legislative process requires financial resources, education, and knowledge of the political process.⁹²¹ Language is also a barrier to participation; although there are 11 official languages, the government primarily operates in English.⁹²² Constituents living in rural areas are also marginalized, as most of the public hearings occur in the capital or city centers.⁹²³ Efforts to advertise opportunities for public participation are often inadequate, leading to insufficient information dissemination and the exclusion of constituents living in the remote corners of the country.

In response to these barriers, the parliament launched an effort to open parliamentary democracy offices in each of the nine provinces, aiming to expand their reach to rural, underserved, and underresourced areas.⁹²⁴ As of July 2016, four offices have been opened.⁹²⁵

Efforts to bolster South Africa's public participation programs have also faced criticism on a perceived increasing tendency toward insider politics.⁹²⁶ Constituents have expressed frustration at the disinterest of elected representatives and distrust of the political system. They say attempts to have their interests heard are watered down or dismissed due to local factionalism within the political party structure.⁹²⁷

c. Local-level decision making

Participation at the provincial level is determined by each provincial legislature and thus includes a variety of approaches, including public hearings, submissions, and the use of youth or women's parliaments and workshops to educate constituencies on the legislative process.⁹²⁸

⁹¹⁹ National Council of Provinces, *Report: Taking Parliament to the People Programme, Free State Province, 15–19 November 2010* (Cape Town: Parliament of the Republic of South Africa, 2010): 5.

⁹²⁰ Black African, colored, and Indian/Asian groups were marginalized under apartheid in South Africa. Idasa, *Elections and the Management of Diversity*, 21.

⁹²¹ Idasa, *Elections and the Management of Diversity*, 37.

⁹²² Dhvani Mehta et al. *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process* (Oxford: University of Oxford, 2011): 18–19.

⁹²³ Mehta et al. *A Comparative Survey of Procedures*, 18–19.

⁹²⁴ Parliament of South Africa, "Parliamentary Democracy Offices," http://www.parliament.gov.za/live/content.php?Category_ID=170.

⁹²⁵ Parliament of South Africa, "Parliamentary Democracy Offices."

⁹²⁶ Susan Booyesen, "Twenty years of South African democracy: Citizen views of human rights, governance, and the political system" (Washington: Freedom House, 2013): 43–44.

⁹²⁷ Booyesen, "Twenty years of South African democracy," 47.

⁹²⁸ See "Public Participation," Gauteng Legislature, <http://gpl.gov.za/index.php/legislative-business/core-functions/public-participation.html>; "Mpumalanga parly to honour Mandela," *SABC News* (14 July 2014), <http://www.sabc.co.za/news/a/7d7491004bf8bbb79894ffa583a5af00/Mpumalanga-parly-to-honour-Mandela>.

The constitution additionally mandates that provincial legislatures facilitate public involvement in the legislative process and conduct their business in an open manner.⁹²⁹ Some legislatures have even created a public participation unit to ensure adequate measures are taken to engage the public.⁹³⁰

d. Referendums

There are no provisions in the constitution that require a public referendum. The president has the authority to call a referendum per the terms of a law passed by parliament.⁹³¹ However, since the end of apartheid, South African laws have not called for a referendum on any issue.

Assessment

South Africa has some of the most well-developed mechanisms for public engagement with governance, particularly with legislative processes. Public hearings, the collection of oral and/or written comments on legislation, and the program “Taking Parliament to the People” aim to enable public engagement with government decision making. This could be further strengthened by improving implementation, such as by opening avenues for the public to influence governance beyond official representation in institutions and allowing the expression of a range of political interests.

6. TRADITIONAL AND CUSTOMARY ARRANGEMENTS

The South African political system includes an organized network of traditional leaders that serves a consultative role to formal government institutions. This traditional leadership structure provides an avenue for communicating interests to the executive and legislature that otherwise would not exist. However, traditional methods of selection of a chief/monarch often exclude marginalized groups, and while legislation mandates women’s participation in formal traditional structures, tensions exist over the relationship between traditional authority and the principles of equality in the constitution.

20121407; “Mpuma’s Women Parly to improve lives,” South African Government News Agency (5 August 2010), <http://www.sanews.gov.za/south-africa/mpumas-women-parly-improve-lives>.

