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DOCUMENTATION PACKAGE 8

**Extracts from Constitutions
dealing with security apparatus**

THEME COMMITTEE 6.4

SECURITY APPARATUS

23 March 1995

PROVISIONS IN FOREIGN CONSTITUTIONS DEALING WITH SECURITY APPARATUS

BOLIVIA

CHILE

HUNGARY

LUXEMBOURG

PORTUGAL

PERU

BOLIVIA

CONSTITUTION

OF

BOLIVIA

1967

BOLIVIA

**CONSTITUTIONS
OF THE
COUNTRIES
OF THE
WORLD**

Editors
ALBERT P. BLAUSTEIN & GISBERT H. FLANZ

BOLIVIA

by
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CAROL CORCORAN & SANDRA LAUREANO**

1972-1986 by GISBERT H. FLANZ

1987-1992 by PETER F. HELLER

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Article 205. Mayors have the following powers and duties:

1. To oversee the provisioning of the city.
2. To suppress speculation.
3. To fix and control the selling price of articles of prime necessity and of public amusements.
4. To maintain and supervise services relating to good neighborhoods, street cleaning, comfort, ornamentation, urban development, and recreation.
5. To promote popular culture.
6. To protect public morals.
7. To cooperate with social welfare and charitable services.
8. To collect and expend the municipal revenues in accordance with the budget.
9. To negotiate loans for public works of recognized necessity, following approval by the municipal council and authorization by the Senate.
10. To call upon the police in the enforcement of their orders.

Article 206. Within an urban district landowners may not possess areas of unimproved lands greater than that fixed by law. Excess areas may be expropriated and used for the construction of housing of social interest.

Title Seven

Armed Forces Regime

Article 207. The armed forces of the nation are organically composed of the high command, the army, the air force and the naval force, the strength of which shall be determined by the legislative power, at the proposal of the executive.

Article 208. The armed forces have the fundamental mission of defending and preserving the national independence, the security and stability of the republic, and national sovereignty and honor; ensuring the rule of the Constitution, guaranteeing the stability of the legally constituted government, and cooperating in the integral development of the country.

Article 209. The organization of the armed forces rests on its ranks of authority and discipline. They are essentially obedient, they do not deliberate, and they are subject to military laws and regulations. As an institutional organization they do not participate in political activity, but individually their members enjoy and exercise the rights of citizenship under conditions prescribed by law.

Article 210. The armed forces are subordinate to the president of the republic and receive their orders from him on administrative matters, through the minister of defense; and on technical matters, through the commander-in-chief.

In the event of war, the commander-in-chief of the armed forces shall direct operations.

Article 211. No foreigner shall exercise command or hold employment or an administrative post in the armed forces without prior authorization from the captain general.

In order to serve as commander-in-chief of the armed forces, chief of the general staff, commanders and chiefs of staff of the army, the air force, the naval force, and of large units, it is necessary to be a Bolivian by birth and meet the requirements prescribed by law. The same conditions shall be necessary to be under-secretary in the ministry of national defense.

Article 212. The Supreme Council of National Defense, the composition, organization, and powers of which shall be determined by law, shall be headed by the captain general of the armed forces.

Article 213. Every Bolivian is obligated to render military service in accordance with the law.

Article 214. Promotions in the armed forces shall be granted in accordance with the law on the subject.

Title Eight

National Police Regime

Article 215. The forces of the national police consist of the General Administration, the National Guard, Traffic, and the National Criminal Investigation Bureau. Their specific mission is the preservation of the public order, the protection of society through their specialized agencies, and the guarantee of enforcement of the laws. The national police is governed by its organic law. It does not deliberate nor take part in partisan politics.

Article 216. The forces of the national police are subordinate to the president of the republic through the minister of government.

Article 217. To be appointed as director general of the national police it is necessary to be a Bolivian by birth and to possess an academic degree.

Article 218. In the event of international war, the forces of the national police shall become subordinate to the commander-in-chief of the armed forces for the duration of the conflict.

CHILE

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such an expenditure. Payments shall be made considering, in addition, the chronological order established in it and subject to budgetary countersignature of the document ordering the payment.

CHAPTER X

Armed Forces, Forces of Order and Public Security

Article 90.— The Forces dependent on the Ministry in charge of National Defense are constituted only and exclusively by the Armed Forces and the Forces of Order and Public Security.