⁹²⁹ S. AFR. CONST., 1996 § 118.

⁹³⁰ For example, the Gauteng Public Participation and Petitions Unit, Western Cape Public Participation Directorate, and Mpumalanga Public Participation Unit. Gauteng Legislature, “Public Participation,” <http://www.gpl.gov.za/index.php/legislative-business/core-functions/public-participation.html>; Mehta et al. *A Comparative Survey of Procedures*, 18–19; Western Cape Government, “Participation: Overview” (20 August 2013), https://www.westerncape.gov.za/your_gov/419; Mpumalanga Provincial Legislature, “Sectoral Parliaments of the Mpumalanga Legislature,” <http://www.mpuleg.gov.za/sectoral-parliaments.html>.

⁹³¹ S. AFR. CONST., 1996 § 84 cl. 2(g).

SPECIAL FEATURE: PARALLEL TRADITIONAL AND CUSTOMARY ENTITIES

The South African political system features an organized network of traditional leaders that parallels the formal government structure from the local to the national level. This network is codified in the Traditional Leadership and Governance Framework Act (2003) and supported by further national and local legislation. The South African government created this organized network in an attempt to modernize the traditional leadership structure while maintaining the legitimacy and legacy of traditional leaders. The powers and functions of traditional authorities have been a contentious issue since the transition from apartheid rule. This network is the result of many years of negotiation between the ANC and traditional leaders. Each traditional house or council advises their respective government on matters pertaining to customary law, customs, traditional leadership, and traditional communities.

The most basic unit of the traditional structure is the traditional community. When several communities are grouped and governed together they are referred to as either principal traditional communities or kingships/queenships (depending on how traditional authority is structured). These entities share a similar status to the local municipality. Each community/kingship/queenhip must have a traditional leadership council, whose membership is both nominated (60 percent) and elected (40 percent), and 30 percent of which must be women.

To engage with the district municipality governments, the traditional entities form a representative body called the local house of traditional leaders, which includes members that are selected by an electoral college consisting of all senior traditional leaders/kings/queens residing within a given district municipality. The electoral colleges must seek to elect a proportion of women equal to the number of women senior traditional leaders voting in the election.

Every province, except the Western Cape, has a provincial house of traditional leaders, with members nominated by each of the local houses within a given province. Some provincial houses require that all members are also local house members, while others encourage the inclusion of other senior traditional leaders. All members of the provincial houses must hold the rank of senior traditional leader or king/queen. While it varies by province, most of the provincial houses have a specific provision calling for the inclusion of women.

The National House of Traditional Leaders consists of 24 representatives from the eight provincial houses. Each of the members is selected by secret ballot by members of the Provincial Houses and serves a five-year term. At least one-third of the members must be women. The National House is presided over by a chairperson and deputy chairperson who are elected from among its members. Decisions are made by consensus, but a vote can be called as needed. The National House seeks to promote the role of traditional leadership at all levels of government.

Sources: Traditional Leadership and Governance Framework Act 41 of 2003 (S. Afr.). See National House of Traditional Leaders Act 22 of 2009 (S. Afr.); Mpumalanga Provincial House and Local Houses of Traditional Leaders Act 5 of 2006 (S. Afr.); Limpopo Houses of Traditional Leaders Act 5 of 2005 (S. Afr.); House of Traditional Leaders Amendment Act 5 of 2000 (S. Afr.); North West Houses of Traditional Leadership Amendment Act 3 of 2005 (S. Afr.); KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005 (S. Afr.); House of Traditional Leaders Amendment Act 9 of 2001 (S. Afr.); and Northern Cape Traditional Leadership, Governance and Houses of Traditional Leaders Act 2 of 2007 (S. Afr.).

The South African government has faced challenges in the incorporation of traditional leadership. There is ongoing discussion over the relationship between traditional authority and democratic principles, where the selection of a chief/monarch is often based on heredity, not popular vote, and thus operates without mechanisms of popular accountability.⁹³² Many women cite discriminatory practices, including the inability to participate in community meetings and other decision-making proceedings and the absence of land ownership rights for women.⁹³³ In most communities, there is not an established pattern of women's participation in community decision making because "women do not have leadership rights under customary law."⁹³⁴ While legislation has mandated women's participation in formal traditional structures, it does not address this underlying issue of why many women do not participate in traditional leadership in the first place.

***Prospect for Political Accommodation:
Traditional Leadership Structure***

South Africa's traditional and customary arrangements include an extensive traditional leadership structure that parallels the formal governance system. Traditional leaders are organized into councils and houses that engage municipal, provincial, and national government representatives. This traditional structure advises government representatives on matters pertaining to customary law, customs, and traditional communities. Traditional leaders also use this structure to convey the economic development and service delivery needs of their communities to government officials.

There is also ongoing debate over whether traditional leaders should be given more formal authority. The Congress of Traditional Leaders of South Africa finds the system of traditional houses trivial and largely symbolic, due to the mere advisory powers of the houses and the lack of resources provided by the government. Traditional leaders have called for greater recognition of their role in providing services where the formal government has fallen short.⁹³⁵ Despite the creation of formal district municipalities, traditional authorities are often better able to deliver services in rural South Africa. Local governments in these rural areas remain weak and largely unable to fulfill their mandate; they are often overstretched, with a small staff

⁹³² Jo Beall, Sibongiseni Mkhize, Shahid Vawda, "Traditional Authority, Institutional Multiplicity and Political Transition in KwaZulu-Natal, South Africa," Working Paper No. 48, Crisis States Programme, Development Research Centre, London School of Economics (5 July 2004).

⁹³³ Christina Murray, "South Africa's Troubled Royalty," Law and Policy Paper No.23, Federation Press and Centre for International and Public Law (Australian National University, 2004): 16.

⁹³⁴ Customary law is rule or practice that has become accepted and expected conduct within a community. Likhapha Mbatha, "Comment on the Traditional Leaders Framework Bill: Focus on Women's Participation," *Gender Research Programme Bulletin*, Centre for Applied Legal Studies, 2 (2003): 5, as cited in Kristina A. Bentley, "Are the Powers of Traditional Leaders in South Africa Compatible with Women's Equal Rights?: Three Conceptual Arguments," *Human Rights Review* 6, no. 4 (2005): 54.

⁹³⁵ Murray, "South Africa's Troubled Royalty," 14.

-serving a large area with many communities. In contrast, traditional authorities have long-established mechanisms for providing basic services and communicating with constituents.⁹³⁶ The legitimacy of the traditional authorities is partly derived from this service function; constituents turn to traditional leaders when the government fails to respond.

a. Executive roles and interactions

The National House of Traditional Leaders advises the national government and president on issues pertaining to customary law and customs. It also works with the national government to transform and adapt customary law to comply with the constitution and to improve the coordination of economic development and service delivery in traditional communities.⁹³⁷

The primary function of the eight Provincial Houses of Traditional Leaders is to advise and make proposals to the provincial governments regarding customary law, customs, or traditional councils.⁹³⁸

At the municipal level, a council of both nominated and elected members assists traditional leaders or kings/queens in administering the affairs of the community and liaises with the local municipal government in identifying their community's needs.⁹³⁹

b. Legislative roles and interactions

Any parliamentary bill pertaining to customary law or the customs of the traditional communities must be referred to the National House for comments.⁹⁴⁰ The National House is accountable to parliament and must submit an annual report on its activities.⁹⁴¹

At the provincial level, a provincial legislature may refer legislation pertaining to customary law or customs to the relevant provincial house for comments.⁹⁴²

c. Judicial activities

Dispute resolution in the traditional communities over issues relating to customary law or custom is foremost the responsibility of traditional entities. The Commission on Traditional Leadership Disputes and Claims hears disputes between traditional communities or other custom-

⁹³⁶ Murray, "South Africa's Troubled Royalty," 14.

⁹³⁷ National House of Traditional Leaders Act 22 of 2009 §11 cl. 1 (S. Afr.).

⁹³⁸ Traditional Leadership and Governance Framework Act 41 of 2003 §18 cl. 2 (S. Afr.).

⁹³⁹ Traditional Leadership and Governance Framework Act 41 of 2003 §§4, 4 cl. a-b (S. Afr.).