The Armed Forces are composed of the Army, Navy and Air Force only. They exist for the defense of the fatherland, are essential for national security and guarantee the institutional order of the Republic.

The Forces of Order and Public Security are composed of the Armed Police and Bureau of Investigations only; they constitute the public force and their function is to ensure the effectiveness of law and guarantee public order and public internal security, in the manner determined by their respective organic laws. The Armed Police shall, in addition, incorporate into the Armed Forces in order to guarantee the institutional order of the Republic.

The Armed Forces and the Armed Police, as armed corps, are essentially obedient and not deliberating bodies. In addition, the forces attached to the Ministry in charge of National Defense are professional, hierarchic and disciplined.

Article 91.— Incorporation into the personnel and establishments of the Armed Forces and Armed Police may only be obtained through their own schools, with the exception of the professional ranks and civil servants as determined by law.

Article 92.— No person, group or organization may possess or own arms or other similar implements indicated by a law passed by a qualified quorum, without due authorization granted in conformity with the latter.

The Ministry in charge of National Defense or a Body depending thereon shall be entrusted with the supervision and control of arms in the manner determined by law.

Article 93.— The Commanders-in-Chief of the Army, Navy and Air Force, and the General, Director of the Armed Police shall be appointed by the President of the Republic from among the five senior generals who have the qualifications required by the respective institutional statutes for such posts. They shall serve their posts for four years, may not be reappointed for a new term of office and shall not be subject to removal from their posts.

In qualified cases, the President of the Republic, with the agreement of the National Security Council, may call the Commanders-in-Chief of the Army, Navy and Air Force or the General, Director of the Armed Police to retirement, as the case may be.

Article 94.— The appointments, promotions and retirements of officers of the Armed Forces and Armed Police shall be made by supreme decree, in accordance with the law and the regulations of each institution.

Entry, assignments, promotions and retirements in the Bureau of Investigations shall be made in conformity with its organic law.

CHAPTER XI

National Security Council

Article 95.— There shall be a National Security Council presided over by the President of the Republic and composed of the presidents of the Senate and of the Supreme Court, of the Commanders-in-Chief of the Armed Forces, and of the General, Director of the Armed Police.

Ministers of the Interior, Foreign Relations, National Defense, Economy and Finance shall also participate as members of the Council, but without the right to vote. The Chief of the General Staff of National Defense shall act as Secretary.

The National Security Council may be convoked by the President of the Republic or on request of two of its Members and it shall require a quorum of an absolute majority of its Members in order to hold sessions. To the effects of convoking the Council and of the quorum for holding sessions, only its Members with the right to vote, shall be considered.

Article 96.— The functions of the National Security Council shall be:

- (a) To advise the President of the Republic on any matter linked to the National Security when he should so request;
- (b) To express to any authority established by the Constitution, its opinion regarding any fact, action or matter which in its judgement gravely attempts against the foundations of institutionality or which might affect the national security;
- (c) To report previously on matters referred to in № 13 of Article 60;
- (d) To seek from authorities and officials of the Administration all the background information related to the external and internal security of the State. In such case, the person to whom the request has been

made, is obliged to furnish them, and his refusal shall be punished in the manner established by law; and
(e) To exercise the other powers entrusted thereto, by this Constitution.
The agreements or opinions referred to in letter (b) may be public or reserved, as determined by the Council in each particular case
A regulation issued by the Council itself shall state the other provisions concerning its organization and functioning.

CHAPTER XII

Central Bank

Article 97.— There shall be an autonomous body of a technical nature with patrimonial assets of its own, known as the Central Bank, whose composition, organization, functions and powers shall be determined by a constitutional organic law.

Article 98.— The Central Bank may only perform transactions with financial institutions, either public or private. In no way whatsoever may it act as collateral thereof nor secure documents issued by the State, its Bodies or Enterprises.

No public expenditure or loan may be financed with direct or indirect credits of the Central Bank. However, in case of a foreign war or the menace of such a war, as determined by the National Security Council, the Central Bank may secure, grant or finance credits to the State and public or private entities.

The Central Bank may not adopt any agreement which should represent, in a direct or indirect manner, the establishment of different or discriminatory norms or requirements in relation to persons, institutions or entities performing transactions of the same nature.

CHAPTER XIII

Government and Internal Administration of the State

Article 99.— For the government and the internal administration of the State, the territory of the Republic is divided into regions and these into provinces. To the effects of local administration, the provinces shall be divided into districts.

The alteration of the boundaries of the regions, as well as the creation, modification and suppression of provinces and districts, shall be a matter of law. The same applies to: determining the capitals of regions and provinces; all of which is to be done on the proposal of the President of the Republic.

Government and Regional Administration

Article 100.— The government and the higher administration of each region rest with the Intendant, who shall be of the exclusive confidence of the President of the Republic. The Intendant shall perform said functions in accordance with the law and with the orders and instructions of the President whose natural and immediate agent he is in his jurisdictional territory.

The Intendant shall be entrusted with the making of the development policy of the region, according to the national plans, and with the supervision, coordination and inspection of public services, with the exception of the Office of the Comptroller General of the Republic and the Courts of Justice.

The law shall establish the manner in which the Intendant shall exercise these powers, the other faculties conferred upon him and the Bodies which shall advise him.

Article 101.— Established in each region shall be a Regional Development Council, headed by the Intendant and composed of the Governors of the respective provinces, a representative of each of the institutions of the Armed Forces and Armed Police with seat in the respective region, and by Members appointed by the principal public and private Bodies performing activities in the territorial area of the region. The majority of the Members of said Council shall represent the private sector.

A constitutional organic law shall determine, according to the characteristics of each region, the number of Members of the Council, the form of appointment and duration in their posts, and matters related to organization and functioning of the Council, and the cases in which public officials integrating such Council shall have the right to vote.

Article 102.— The function of the Regional Council is to advise the Intendant and contribute to the effective participation of the community in the economic, social and cultural progress of the region.

The law shall determine the matters on which consultation of the Intendant with the Council shall be mandatory and those in which the agreement of the Council shall be necessarily required. In any case, such agreement shall be required for the approval of projects related to the regional development plan and to the regional budget. The decision on the distribution of regional development funds shall rest with the Council.

The Regional Councils shall have the other powers provided for by the Constitution and the law.

Article 103.— The law shall provide for, with the appropriate exceptions, the regional decentralization of the Ministries and Public Services as well as the procedures to ensure their due coordination and facilitate the exercise of the powers of the regional authorities.

HUNGARY

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**The REPUBLIC of
HUNGARY**

Chronology to 1976

by

GISBERT H. FLANZ & CAMILL A. RONAY

1976-1990

by

GISBERT H. FLANZ

Commentary by **GABOR HAMZA**
Translation by **MARTA KISZELY**

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§ 39/B.

(1) In case Parliament withdraws its confidence from the Council of Ministers, it shall remain in office until a new Council of Ministers is elected, and shall exercise all powers and rights that are due to a Council of Ministers; however, it shall not be entitled to make international agreements/treaties, and shall be entitled to enact a decree only by express authorization by law in cases of pressing necessity; that cannot be postponed.

(2)* Parliament shall make decision on the issue of electing a new Council of Ministers within forty days after withdrawal of confidence.

* Subparagraph (2) of paragraph 39/A and subparagraph (2) of paragraph 39/B shall come into force on the day of the constituent assembly of the new Parliament to be convoked after the next general election of Members of Parliament.

§ 40.

(1) For the performance of certain duties the Council of Ministers may create/-organize government committees.

(2) In any matter within the scope of state administration the Council of Ministers may take action either directly or through any of its members.

(3) The Council of Ministers has the right to draw any branch of state administration within its immediate supervision and to create special agencies for this purpose.

CHAPTER VIII. THE ARMED FORCES AND THE POLICE

§ 40. A.

(1) The fundamental duty of the Armed Forces (Hungarian People's Army, Frontier-Guard) is the military defense of the country. The duties of the Armed Forces and detailed rules referring to them shall be provided by a Constitutional Act.

(2) The fundamental duty of the police is to protect public safety and internal law and order. Detailed rules referring to the Policy and the Safety of the state shall be provided by a Constitutional Act.

§ 40. B.

(1) The Armed Forces shall not cross the borders of the state unless having the prior consent of Parliament, and except in cases of military exercises under a treaty in force or of peace-keeping activities carried out by the request of the United Nations.