⁹⁴⁰ Traditional Leadership and Governance Framework Act 41 of 2003 §18 cl. 1 (S. Afr.).

⁹⁴¹ National House of Traditional Leaders Act 22 of 2009 §17 cl. 1 (S. Afr.).

⁹⁴² Traditional Leadership and Governance Framework Act 41 of 2003 §18 cl. 2 (S. Afr.).

ary institutions that cannot be otherwise resolved by the parties involved or by the provincial houses.⁹⁴³

In the principal traditional communities and kingships/queenships, the leadership councils mediate intercommunity disputes and promote unity across communities in their jurisdictions.⁹⁴⁴

Assessment

South Africa's traditional leadership structure provides an avenue for communicating certain interests to the executive and legislature that are otherwise not explicitly represented in the electoral system or political structure, including those of some local communities in which traditional leaders serve a prominent governance function. However, traditional methods of selection of a chief/monarch often exclude marginalized groups, and while legislation mandates women's participation in formal traditional structures, it does not address underlying issues of why many women do not participate in traditional leadership in the first place. The parallel and consultative nature of the system seeks to reflect the delicate balance between providing a voice for traditional authorities in the governance system and not prioritizing their interests over others'.

Conclusion

The South African political system was designed with the aim of promoting inclusion and accommodation, while acknowledging that the diverse and deeply divided country was emerging from a costly civil war.⁹⁴⁵ As a result, the constitution includes robust language on the rights and recognition of South Africa's many communities, while also enabling a relatively centralized federal structure that relies on institutions to implement politically accommodating policies.

South Africa provides a number of examples of political accommodation, including the use of voluntary political party quotas, robust public participation mechanisms, and an extensive traditional leadership network that parallels the formal government. However, this is tempered by a growing disillusion among some South Africans with the government's ability to respond to constituent needs and interests. Without a strong formal legal framework that promotes decentralization and inclusion, implementation of certain measures largely relies on the good faith of political parties and, more specifically, the ruling ANC party.

⁹⁴³ Traditional Leadership and Governance Framework Act 41 of 2003 §§21, 22 (S. Afr.).

⁹⁴⁴ Traditional Leadership and Governance Framework Act 41 of 2003 §§4, 4 cl. a-b (S. Afr.).

⁹⁴⁵ Christina Murray, "Republic of South Africa," 2.

References

Legal References

- African National Congress. *African National Congress Constitution*. Johannesburg: African National Congress, 2007.
- Division of Revenue Bill, 2011/2012, Bill 4-2011 (S. Afr.).
- Doctors for Life International v. The Speaker of the National Assembly and Others* 2006 (12) BCLR 1299 (CC) (S. Afr.).
- Electoral Act 73 of 1998 (S. Afr.).
- Electoral Commission Act 51 of 1996 (S. Afr.).
- Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* 1999 (15) BCLR 1 (CC) (S. Afr.).
- House of Traditional Leaders Amendment Act 5 of 2000 (S. Afr.).
- House of Traditional Leaders Amendment Act 9 of 2001 (S. Afr.).
- Intergovernmental Fiscal Relations Act 97 of 1997 (S. Afr.)
- Intergovernmental Relations Framework Act 13 of 2005 (S. Afr.).
- KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005 (S. Afr.).
- Local Government Municipal Structures Act 117 of 1998 (S. Afr.).
- Limpopo Houses of Traditional Leaders Act 5 of 2005 (S. Afr.).
- Mashava v. President of the Republic of South Africa and Others* 2004 (6) BCLR 1243 (CC) (S. Afr.).
- Merafong Demarcation Forum and Others v. President of the Republic of South Africa and Others* 2008 (10) BCLR 968 (CC) (S. Afr.).
- Mpumalanga Provincial House and Local Houses of Traditional Leaders Act 5 of 2005 (S. Afr.).
- National House of Traditional Leaders Act 22 of 2009 (S. Afr.).
- North West Houses of Traditional Leadership Amendment Act 3 of 2005 (S. Afr.).
- Northern Cape Traditional Leadership, Governance and Houses of Traditional Leaders Act 2 of 2007 (S. Afr.).
- Parliament of the Republic of South Africa. *Joint Rules of Parliament*, 4th ed. Cape Town: Parliament of the Republic of South Africa, 2008.
- Parliament of the Republic of South Africa. *Rules of the National Assembly*, 6th ed. Cape Town: Parliament of the Republic of South Africa, 2008.
- Parliament of the Republic of South Africa. *Rules of the National Council of Provinces*, 9th ed. Cape Town: Parliament of the Republic of South Africa, 2008.
- Promotion of Access to Information Act 2 of 2000 (S. Afr.).
- Republic of South Africa, Constitution of the Republic of South Africa, 4 December 1996. (S. Afr. CONST. 1996.)
- Tinyiko Lwandhlamuni Philla Nwamitwa Shilubana and Others v. Sidwell Nwamitwa* 2008 (9) BCLR 914 (CC) (S. Afr.).

Traditional Leadership and Governance Framework Act 41 of 2004 (S. Afr.).

Nonlegal References

- African Union Commission. African Union Election Observation Mission to the 7 May 2014 National and Provincial Elections in the Republic of South Africa: Final Report. August 2014.
- Ajam, Tania, Bongani Khumalo, Ramos Mabugu, and Bethuel Setai (eds.). Technical Report: Annual Submission on the Division of Revenue 2010/11. Johannesburg: Financial and Fiscal Commission, 2009.
- Beall, Jo, Sibongiseni Mkhize, and Shahid Vawda. "Traditional Authority, Institutional Multiplicity and Political Transition in KwaZulu-Natal, South Africa." Working Paper No. 48. Crisis States Programme, Development Research Centre, London School of Economics, July 2004.
- Bentley, Kristina A. "Are the Powers of Traditional Leaders in South Africa Compatible with Women's Equal Rights?: Three Conceptual Arguments." *Human Rights Review* 6, no. 4 (2005): 48–68.
- Booyesen, Susan. *Twenty Years of South African Democracy*. Washington: Freedom House, 2013.
- Cameron, Robert. "Vertical Decentralization and Urban Service Delivery in South Africa: Does Politics Matter?" WIDER Working Paper 2012/087. Helsinki: UNU-WIDER, 2012.
- de Klerk, Eldred. "South Africa's Negotiated Transition: Context, Analysis, and Evaluation." In *Owning the Process: Public Participation in Peacemaking*, edited by Catherine Barnes, 14–19. London: Conciliation Resources, 2002.
- de Villiers, Susan. *A People's Government, The People's Voice: A Review of Public Participation in the Law and Policy-Making Process in South Africa*. Pretoria: Idasa, 2001.
- de Vos, Pierre. "Key Institutions Affecting Democracy in South Africa." In *Testing Democracy: Which Way Is South Africa Going?*, edited by Neeta Misra-Dexter and Judith February, 94–116. Cape Town: Idasa, 2010.
- Electoral Commission of South Africa. "2014 National and Provincial Elections Results." <http://www.elections.org.za/resultsnpe2014/>.
- Financial and Fiscal Commission. *Submission on the Division of Revenue 2014/15*. Johannesburg: Financial and Fiscal Commission, 2013.
- Gauteng Legislature. "Public Participation." <http://www.gpl.gov.za/index.php/legislative-business/core-functions/public-participation.html>.
- Hicks, Janine, and Colleen Lowe Morna. "Gender Equality in Elections Cannot Be Left to the Whims of Political Parties." *Mail & Guardian*, 29 July 2016. <https://mg.co.za/article/2016-07-29-00-gender-equality-in-elections-cannot-be-left-to-the-whims-of-political-parties>.
- Idasa, *Elections and the Management of Diversity in Africa: National Country Report for South Africa*. Pretoria: Idasa, 2012.
- Inter-Parliamentary Union. "Women in National Parliaments." 1 December 2015. <http://www.ipu.org/wmn-e/classif.htm>.
- Kethusegite-Juru, Bookie Monua. "Quotas Systems in Africa: An Overview." In *The Implementation of Quotas: African Experiences*, edited by Julie Ballington, 22–26. Stockholm: International IDEA, 2004.
- Klug, Heinz. *The Constitution of South Africa: A Contextual Analysis*. Portland, OR: Hart Publishing, 2010.
- Koelble, Thomas A., and Andrew Siddle. "Why Decentralization in South Africa Has Failed," *Governance: An International Journal of Policy, Administration, and Institutions* 26, no. 3 (July 2013): 343–346.