(2) The Armed Forces may be deployed in case of armed actions aimed to overthrow constitutional law and order or to acquire exclusive power; as well as in case of grave violent acts committed by force of arms or weapons, threatening the safety of citizens' life and property en masse, during a state of emergency proclaimed in conformity with the Constitution, and if the deployment of Police is not sufficient.

(3) The power to direct the Armed Forces is delegated exclusively to Parliament, the President of the Republic, the Council of National Defense, the Council of

Ministers within the limits specified by the Constitution and a particular Act, unless otherwise provided by a treaty in force.

(4) Full-time members of the Armed Forces and the Police on active duty may participate in activities in political parties within the limits set by a Constitutional Act.

§ 40/C.

(1) Troops of foreign armed forces - failing a provision to the contrary in a treaty in force - shall neither march across, nor be deployed or stationed in the territory of the Country unless having prior consent of Parliament.

(2) International agreements affecting national defense shall be affirmed and promulgated publicly by an Act.

CHAPTER IX. THE COUNCILS

§ 41.

(1) The territory of the Republic of Hungary is divided into the Capital, counties, cities, and communities.

(2) The Capital and the cities may be divided into districts.

§ 42.

(1) Councils function, operate in the Capital, the counties, the districts of the Capital, the cities, and the communities. Councils may also be established formed by a city or community, or by several communities jointly.

(2)* Members of the Councils are elected for the term of four years.

(3) The Council performs its duty with the active participation of the population, in its work it relies directly on social organizations, and cooperates with non-Council organizations.

(4) Members of the Councils shall regularly render account of the work of the Council and their own activities to their electorate constituents.

* Subparagraph (2) of paragraph 42 shall come into force on the day of setting the date of the next election of Members of Councils, according to the provisions of subparagraph (3) of paragraph 38 of Act No. XXXI. of 1989.

§ 43.

(1) The Council

(a) represents the interest of the population, within its territorial venue it functions as a self-governing body of the population.

(b) ensures the realization implementation of the central state and the local objectives, the independent discharge of functions assigned to its competence, the enforcement of the statutory provisions.

(c) determines its own plans and budget concerning the social-economic plan of the Country and the State Budget, directs and supervises the implementation of

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jurisdiction of the courts except as otherwise provided by law.

Art. 86. No court or jurisdiction in contentious matters shall be set up except by virtue of a law. No extraordinary commissions or courts shall be set up, under whatever name.

Art. 87. The organization of a Superior Court of Justice shall be provided for by a law

Art. 88. Hearings in court shall be public unless such publicity is a threat to good order and morality. In which case the court shall so declare by way of a ruling.

Art. 89. All judgments shall be reasoned. They shall be given in open court.

Art. 90. Justices of the Peace and judges of the courts shall be appointed directly by the Grand Duke. — Members of the Superior Court of Justice and presidents and vice-presidents of the district courts shall be appointed by the Grand Duke on the advice of the Superior Court of Justice.

Art. 91. District court judges and members of the Superior Court of Justice shall be appointed for life. — None of them shall be deprived of his post or suspended save by a judicial decision. — None of these judges shall be transferred except by way of a new appointment and with his consent.

In the event of infirmity or misconduct, however, he may be suspended, dismissed or transferred, under the conditions laid down by the law.

Art. 92. The salaries of members of the judiciary shall be fixed by the law.

Art. 93. Except where otherwise provided by law, no judge shall accept salaried functions from the Government unless he performs them free of charge, without prejudice however to cases of incompatibility determined by the law.

Art. 94. Special laws shall regulate the organization of military tribunals, their duties, and the rights, obligations and terms of office of their members. — Commercial courts may be set up in places determined by the law, which shall regulate their organization and duties, and the method of appointment and terms of office of their members.

Art. 95. Courts of law shall not apply general and local decisions and regulations except in so far as these comply with the law. — The Superior Court of Justice shall settle disputes as to competence in accordance with the procedure laid down by the law.

**Chapter VII
The Public Force**

Art. 96. All matters connected with the armed force shall be regulated by the law.

Art. 97. The organization and the powers of the gendarmerie shall be made the subject-matter of a law.

Art. 98. A civil guard, whose organization shall be regulated by the law, may be formed.

**Chapter VIII
Finances**

Art. 99. No tax shall be imposed for the benefit of the State except pursuant to a law. — No loan to be borne by the State shall be contracted without the consent of the Chamber. — No real property of the State shall be alienated unless such alienation is authorized by law. — No road, canal, railway or large bridge or building shall be ordered to be built on behalf

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guaranteed to citizens [administrados] for the safeguarding [tutela] of their rights and legally protected interests." A new sixth paragraph calls for a law which will specify a maximum period for replies by the administration.

In the first paragraph of Article 271, which defines the responsibility of officials and personnel, the first of the four paragraphs was amended.

Section X National Defense

Section X concerns National Defense (articles 273-276). Some important changes were made in this section. They mark a further effort to bring the military establishment under civilian control in times of emergency as well as normalcy. The amendments concern articles 273, 275 and 276.

The original 1976 Article 273 consisted of five paragraphs which reflected the powerful position of the Armed Forces within the State. In 1982 the article was condensed and modified in two paragraphs. The amendment of 1989 added to the objectives of national defense the obligation to "respect the constitutional order," as well as democratic institutions.

The changes in Article 275 pertain to the fifth and sixth paragraphs. The original 1976 text of Article 275, which consisted of only two paragraphs, was limited to the objectives of keeping the Armed Forces out of partisan politics. In 1982 a much more elaborate and comprehensive definition was formulated in six paragraphs. The 1989 amendment of the fifth paragraph makes references also to "situations of public calamity which do not justify the suspension of the exercise of rights." The sixth paragraph was slightly amended to refer to "laws which shall regulate the state of siege and the state of emergency [and] specify the conditions under which the Armed Forces may be used in these circumstances."

Only a small change was made in Article 276. In the first paragraph it is stated that defense of the country is not only a duty but also a right of all Portuguese.

PART IV SAFEGUARDS and REVISION of the CONSTITUTION

Part IV, now as before, concerns safeguards and the revision of the Constitution. Additional Constitutional safeguards were introduced by the amendment in Section I, "Supervision of the Constitutionality," of articles 278, 279, 280 and 281. In Section II, "Revision of the Constitution," the following articles were amended, renumbered or eliminated: 284, 285, 286, 287 and 288.

Section I

Article 278 which defines "preventive scrutiny of constitutionality," was extensively amended. In the third paragraph, it is now stipulated that "preventive scrutiny of constitutionality shall be requested no later than eight days [formerly it was five] from the date of the receipt of the instruments [diploma]." A new paragraph four was inserted which authorizes the President of the Republic, the Prime Minister, as well as one-fifth of the Members of the Assembly to request the Constitutional Court to undertake a preventive scrutiny of the constitutionality of any provision of a decree which is to be promulgated by the President of the Republic as an organic law. A new fifth paragraph requires that when a decree is to be submitted to the President of the Republic for

3. The committee of neighbours shall be elected in a secret ballot by the assembly of neighbours and freely destituted by the latter.

ARTICLE 265

Rights and powers

1. The neighbourhood organisations shall enjoy the rights:

- a. Of petition before the local authorities with respect to administrative matters of concern to the neighbours, and
- b. Of participation in the parish assembly through their representatives, the latter not being entitled to vote.

2. The neighbourhood organisations shall have the powers to perform the tasks conferred upon them by law or delegated to them by the organs of the concerned parish.

SECTION IX

Public administration

ARTICLE 266

Fundamental principles

1. Public administrative authorities shall seek to promote the public interest, while observing those rights and interests of citizens that are protected by law.

2. The organs and staff of the administrative authorities shall be subject to the Constitution and the law and shall exercise their functions in such a way as to respect the principles of equality, proportionality, fairness and impartiality.

ARTICLE 267

Structure of the Administration

1. Public administrative authorities shall be structured in such a way as to avoid bureaucracy, to bring the administration closer to the population and to ensure par-

participation by those concerned in its actual running, in particular through public associations, neighbourhood organisations and other forms of democratic representation.

2. For the purposes of the foregoing paragraph, suitable forms of administrative decentralisation and devolution shall be established by law, without prejudice to the efficiency and unity of action that are necessary or to take the Government's powers to direct and supervise.

3. Public associations may be formed only to meet specific needs. They shall not have the functions peculiar to trade union associations and their internal organisation shall be based on respect for the rights of their members and on the democratic formation of their organs.