- Mehta, Dhvani, Aditi Aparajita, Chris McConnachie, Deeksha Sharma, Francesco Carelli, and Kelly Dhru. *A Comparative Survey of Procedures for Public Participation in the Lawmaking Process*. Oxford: University of Oxford, 2011.
- Morna, Colleen Lowe, Sifiso Dube, and Lucia Makamure (eds.). *SADC Gender Protocol 2015 Barometer*. Johannesburg: Southern Africa Gender Protocol Alliance, 2015.
- Mpumalanga Provincial Legislature. "Sectoral Parliaments of the Mpumalanga Legislature." <http://www.mpuleg.gov.za/sectoral-parliaments.html>.
- Murray, Christina. "Republic of South Africa." In *A Global Dialogue on Federalism, Vol. 3: Legislative, Executive, and Judicial Governance in Federal Countries*, edited by Katy Le Roy and Cheryl Saunders, 258–288. Montreal: McGill Queen University Press, 2006.
- Murray, Christina. "South Africa's Troubled Royalty." Law and Policy Paper No.23. Federation Press and Centre for International and Public Law. Australian National University, 2004.
- Myakayaka-Manzini, Mavivi. "Political Party Quotas in South Africa." In *The Implementation of Quotas: African Experiences*, edited by Julie Ballington, 58–60. Stockholm: International IDEA, 2004.
- National Council of Provinces. *Report: Taking Parliament to the People Programme, Free State Province, 15–19 November 2010*. Cape Town: Parliament of the Republic of South Africa, 2010.
- Parliament of South Africa. "Committees." http://www.parliament.gov.za/live/content.php?Item_ID=137.
- Parliament of South Africa. "Committees: The Role and Functions of Committees in Parliament." http://www.parliament.gov.za/live/content.php?Category_ID=28.
- Parliament of South Africa. "National Assembly." http://www.parliament.gov.za/live/content.php?Category_ID=26.
- Parliament of South Africa. "National Council of Provinces Concludes Its Final Stage of Taking Parliament to the People." 25 October 2007. http://www.parliament.gov.za/live/contentpopup.php?Item_ID=407&Category_ID=
- Parliament of South Africa. "Parliamentary Democracy Offices." http://www.parliament.gov.za/live/content.php?Category_ID=170.
- Picard, Louis A., and Thomas Mogale. *Comparative Assessment of Decentralization in Africa: South Africa Desk Study*. Washington: United States Agency for International Development, 2010.
- Provincial Treasury of KwaZulu-Natal. "Estimates of Provincial Revenue and Expenditure 2015/16." <http://www.treasury.gov.za/documents/provincial%20budget/2015/4.%20Estimates%20of%20PrPr%20Rev%20and%20Exp/Default.aspx>.
- SABC News. "Mpumalanga Parly to Honour Mandela." 14 July 2014. <http://www.sabc.co.za/news/a/7d7491004bf8bbb79894ffa583a5af00/Mpumalanga-parly-to-honour-Mandela-20121407>.
- South African Government News Agency. "Mpuma's Women Parly to Improve Lives." 5 August 2010. <http://www.sanews.gov.za/south-africa/mpumas-women-parly-improve-lives>.
- Statistics South Africa. "Census 2001: Primary Tables South Africa, Census '96 and 2001 Compared." Pretoria: 2004. http://www.statssa.gov.za/?page_id=5107.
- Statistics South Africa. "Community Survey 2016, Statistical Release P0301." Pretoria: July 2016. <http://cs2016.statssa.gov.za/>.

Western Cape Government. "Directorate: Public Participation: Overview." Last modified 20 August 2013. https://www.westerncape.gov.za/your_gov/419.

Wines, Michael. "Leadership Battle Grips South Africa's Dominant Party." New York Times, 17 December 2007. <http://www.nytimes.com/2007/12/17/world/africa/17anc.html?pagewanted=all&r=0>

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