4. Administrative procedures shall be dealt with in a special law, which shall ensure rationalisation of the methods to be used by departments and participation by the citizens in the decision-making process or in deliberations which concern them.

ARTICLE 268

Rights and safeguards of the citizens

1. Citizens shall be entitled to be informed by public administrative authorities, whenever they so require on the progress of proceedings in which they are directly concerned and to have knowledge of final decisions taken with regard to them.

2. Citizens shall also enjoy the right of access to the administrative archives and files, without prejudice to the legal provisions concerning the internal and external security, criminal investigation and personal privacy.

3. Administrative acts shall be notified to the interested parties in the way provided for by law; they shall be substantiated whenever they affect the legally protected rights or interests of citizens.

4. Interested parties shall be entitled to judicial appeal on grounds of illegality against any administrative act affecting their legally protected rights or interests, irrespective of the latter's form.

5. Access to the administrative justice shall also be secured always to citizens for the purpose of safeguarding their legally protected rights and interests.

6. For the purposes set out in paragraphs 1 and 2 above, the law shall provide a delay for the Administration's reply.

ARTICLE 269

Civil service

1. While exercising their functions, the workers of public administrative authorities and other personnel of the State and other public bodies shall exclusively serve the public interest, as it is defined, in accordance with law, by competent organs of administration.

2. The workers of public administrative authorities and other personnel of the State and other public bodies shall not suffer damage or receive benefit as a result of the exercise of any political rights provided for in the Constitution, in particular because of party allegiance.

3. In disciplinary proceedings the right of the individual concerned to be heard and to defend himself shall be secured.

4. No one shall hold more than one public post or office except in cases expressly provided for by law.

5. Cases of incompatibility between the holding of a public post or office and other activities shall be laid down by law.

ARTICLE 270

Restrictions on the exercise of rights

The law may lay down restrictions on the rights of expression, meeting, demonstration, association and collective petition and on the electoral capacity of the permanent cadres of the military and security forces on active duty as strictly required by their peculiar functions.

ARTICLE 271

Liability of officials and personnel

1. Officials and personnel of the State and other public bodies shall be responsible on civil, criminal and disciplinary grounds for actions and omissions performed in the exercise and because of their functions which result in infringements of the legally protected rights or interests of the citizens; taking action or proceedings thereupon shall not be subject at any stage to approval by a higher authority.

2. An official or member personnel who acts in accordance with orders or instructions on a service matter from his legitimate superior shall not be held liable provided that he previously requested or required that they should be given or confirmed in writing.

3. The duty of obedience shall cease whenever the carrying out of orders or instructions involves committing some criminal offence.

4. The conditions on which the State and other public bodies shall be entitled to recover the amount of indemnities previously paid by them from officials and their personnel shall be regulated by law.

ARTICLE 272

Police

1. The police shall have the functions of defending democratic legality and the rights of citizens.

2. The police measures shall be as provided for by law and shall not be used beyond what is strictly necessary.

3. The prevention of crimes, including crimes against the security of the State, shall be performed with due regard to the general rules governing the police and to the rights, freedoms and safeguards of citizens.

4. The law shall determine the system governing the security forces, each of which shall have a single organisation for the whole national territory.

SECTION X

National Defence

ARTICLE 273

National defence

1. The State shall have the obligation of ensuring national defence.

2. The aims of the national defence shall be to ensure the national independence, the integrity of the territory and the freedom and security of the population against any external aggression or menace, whilst respecting the constitutional order, the democratic institutions and the international conventions.

ARTICLE 274

Higher Council of National Defence

1. The Higher Council of National Defence shall be presided over by the President of the Republic and its membership shall be determined by law.

2. The Higher Council of National Defence shall be the specific advisory body for questions concerning national defence and the organisation, functioning and discipline of the Armed Forces and it shall have the administrative competence that may be granted to it by law.

ARTICLE 275

Armed Forces

1. The Armed Forces shall secure the military defence of the Republic.

2. The Armed Forces shall be exclusively composed of Portuguese citizens and their organisation shall be based on compulsory military service and be a single one for the whole national territory.

3. The Armed Forces shall obey the competent organs of supreme authority in accordance with the Constitution and the law.

4. The Armed Forces shall be at the service of the Portuguese people. They shall be strictly non-partisan and their members shall not take advantage of their weapons, posts or functions for any political intervention.

5. The Armed Forces may co-operate in the accomplishment of tasks connected with the satisfaction of basic needs and the improvement of the quality of life of the population, including situations of public calamity not justifying the suspension of the exercise of rights.

6. Legislation that makes provision for the state of siege and the state of emergency shall determine the conditions under which the Armed Forces shall be used in those circumstances.

ARTICLE 276

Defence of the country, military and civic service

1. The defence of the country shall be a fundamental right and a fundamental duty of every Portuguese.

2. Military service shall be compulsory, for a period and on conditions to be laid down by law.
3. Persons considered unfit for armed military service shall perform unarmed military service or civic service suited to their situations.
4. Conscientious objectors shall perform civic service of a length and difficulty equivalent to that of armed military service.
5. Civic service may be established as a substitute for or as a complement to military service and may be made compulsory by law for citizens not subject to military service.
6. No citizen shall keep or obtain any office in the State or in any other public body if he fails to perform his military service or civic service, if compulsory.
7. Performance by a citizen of military service or compulsory civic service shall be without prejudice to his social security benefits or permanent career.

PART IV

Safeguards and revision of the Constitution

SECTION I

Supervision of the constitutionality

ARTICLE 277

Active unconstitutionality

1. Provisions of law that infringe a provision of the Constitution or the principles laid down therein are unconstitutional.
2. The organic or formal unconstitutionality of international treaties that have been regularly ratified shall not prevent the application of their provisions in Portuguese law as long as the provisions are applied in the law of the other party, except if the said unconstitutionality results from the violation of a fundamental principle.

PERU

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On November 11 a state of emergency was proclaimed in seven additional provinces. It was extended to three others.

As the terrorist activities continued the demands placed upon the constitutional organs entrusted with the maintenance of public order were increased. There was concern that the military and police forces might use excessive force. It was deemed necessary to provide additional constitutional safeguards, especially with respect to the power of the National Police.

1988 Law No. 24949 of November 16, 1988 concerning the creation of the National Police of Peru was published in *El Peruano*, the official gazette of Peru on December 7, 1988.

It amended the following articles of the Constitution: 2, 22, 61, 67, 172, 182, 204, 211, 273, 274, 277, 278, 279, 280, 281, 282, 284, 285 and 293. These amendments came into effect on December 8, 1988.

In order to provide a better understanding of the significance of these amendments, we are reproducing the above mentioned articles in their present amended wording.

1989 Economic and internal political conditions worsened. In June it was reported that the inflation rate had reached 800% and that the cocaine export trade was flourishing. Shining Path rebels took responsibility for the killing of eight presidential honor guards. There was growing concern that there would be a *coup d'état* before the end of President Garcia's term (July 1990) or that the Army and police would resort to extralegal actions in order to prevent it.



CONSTITUCION POLITICA DEL PERU

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REPUBLIC OF PERU
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ARTICLE 267. The norms approved by the Regional Assembly are transmitted to the Executive Power for their promulgation and publication within fifteen days of being approved. The Executive Power can veto them.

ARTICLE 268. The President and the Council constitute the executive organ of the region. Their functions are the following:

1. To elaborate the draft of the Regional Development Plan in accordance with the outlines of the National Plan.
2. To execute the Regional Budget and administer its property.
3. To organize and administer the decentralized public services and to coordinate them with those provided by the Executive Power.
4. To solve in the last instance administrative issues of the municipal councils of the region.
5. To execute the agreements and resolutions of the Regional Assembly.
6. To regulate the norms issued by the Regional Assembly.
And
7. Others provided by the law.

CHAPTER XIII

CONCERNING NATIONAL DEFENSE AND THE INTERNAL ORDER

ARTICLE 269. The State guarantees the security of the Nation through its National Defense.

ARTICLE 270. The National Defense is permanent and integral. Every natural or juridical person is obligated to participate in it in conformity with the law.

ARTICLE 271. The direction, preparation, and exercise of National Defense are achieved through a system whose organization and functions are determined bylaw.

ARTICLE 272. The law prescribes the scope and procedures of mobilization.

ARTICLE 273. The President of the Republic is the Supreme Chief of the Armed Forces and the National Police. He directs the System of National Defense.

ARTICLE 274. Respective laws and regulations determine the organization, functions, preparedness, use, and discipline of the Armed Forces and the National Police.

ARTICLE 275. The Armed Forces are constituted by the Army, the Navy, and the Air Force. Their primary purpose is to guarantee the independence, sovereignty, and territorial integrity of the Republic. They assume control of the internal order, in accordance with Article 231.

ARTICLE 276. The Armed Forces organize their reserves and dispose of them according to the needs of National Defense and in accordance with the law.

ARTICLE 277. The fundamental purpose of the National Police is to guarantee, maintain and reestablish internal order, having to help and protect the people and the society, to guarantee the execution of the laws, the safety of private and public properties, to prevent and combat delinquency, to guard and control the national frontiers.

They participate in National Defense with the Armed Forces. Their organization and functions are established by the respective organic laws.

ARTICLE 278. The Armed Forces and the National Police are not decision-making bodies [deliberantes]. They are subordinate to the Constitutional Power.

ARTICLE 279. The law assigns funds destined to guarantee the equipment required by the Armed Forces and National Police, respectively. These funds cannot be assigned except for the purposes appropriate to each of said institutions.

ARTICLE 280. The Armed Forces and the National Police participate in the economic and social development of the country and in civil defense, in accordance with the law.

ARTICLE 281. The number of personnel of the Armed Forces and the National Police are determined annually by the Executive Power. The appropriate funds are approved in the Budget Law.

Promotions are conferred in case of vacancy in accordance with the law. The Senate ratifies the promotions of the Generals

and Admirals of the Armed Forces and of the Generals and equivalent ranks of the National Police.

ARTICLE 282. The members of the Armed Forces and National Police in cases of crimes on duty are subject to the appropriate jurisdiction and the Code of Military Justice, whose provisions are not applicable to civilians, except as is provided in Article 235.

Whoever violates obligatory military service is subject to the Code of Military Justice.

ARTICLE 283. Conscription, in cases not authorized by military laws and regulations, is an offense, which can be reported, through public action, before Judges and Courts or before the Congress.

ARTICLE 284. The ranks, honors, remunerations, and pensions pertaining to the hierarchy of officers in the Armed Forces and the National Police are equivalent. The law establishes the equivalences corresponding to military and police career personnel who do not have the rank or title of officer. In both cases the rights granted cannot be removed from their holders except by judicial sentence.

ARTICLE 285. Only the Armed Forces and the National Police can have and use weapons of war.

All those weapons that exist, are produced, or introduced into the country become the property of the State without indemnification or trial.

The law regulates the manufacture, trade, possession, and use by private parties of arms which are not weapons of war.

CHAPTER XIV

CONCERNING THE NATIONAL ELECTIONS BOARD

ARTICLE 286. The National Elections Board is responsible for the election processes. It has competence in matters relative to the right of suffrage, the validity or invalidity of elections, the certification of those elected, the issuance of credentials, electoral rules, and others noted in the law.

material error and challenge which are adjudicated according to the law.

ARTICLE 292. The National Elections Board can declare, in case of final appeal, the invalidity of the elections of a specific electoral district for the following reasons:

1. Serious irregularities in the electoral process which may be sufficient to change the results of the election. And
2. When it is proven that two-thirds of the ballots are void or blank.

ARTICLE 293. The National Elections Board dictates the instructions and provisions for the maintenance of electoral order and freedom at the polls. Said instructions and provisions are binding on the Armed Forces and the National Police.

ARTICLE 294. The Electoral Register and the Register of Political Parties are kept by the National Elections Board. The law determines their organization and function.

TITLE V

CONSTITUTIONAL GUARANTEES

ARTICLE 295. An action or omission by any authority, official, or individual who undermines or threatens individual liberty is ground for an action of "habeas corpus."

The action of amparo protects the other rights which are recognized by the Constitution that may be violated or threatened by any authority, official, or individual.

An action of amparo involves the same proceeding as the action of "habeas corpus" to the extent that it is applicable.

Popular complaints may be brought before the Judicial Power on account of a violation of the Constitution or the law against administrative regulations and norms and against decisions and decrees of a general character issued by the Executive Power, the regional and local governments, and other persons of public law.

ARTICLE 296. The Court of Constitutional Guarantees is the control organ of the Constitution. It is made up of nine members. Three are appointed by the Congress, three by the Executive Power, and three by the Supreme Court of Justice.